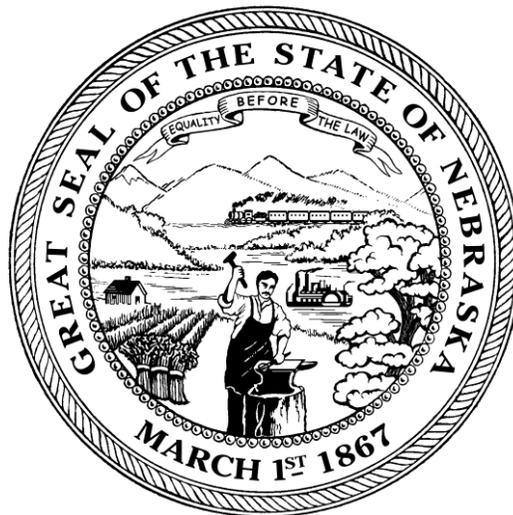


# REVISED STATUTES OF NEBRASKA

## REISSUE OF VOLUME 3B

### 2010

COMPRISING ALL THE STATUTORY LAWS OF A  
GENERAL NATURE IN FORCE AT DATE OF  
PUBLICATION ON THE SUBJECTS ASSIGNED  
TO CHAPTER 48, ARTICLES 6 TO 30,  
AND CHAPTERS 49 TO 60, INCLUSIVE



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Revisor of Statutes

For the benefit of the  
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**CERTIFICATE OF AUTHENTICATION**

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the Reissue of Volume 3B of the Revised Statutes of Nebraska, 2010, contains all of the laws set forth in Chapter 48, Articles 6 to 30, and Chapters 49 to 60, appearing in Volume 3B, Revised Statutes of Nebraska, 2004, as amended and supplemented by the Ninety-ninth Legislature, First Session, 2005, through the One Hundred First Legislature, Second Session, 2010, of the Nebraska Legislature, in force at the time of publication hereof.

Joanne M. Pepperl  
Revisor of Statutes

Lincoln, Nebraska  
October 1, 2010

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REISSUE REVISED STATUTES

OF NEBRASKA, 2010

(in full)

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(abbreviated)

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**EMPLOYMENT SECURITY**

**CHAPTER 48  
LABOR**

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

Sections 48-601 to 48-671 shall be known and may be cited as the Employment Security Law.

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

Operative date July 1, 2011.

Appeals to the Supreme Court under the provisions of the Employment Security Law are reviewed de novo on the record. *Smith v. Sorensen*, 222 Neb. 599, 386 N.W.2d 5 (1986).

The Employment Security Law provides one avenue of judicial appeal when the dispute concerns benefit liability and another when the dispute concerns contribution liability. *Northern Messenger v. Sorensen*, 218 Neb. 846, 359 N.W.2d 787 (1984).

The state, by its Legislature, has extensively entered the field of labor. *Midwest Employers Council, Inc. v. City of Omaha*, 177 Neb. 877, 131 N.W.2d 609 (1964).

A compensable claim for benefits under the unemployment compensation act must have some relation to, or connection with, the employment which employee has lost. *Woodmen of the World Life Ins. Soc. v. Olsen*, 141 Neb. 776, 4 N.W.2d 923 (1942).

#### **48-602 Terms, defined.**

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

(1) Base period means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except that for benefit years beginning on or after July 1, 2011, if the individual is not monetarily eligible for unemployment benefits as determined pursuant to subdivision (5) of section 48-627 based upon wages paid during the first four of the five most recently completed calendar quarters, the department shall make

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

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

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

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

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

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

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

(8) Commissioner means the Commissioner of Labor;

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

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

(11) Department means the Department of Labor;

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

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

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

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

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

(16) Insured work means employment for employers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(28) Unemployment Trust Fund means the trust fund in the Treasury of the United States of America established under section 904 of the federal Social Security Act, 42 U.S.C. 1104, as such section existed on March 2, 2001, which receives credit from the state Unemployment Compensation Fund;

(29) Wages, except with respect to services performed in employment as provided in subdivisions (4)(c) and (d) of section 48-604, means all remuneration for personal services, including commissions and bonuses, remuneration for personal services paid under a contract of hire, and the cash value of all remunerations in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules and regulations prescribed by the commissioner. After December 31, 1985, wages includes tips which are received while performing services which constitute employment and which are included in a written statement furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code as defined in section 49-801.01.

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

The term wages does not include:

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

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

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

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

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

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

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

(g) Benefits paid under a supplemental unemployment benefit plan which satisfies the eight points set forth in Internal Revenue Service Revenue Ruling 56-249 as the ruling existed on March 2, 2001, and is in compliance with the standards set forth in Internal Revenue Service Revenue Rulings 58-128 and 60-330 as the rulings existed on March 2, 2001; and

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

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

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

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

(33)(a) Until January 1, 2012, worksite employee means a person receiving wages or benefits from a professional employer organization pursuant to the terms of a professional employer agreement for work performed at a client's worksite.

(b) On and after January 1, 2012, worksite employee has the same meaning as the term covered employee in section 48-2702.

**Source:** Laws 1937, c. 108, § 2, p. 370; Laws 1939, c. 56, § 1, p. 229; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 373; C.S.Supp., 1941, § 48-702; Laws 1943, c. 111, §§ 1, 2, p. 390; R.S. 1943, § 48-602; Laws 1947, c. 175, § 1, p. 563; Laws 1949, c. 163, § 2, p. 417; Laws 1951, c. 156, § 1, p. 626; Laws 1953, c. 167, § 2, p. 520; Laws 1961, c. 235, § 3, p. 695; Laws 1961, c. 238, § 1, p. 701; Laws 1971, LB 651, § 1; Laws 1972, LB 1392, § 1; Laws 1977, LB 509, § 1; Laws 1979, LB 581, § 1; Laws 1980, LB 800, § 1; Laws 1983, LB 248, § 1; Laws 1985, LB 339, § 2; Laws 1986, LB 950, § 1; Laws 1988, LB 1033, § 1; Laws 1992, LB 879, § 1; Laws 1993, LB 121, § 289; Laws 1994, LB 286, § 1; Laws 1994, LB 1337, § 2; Laws 1995, LB 77, § 1; Laws 1995, LB 574, § 51; Laws 1996, LB 1044, § 274; Laws 1999, LB 168, § 1; Laws 1999, LB 608, § 1; Laws 2001, LB 192, § 3; Laws 2002, LB 921, § 1; Laws 2005, LB 484, § 3; Laws 2005, LB 739, § 2; Laws 2007, LB 265, § 4; Laws 2007, LB 296, § 216; Laws 2010, LB 579, § 20; Laws 2010, LB 1020, § 2.

**Note:** Changes made by LB1020 became operative July 1, 2011.

Based upon the plain and ordinary meaning of the first definition contained in subsection (27) of this section, two elements must be satisfied to demonstrate unemployment: First, the individual must not perform any services for the relevant time period; and second, no wages may be payable with respect to that time period. *Wadkins v. Lecuona*, 274 Neb. 352, 740 N.W.2d 34 (2007).

In determining whether wages are payable with respect to a time period, within the meaning of subsection (27) of this section, the test is not in what week the remuneration is received but in what week it is earned or to which it may reasonably be considered to apply. Generally speaking, wages are tied to the week of work and not to the week in which they are paid. *Wadkins v. Lecuona*, 274 Neb. 352, 740 N.W.2d 34 (2007).

Vacation pay, within the meaning of subsection (18) of this section, is generally regarded, not as a gratuity or gift, but as additional wages for services performed. It is not in the nature of compensation for the calendar days it covers — it is more like a contracted-for bonus for a whole year's work. A "vacation" is also understood to be a respite from active duty, during which activity or work is suspended, purposed for rest, relaxation, and personal pursuits. *Wadkins v. Lecuona*, 274 Neb. 352, 740 N.W.2d 34 (2007).

Under former law, wages may include noncash benefits under certain circumstances. In-kind benefits received in return for

services provided may constitute wages for purposes of determining eligibility for unemployment compensation benefits. *Lecuona v. McCord*, 270 Neb. 213, 699 N.W.2d 403 (2005).

As a requisite matter, for an entity to be denominated an employee leasing company under subsection (11) of this section, it must be in the business of leasing employees to another entity. *American Employers Group Inc. v. Department of Labor*, 260 Neb. 405, 617 N.W.2d 808 (2000).

Under the former law, pursuant to subsection (24) of this section, employees who agree to take their earned vacation at a specific period of time for the employer's convenience under the expectation that their employment will continue after that period are not unemployed for the purpose of receiving unemployment insurance benefits. *Vlasic Foods International v. Lecuona*, 260 Neb. 397, 618 N.W.2d 403 (2000).

One performing services under a contract but not receiving wages, as defined by subsection (16) of this section, performs services under a contract of hire unless one is an independent contractor, as defined by the common law. *Omaha World-Herald v. Dernier*, 253 Neb. 215, 570 N.W.2d 508 (1997).

A professional symphony musician employed under a seasonal contract rather than an annual contract was entitled to unemployment benefits for the time he was unemployed during the symphony's "off season". *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).

### 48-603 Employer, defined.

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

(1) Any individual or type of organization, including any partnership, limited liability company, association, trust, estate, joint-stock company, insurance

company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which is or was an employer as defined by the Employment Security Law immediately prior to May 27, 1971, and after December 31, 1971, any such individual or employing concern which for some portion of a day but not necessarily simultaneously in each of twenty different calendar weeks, whether or not such weeks are or were consecutive, within either the current or preceding calendar year, and for the purpose of this definition, if any week includes both December 31 and January 1, the days up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week, has or had in employment one or more individuals, irrespective of whether the same individuals are or were employed in each such day; all individuals performing services for any employer of any person in this state, who maintains two or more separate establishments within this state, shall be deemed to be employed by a single employer; any artifice or device, including any contract or subcontract, by an employer for the performance of work, which is a part of such employer's usual trade, occupation, profession, or business, entered into for the purpose or with the intent of evading the application of this section to such employer, is hereby prohibited and declared to be unlawful;

(2) Any employer of any person in this state who after December 31, 1971, in any calendar quarter in either the current or preceding calendar year has paid wages for employment in the total sum of fifteen hundred dollars or more;

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

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

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

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

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

(8) The state or any of its instrumentalities which is or was an employer under the Employment Security Law immediately prior to September 2, 1977, and after December 31, 1977, the state or any political subdivision thereof and any instrumentality of any one or more of the foregoing;

(9) Any organization for which service in employment as defined in section 48-604, subdivision (4)(b) is performed after December 31, 1971;

(10) Any individual or employing unit for which service in employment as defined in section 48-604, subdivision (4)(c), is performed after December 31, 1977;

(11) Any individual or employing unit for which service in employment as defined in section 48-604, subdivision (4)(d), is performed after December 31, 1977; and

(12)(a) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under subdivision (1) or (10) of this section, the wages earned or the employment of an employee performing domestic service after December 31, 1977, shall not be taken into account; and

(b) In determining whether or not an employing unit for which agricultural labor is also performed is an employer under subdivision (11) of this section, the wages earned or the employment of an employee performing services in agricultural labor after December 31, 1977, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for the purposes of subdivision (1) of this section.

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

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

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

(2) The term employment shall include service performed in the employ of an Indian tribe, as defined in 26 U.S.C. 3306(u), as such section existed on March 2, 2001, if such service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of 26 U.S.C. 3306(c)(7), as such section existed on March 2, 2001, and is not otherwise excluded from employment under the Employment Security Law. For purposes of this section, the exclusions from employment in subdivisions (6)(f) and (6)(g) of section 48-604 shall be applicable to services performed in the employment of an Indian tribe.

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

(4)(a) Indian tribes or tribal units, subdivisions, subsidiaries, or business enterprises wholly owned by such Indian tribes, subject to the Employment Security Law, shall pay combined tax under the same terms and conditions as

all other subject employers, unless they elect to make payments in lieu of contributions equal to the amount of benefits attributable to service in the employ of the Indian tribe.

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

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

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

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

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

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

(ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subdivision (5)(a)(i) of this section, shall have such option reinstated if, after a period of one year, all combined taxes have been paid timely and no combined tax, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

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

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

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

(a) Will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act, as the act existed on March 2, 2001;

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

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

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

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

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

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

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

(1) Any service performed after June 30, 1941, including service in interstate commerce, for wages under a contract of hire, written or oral, express or implied;

(2) The term employment shall include an individual's entire service, performed within or both within and without this state if (a) the service is localized in this state, (b) the service is not localized in any state but some of the service is performed in this state and the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled is in this state or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state, (c) the service shall be deemed to be localized within a state if (i) the service is performed entirely within such state or (ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions;

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

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

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

(c)(i) Services of an individual who is a citizen of the United States, performed outside the United States except in Canada in the employ of an American employer, other than service which is deemed employment under

subdivisions (2) and (3)(a) and (b) of this section or the parallel provisions of another state's law, if:

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

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

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

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

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

(4)(a) Service performed prior to January 1, 1978, which is or was service in employment for this state or any instrumentality thereof immediately prior to September 2, 1977, including service performed after December 31, 1971, in the employ of this state or any of its instrumentalities, or in the employ of this state and one or more other states or their instrumentalities, for a hospital or institution of higher education located in this state; and service performed after December 31, 1977, in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing or any instrumentality which is wholly owned by this state and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this state or of any political subdivision thereof and one or more other states or political subdivisions if such service is excluded from employment as defined in the Federal Unemployment Tax Act, as such act existed on September 1, 2001, solely by reason of 26 U.S.C. 3306(c)(7), as such section existed on September 1, 2001, and is not otherwise excluded under this section;

(b) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization, but only if the following conditions are met: (i) The service is excluded from employment as defined in the Federal Unemployment Tax Act, as such act existed on September 1, 2001, solely by reason of 26 U.S.C. 3306(c)(8), as such section existed on September 1, 2001, and is not otherwise excluded under this section; and (ii) the organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(c)(i) Service performed after December 31, 1977, by an individual in agricultural labor as defined in subdivision (6)(a) of this section when:

(A) Such service is performed for a person who during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor, or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time; and

(B) Such service is not performed in agricultural labor if performed before January 1, 1984, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the federal Immigration and Nationality Act, as such sections existed on September 1, 2001.

(ii) For purposes of this subdivision:

(A) Any individual who is a member of a crew furnished by a crew leader to perform services in agricultural labor for any other person shall be treated as an employee of such crew leader if such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1801 et seq., as the act existed on September 1, 2001; substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and if such individual is not an employee of such other person within the meaning of any other provisions of this section;

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

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

(d) Service performed after December 31, 1977, by an individual in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if performed for a person who paid cash remuneration of one thousand dollars or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter;

(5) Services performed by an individual for wages, including wages received under a contract of hire, shall be deemed to be employment unless it is shown to the satisfaction of the commissioner that (a) such individual has been and will continue to be free from control or direction over the performance of such

services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of the business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. The provisions of this subdivision are not intended to be a codification of the common law and shall be considered complete as written;

(6) The term employment shall not include:

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

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

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

(iii) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Federal Agricultural Marketing Act, as such section existed on September 1, 2001; in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

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

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

As used in this section, the term farm includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards;

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

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

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

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

(f) Service performed in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing if such services are performed by an individual in the exercise of his or her duties: (i) As an elected official; (ii) as a member of the legislative body or a member of the judiciary of a state or political subdivision thereof; (iii) as a member of the Army National Guard or Air National Guard; (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; (v) in a position which, under or pursuant to the state law, is designated a major nontenured policymaking or advisory position, or a policymaking or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week; or (vi) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars;

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

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

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

(iii) Prior to January 1, 1978, in the employ of a school which is not an institution of higher education;

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

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

(vi) Prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution;

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

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

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

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

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

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

(n) Service performed by an individual in the sale, delivery, or distribution of newspapers or magazines under a written contract in which (i) the individual acknowledges that the individual performing the service and the service are not covered and (ii) the newspapers and magazines are sold by him or her at a fixed price with his or her compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him or her, whether or not he or she is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

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

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

(q) Service performed for a motor carrier, as defined in 49 U.S.C. 13102, as such section existed on September 1, 2001, or section 75-302, as amended, by a lessor leasing one or more motor vehicles driven by the lessor or one or more drivers provided by the lessor under a lease, with the motor carrier as lessee, executed pursuant to 49 C.F.R. part 376, as such part existed on September 1, 2001, Title 291, Chapter 3, as amended, of the rules and regulations of the Public Service Commission, or the rules and regulations of the Division of Motor Carrier Services. This shall not preclude the determination of an employment relationship between the lessor and any personnel provided by the lessor in the conduct of the service performed for the lessee. The existence of such a lease either prior to, on the date of, or after August 26, 1983, shall preclude a determination of liability as defined by the Employment Security Law after September 1, 1982;

(r) Service performed by an individual for a business engaged in compilation of marketing data bases if such service consists only of the processing of data and is performed in the residence of the individual. The performance of such service prior to, on, or after August 26, 1983, shall preclude a determination of liability as defined by the Employment Security Law after January 1, 1983;

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

(t) Service performed by a direct seller if: (i) Such person is engaged in sales primarily in person and is (A) engaged in the trade or business of selling or soliciting the sale of consumer products or services to any buyer on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment or (B) engaged in the trade or business of selling or soliciting the sale of consumer products or services in the home or otherwise than in a permanent retail establishment; (ii) substantially all the remuneration, whether or not paid in

cash, for the performance of the services described in subdivision (t)(i) of this subdivision is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and (iii) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and the contract provides that the person will not be treated as an employee for federal and state tax purposes. Sales by a person whose business is conducted primarily by telephone or any other form of electronic sales or solicitation is not service performed by a direct seller under this subdivision;

(u) Service performed by an individual who is a participant in the National and Community Service State Grant Program, also known as AmeriCorp, because a participant is not considered an employee of the program in which the participant is enrolled pursuant to 42 U.S.C. 12511(17)(B), as such section existed on September 1, 2001; and

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

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

(8) Notwithstanding the foregoing exclusions from the definition of employment, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, as the act existed on September 1, 2001, is required to be covered under the Employment Security Law; and

(9) Any extension of the definition of employment by this section to include services heretofore excluded shall not be effective until after December 31, 1977, and section 48-604 as it existed prior to its amendments by Laws 1977, LB 509, shall be applicable to services performed prior to January 1, 1978.

**Source:** Laws 1937, c. 108, § 2, p. 372; Laws 1939, c. 56, § 1, p. 230; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 375; C.S.Supp., 1941, § 48-702; R.S. 1943, § 48-604; Laws 1945, c. 115, § 1, p. 376; Laws 1947, c. 175, § 2, p. 566; Laws 1953, c. 167, § 3, p. 523; Laws 1959, c. 228, § 1, p. 795; Laws 1961, c. 238, § 2, p. 704; Laws 1971, LB 651, § 3; Laws 1972, LB 1392, § 2; Laws 1977, LB 509, § 3; Laws 1979, LB 581, § 2; Laws 1983, LB 248, § 2; Laws 1983, LB 319, § 1; Laws 1984, LB 745, § 1; Laws 1985, LB 339, § 4; Laws 1986, LB 799, § 1; Laws

1993, LB 121, § 291; Laws 1994, LB 1337, § 3; Laws 1995, LB 424, § 1; Laws 1995, LB 574, § 52; Laws 1997, LB 79, § 1; Laws 1997, LB 129, § 1; Laws 1997, LB 130, § 1; Laws 1999, LB 168, § 2; Laws 2000, LB 953, § 1; Laws 2001, LB 387, § 1; Laws 2003, LB 199, § 2.

Since subsection (5) of this section refers only to services performed for wages, the ABC test embodied therein does not apply in determining whether one engages in employment under a contract of hire. *Omaha World-Herald v. Dernier*, 253 Neb. 215, 570 N.W.2d 508 (1997).

For the purpose of determining unemployment tax liability, the common-law definition of independent contractor is superseded by the definition found in this section. *Commissioner of Labor v. Lyric Co.*, 224 Neb. 190, 397 N.W.2d 32 (1986).

Individuals who provide services for welfare recipients at the request of the Nebraska Department of Public Welfare, now Department of Social Services, pursuant to 42 U.S.C. 1397 (1982) are independent contractors and not employees of the Department of Public Welfare within the meaning of this section. *State v. Saville*, 219 Neb. 81, 361 N.W.2d 215 (1985).

Where school has certified to an employer that work-study is an integral part of its educational program, the employer should be allowed to rely on that assurance, particularly when such conclusion is adequately supported by the record. The exemp-

tion from the term "employment" in section 48-604(6)(o) includes participation in a voluntary work-study program as long as grades and credits received are applied toward high school degree and it is part of an approved course of study. Exclusion of section 48-604(6)(o) is intended to encourage employers to participate in cooperative educational plans. *Seldin Development & Management Co. v. Chizek*, 208 Neb. 315, 303 N.W.2d 300 (1981).

Where orchestra leader was engaged by hotel for specific services at a fixed price, hired his own employees and paid and controlled them in the performance of their duties without interference, leader was an independent contractor and hotel was not liable for unemployment compensation for member of orchestra. *Hill Hotel Co. v. Kinney*, 138 Neb. 760, 295 N.W. 397 (1940).

The term "places of business" in subsection (5)(b) of this section includes the jobsites and the office of a construction company. *Bay Constr. Co. v. Dolan*, 2 Neb. App. 739, 513 N.W.2d 555 (1994).

#### **48-605 Commissioner; additional salary.**

The commissioner, for his or her services with respect to the administration of the Employment Security Law, shall receive the sum fixed by the Governor, payable monthly, to be paid from the Employment Security Administration Fund in addition to the salary of the commissioner as set out in section 81-103.

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

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

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

promptly inform the Governor and the Clerk of the Legislature thereof and make recommendations with respect thereto. Each member of the Legislature shall receive a copy of such information by making a request for it to the commissioner.

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

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

**Source:** Laws 1937, c. 108, § 11, p. 390; Laws 1941, c. 94, § 8, p. 396; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-606; Laws 1953, c. 167, § 4(1), p. 529; Laws 1955, c. 231, § 8, p. 720; Laws 1979, LB 322, § 17; Laws 1985, LB 339, § 6; Laws 1987, LB 278, § 1; Laws 2003, LB 195, § 1; Laws 2007, LB265, § 5.

**48-606.01 Commissioner; office space; acquire; approval of Department of Administrative Services.**

The commissioner, with the written consent of the Department of Administrative Services, is authorized and empowered to use any funds available under either subdivision (1)(a) or (1)(b) of section 48-621, for the purpose of acquiring suitable office space within the corporate limits of the state capital city for the administration of the Employment Security Law by purchase, contract, or in any other manner including the right to use such funds or any part thereof to assist in financing the construction of any building erected by the State of Nebraska or any of its agencies wherein available space will be provided for the department under lease or contract between the commissioner and the State of Nebraska or such other agency whereby the department will continue to occupy such space rent free after the cost of financing such building has been liquidated. The commissioner, upon approval by the Department of Administrative Services, is authorized and empowered to use any such funds to acquire suitable office space for local employment offices anywhere in the State of Nebraska.

**Source:** Laws 1953, c. 167, § 4(2), p. 530; Laws 1955, c. 190, § 2, p. 540; Laws 1961, c. 239, § 2, p. 713; Laws 1975, LB 359, § 1; Laws 1984, LB 747, § 2; Laws 1985, LB 339, § 7; Laws 1995, LB 1, § 1; Laws 2000, LB 953, § 2.

**48-607 Rules and regulations; adoption; procedure.**

The commissioner shall adopt and promulgate rules and regulations necessary to carry out the Employment Security Law pursuant to the Administrative

Procedure Act. This section shall not be construed to invalidate any rules or regulations in effect on September 6, 1985.

**Source:** Laws 1937, c. 108, § 11, p. 390; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-607; Laws 1985, LB 339, § 8.

**Cross References**

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

**48-608 Commissioner; distribution; duty.**

The Commissioner of Labor shall furnish eight copies of the text of the Employment Security Law and his or her rules and regulations to the Nebraska Publications Clearinghouse.

**Source:** Laws 1937, c. 108, § 11, p. 391; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-608; Laws 1972, LB 1284, § 16; Laws 1981, LB 545, § 10; Laws 1985, LB 339, § 9; Laws 2001, LB 192, § 4.

**48-609 Personnel; powers of commissioner; bond or insurance; retirement system.**

Subject to other provisions of the Employment Security Law, the Commissioner of Labor is authorized to appoint, fix the compensation of, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of his or her duties under such law. The commissioner may delegate to any such person such power and authority as he or she deems reasonable and proper for the effective administration of such law. Employees handling money or signing warrants under such law shall be bonded or insured as required by section 11-201. The commissioner may pay the share of the premium from the Employment Security Administration Fund. The commissioner shall classify positions under such law and shall establish salary schedules and minimum personnel standards for the positions so classified. He or she shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments of not to exceed six months in duration, such personnel shall be appointed on the basis of efficiency and fitness as determined in such examinations. The commissioner shall adopt, promulgate, and enforce fair and reasonable rules and regulations for appointments, promotions, and demotions based upon ratings of efficiency and fitness and for terminations for cause.

The commissioner may provide for a contributory retirement system for the employees of the department employed prior to July 1, 1984, and paid from funds provided pursuant to Title III of the Social Security Act or funds from other federal sources, or let a contract for such purpose with an insurance company licensed in Nebraska, and pay the employer's share of such system or contract from the Employment Security Administration Fund as long as this fund is wholly financed from Title III of the Social Security Act or from other federal sources. The employee's contribution to any such plan shall be deducted from his or her salary. Any person employed by the department after June 30, 1984, and paid from funds provided pursuant to Title III of the Social Security Act or funds from other federal sources shall be enrolled in the State Employ-

ees Retirement System of the State of Nebraska when he or she becomes eligible.

**Source:** Laws 1937, c. 108, § 11, p. 391; Laws 1939, c. 56, § 8, p. 246; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-609; Laws 1961, c. 240, § 1, p. 715; Laws 1978, LB 653, § 10; Laws 1984, LB 747, § 3; Laws 1985, LB 339, § 10; Laws 1987, LB 272, § 1; Laws 1989, LB 29, § 1; Laws 2004, LB 884, § 21.

**Cross References**

State Employees Retirement Act, see section 84-1331.

**48-610 Repealed. Laws 2009, LB 631, § 15.**

**48-611 Commissioner; general duties.**

The Commissioner of Labor, with the advice and aid of advisory councils, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

**Source:** Laws 1937, c. 108, § 11, p. 392; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-611; Laws 1984, LB 747, § 4.

**48-612 Employers; records and reports required; privileged communications; violation; penalty.**

(1) Each employer, whether or not subject to the Employment Security Law, shall keep true and accurate work records containing such information as the Commissioner of Labor may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner and the appeal tribunal may require from any such employer any sworn or unsworn reports, with respect to persons employed by it, which he, she, or it deems necessary for the effective administration of such law. Except as otherwise provided in section 48-612.01, information thus obtained or obtained from any individual pursuant to the administration of such law shall be held confidential.

(2) Any employee of the commissioner who violates any provision of sections 48-606 to 48-616 shall be guilty of a Class III misdemeanor.

(3) All letters, reports, communications, or any other matters, either oral or written, from an employer or his or her workers to each other or to the commissioner or any of his or her agents, representatives, or employees which shall have been written or made in connection with the requirements and administration of the Employment Security Law, or the rules and regulations thereunder, shall be absolutely privileged and shall not be made the subject

matter or basis for any suit for slander or libel in any court of this state, unless the same be false in fact and malicious in intent.

**Source:** Laws 1937, c. 108, § 11, p. 392; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-612; Laws 1945, c. 115, § 2, p. 381; Laws 1977, LB 40, § 290; Laws 1985, LB 339, § 11; Laws 1993, LB 757, § 31; Laws 2001, LB 192, § 5; Laws 2007, LB265, § 6.

Information provided to the Department of Labor in connection with the requirements of the Employment Security Law is privileged and cannot be the basis for a libel suit unless the information is both false and malicious. *Molt v. Lindsay Mfg. Co.*, 248 Neb. 81, 532 N.W.2d 11 (1995).

**48-612.01 Employer information; disclosure authorized; costs; prohibited redisclosure; penalty.**

(1) Information obtained pursuant to subsection (1) of section 48-612 may be disclosed under the following circumstances:

(a) Any claimant or employer or representative of a claimant or employer, as a party before an appeal tribunal or court regarding an unemployment claim or tax appeal, shall be supplied with information obtained in the administration of the Employment Security Law, to the extent necessary for the proper presentation of the claim or appeal;

(b) The names, addresses, and identification numbers of employers may be disclosed to the Nebraska Workers' Compensation Court which may use such information for purposes of enforcement of the Nebraska Workers' Compensation Act;

(c) Appeal tribunal decisions rendered pursuant to the Employment Security Law and designated as precedential decisions by the commissioner on the coverage of employers, employment, wages, and benefit eligibility may be published in printed or electronic format if all social security numbers have been removed and such disclosure is otherwise consistent with federal and state law;

(d) To a public official for use in the performance of his or her official duties. For purposes of this subdivision, performance of official duties means the administration or enforcement of law or the execution of the official responsibilities of a federal, state, or local elected official. Administration of law includes research related to the law administered by the public official. Execution of official responsibilities does not include solicitation of contributions or expenditures to or on behalf of a candidate for public office or to a political party;

(e) To an agent or contractor of a public official to whom disclosure is permissible under subdivision (d) of this subsection;

(f) For use in reports and publications containing information collected exclusively for statistical purposes under a cooperative agreement with the federal Bureau of Labor Statistics. This subdivision does not restrict or impose any condition on the transfer of any other information to the federal Bureau of Labor Statistics under an agreement or the federal Bureau of Labor Statistics' disclosure or use of such information; and

(g) In response to a court order.

(2) Information about an individual or employer obtained pursuant to subsection (1) of section 48-612 may be disclosed to:

(a) One who acts as an agent for the individual or employer when the agent presents a written release from the individual or employer, where practicable, or other evidence of authority to act on behalf of the individual or employer;

(b) An elected official who is performing constituent services if the official presents reasonable evidence that the individual or employer has authorized such disclosure;

(c) An attorney who presents written evidence that he or she is representing the individual or employer in a matter arising under the Employment Security Law; or

(d) A third party or its agent carrying out the administration or evaluation of a public program, if that third party or agent obtains a written release from the individual or employer to whom the information pertains. To constitute informed consent, the release shall be signed and shall include a statement:

(i) Specifically identifying the information that is to be disclosed;

(ii) That state government files will be accessed to obtain that information;

(iii) Identifying the specific purpose or purposes for which the information is sought and that information obtained under the release will only be used for that purpose or purposes; and

(iv) Identifying and describing all the parties who may receive the information disclosed.

(3) Information obtained pursuant to subsection (1) of section 48-612 may be disclosed under the following circumstances:

(a) To an individual or employer if the information requested pertains only to the individual or employer making the request;

(b) To a local, state, or federal governmental official, other than a clerk of court, attorney, or notary public acting on behalf of a litigant, with authority to obtain such information by subpoena under state or federal law; and

(c) To a federal official for purposes of unemployment compensation program oversight and audits, including disclosures under 20 C.F.R. part 601 and 29 C.F.R. parts 96 and 97 as they existed on January 1, 2007.

(4) If the purpose for which information is provided under subsection (1), (2), or (3) of this section is not related to the administration of the Employment Security Law or the unemployment insurance compensation program of another jurisdiction, the commissioner shall recover the costs of providing such information from the requesting individual or entity prior to providing the information to such individual or entity unless the costs are nominal or the entity is a governmental agency which the commissioner has determined provides reciprocal services.

(5) Any person who receives information under subsection (1) or (2) of this section and rediscloses such information for any purpose other than the purpose for which it was originally obtained shall be guilty of a Class III misdemeanor.

**Source:** Laws 2007, LB265, § 7; Laws 2009, LB631, § 1.

**Cross References**

Nebraska Workers' Compensation Act, see section 48-1,110.

**48-613 Oaths; depositions; subpoenas.**

In the discharge of the duties imposed by the Employment Security Law, the Commissioner of Labor, an appeal tribunal, and any duly authorized representative of any of them shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of such law.

**Source:** Laws 1937, c. 108, § 11, p. 393; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-613; Laws 1985, LB 339, § 12; Laws 2001, LB 192, § 6.

**48-614 Subpoenas; contumacy or disobedience; punishable as contempt; penalty.**

The Commissioner of Labor, an appeal tribunal, or a duly authorized representative of the commissioner or an appeal tribunal may petition a court to enforce a subpoena issued by the commissioner or an appeal tribunal in case of contumacy by any person, or refusal of any person to obey such a subpoena. Any court of this state which has subject matter jurisdiction and has venue jurisdiction of the place where the person guilty of contumacy or refusal to obey is found, resides, or transacts business has jurisdiction to issue such person an order requiring him or her to appear before the commissioner, the appeal tribunal, or a duly authorized representative and to produce evidence or give testimony if so ordered touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as contempt. Any person who without just cause fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his or her power so to do, in obedience to a subpoena of the commissioner, an appeal tribunal, or a duly authorized representative shall be guilty of a Class III misdemeanor. Each day such violation continues shall be a separate offense.

**Source:** Laws 1937, c. 108, § 11, p. 393; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-614; Laws 1977, LB 40, § 291; Laws 2001, LB 192, § 7.

**48-615 Repealed. Laws 1987, LB 277, § 1.**

**48-616 Commissioner of Labor; cooperation with Secretary of Labor of the United States; duties.**

In the administration of the Employment Security Law, the Commissioner of Labor shall cooperate, to the fullest extent consistent with such law, with the Secretary of Labor of the United States and is authorized and directed to take such action, through the adoption of appropriate rules and regulations, administrative methods, and standards, as may be necessary to secure to this state and its citizens all advantages available under the Social Security Act, under sections 3303 and 3304 of the Federal Unemployment Tax Act, and under the Act of Congress entitled An act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such system, and for other purposes, approved June 6, 1933, as amended. The commissioner shall comply with the regulations of the Secretary of Labor relating to the receipt or expenditure by this state of money granted under any of such acts and shall make such reports, in such form and containing such

information as the Secretary of Labor may from time to time require, and shall comply with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports. Upon request therefor the commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under the Employment Security Law. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

**Source:** Laws 1937, c. 108, § 11, p. 394; Laws 1939, c. 56, § 8, p. 247; Laws 1941, c. 94, § 16, p. 401; C.S.Supp.,1941, § 48-711; R.S. 1943, § 48-616; Laws 1961, c. 238, § 3, p. 709; Laws 1985, LB 339, § 13.

**48-617 Unemployment Compensation Fund; establishment; composition; investment.**

There is hereby established as a special fund, separate and apart from all public money or funds of this state, an Unemployment Compensation Fund, which fund shall be administered by the Commissioner of Labor exclusively for the purposes of the Employment Security Law. This fund shall consist of (1) all contributions and payments in lieu of contributions collected under such law together with any interest thereon collected pursuant to sections 48-655 to 48-660.01, except as provided in subdivision (1)(b) of section 48-621, (2) interest earned upon any money in the fund, (3) any property or securities acquired through the use of money belonging to the fund, (4) all earnings of such property or securities, (5) all money credited to this state's account in the Unemployment Trust Fund pursuant to section 903 of the federal Social Security Act, as amended, and (6) all other money received for the fund from any other source. Any money in the Unemployment Compensation 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 1937, c. 108, § 9, p. 387; Laws 1939, c. 56, § 7, p. 243; C.S.Supp.,1941, § 48-709; R.S.1943, § 48-617; Laws 1947, c. 175, § 4, p. 572; Laws 1957, c. 208, § 1, p. 728; Laws 1969, c. 584, § 48, p. 2374; Laws 1972, LB 1392, § 3; Laws 1985, LB 339, § 14; Laws 1995, LB 1, § 2; Laws 1995, LB 7, § 46; Laws 2000, LB 953, § 3.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**48-618 Unemployment Compensation Fund; treasurer; accounts; transfer of interest; depositories; bond or insurance.**

The Commissioner of Labor shall designate a treasurer and custodian of the fund, who shall be selected in accordance with section 48-609, and who shall administer such fund in accordance with the directions of the commissioner and shall issue his or her warrants upon it in accordance with such rules and regulations as the commissioner shall prescribe. He or she shall maintain

within the fund three separate accounts: (1) A clearing account, (2) an Unemployment Trust Fund account, and (3) a benefit account. All money payable to the fund, upon receipt thereof by the commissioner, shall be forwarded to the treasurer who shall immediately deposit the same in the clearing account. Transfers of interest on delinquent contributions pursuant to subdivision (1)(b) of section 48-621 and refunds payable pursuant to section 48-660 may be paid from the clearing account upon warrants issued by the treasurer of the Unemployment Compensation Fund under the direction of the commissioner. After clearance thereof, all other money in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this state in the Unemployment Trust Fund, established and maintained pursuant to section 904 of the Social Security Act, any provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all money requisitioned from this state's account in the Unemployment Trust Fund. Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited by the treasurer under the direction of the commissioner in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall be bonded or insured as required by section 11-201.

**Source:** Laws 1937, c. 108, § 9, p. 387; Laws 1939, c. 56, § 7, p. 243; Laws 1941, c. 94, § 7, p. 395; C.S.Supp., 1941, § 48-709; R.S. 1943, § 48-618; Laws 1947, c. 175, § 5, p. 573; Laws 1955, c. 190, § 4, p. 541; Laws 1978, LB 653, § 11; Laws 1985, LB 339, § 15; Laws 1995, LB 1, § 3; Laws 2000, LB 953, § 4; Laws 2004, LB 884, § 22.

#### **48-619 Unemployment Trust Fund; withdrawals.**

Money shall be requisitioned from this state's account in the Unemployment Trust Fund solely for the payment of benefits in accordance with lawful rules and regulations prescribed by the Commissioner of Labor, except that subject to the limitations therein contained, money credited to this fund pursuant to section 903 of the federal Social Security Act, as amended, may upon an appropriation duly made by the Legislature, be used for the administration of the Employment Security Law and shall for such purposes and to the extent required be transferred to the Employment Security Administration Fund established in subdivision (1)(a) of section 48-621. The commissioner shall from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amounts standing to this state's account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such money in the benefit account and shall issue his or her warrants as aforesaid and as provided by law for the payment of benefits solely from such benefit account. Expenditures of such money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations. Any balance of money requisitioned from the Unemployment Trust Fund, which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned, shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeed-

ing periods or, in the discretion of the commissioner, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the Unemployment Trust Fund, as provided in section 48-618. As used in this section, the term warrant shall include a signature negotiable instrument, electronic funds transfer system, telephonic funds transfer system, electric funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, mechanical funds transfer system, or other funds transfer system established by the treasurer. The warrant, when it is a dual signature negotiable instrument, shall affect the state's cash balance in the bank when redeemed by the treasurer, not when cashed by a financial institution.

**Source:** Laws 1937, c. 108, § 9, p. 388; Laws 1939, c. 56, § 7, p. 244; C.S.Supp.,1941, § 48-709; R.S.1943, § 48-619; Laws 1957, c. 208, § 2, p. 728; Laws 1985, LB 339, § 16; Laws 1995, LB 1, § 4; Laws 2000, LB 953, § 5; Laws 2005, LB 484, § 4.

#### **48-620 Unemployment Trust Fund; discontinuance; investment.**

The provisions of sections 48-617 to 48-619, to the extent that they relate to the Unemployment Trust Fund, shall be operative only so long as such Unemployment Trust Fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such Unemployment Trust Fund, from which no other state is permitted to make withdrawals. If and when such Unemployment Trust Fund ceases to exist or such separate book account is no longer maintained, all money, properties, or securities therein belonging to the Unemployment Compensation Fund of this state shall be transferred to the treasurer of the Unemployment Compensation Fund.

Any money in the Unemployment Trust Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. If advances to the Unemployment Trust Fund under Title XII of the federal Social Security Act are necessary, any interest required to be paid on such advances shall be paid in a timely manner and shall not be paid by this state, directly or indirectly, by an equivalent reduction in state unemployment taxes or otherwise, from amounts in the Unemployment Compensation Fund.

**Source:** Laws 1937, c. 108, § 9, p. 388; Laws 1939, c. 56, § 7, p. 245; C.S.Supp.,1941, § 48-709; R.S.1943, § 48-620; Laws 1969, c. 584, § 49, p. 2375; Laws 1984, LB 746, § 1; Laws 1995, LB 7, § 47.

#### **Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

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

(1) The administrative fund shall consist of the Employment Security Administration Fund and the Employment Security Special Contingent Fund. Each

fund shall be maintained as a separate and distinct account in all respects, as follows:

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

(b) There is hereby created in the state treasury a special fund to be known as the Employment Security Special Contingent Fund. Any money in the Employment Security Special Contingent Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. All money collected under section 48-655 as interest on delinquent contributions, less refunds, shall be credited to this fund from the clearing account of the Unemployment Compensation Fund at the end of each calendar quarter. Such money shall not be expended or available for expenditure in any manner which would permit its substitution for or a corresponding reduction in federal funds which would in the absence of such money be available to finance expenditures for the administration of the unemployment insurance law, but nothing in this section shall prevent the money from being used as a revolving fund to cover expenditures necessary and proper under the law for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such federal funds when received. The money in this fund may be used by the Commissioner of Labor only as follows:

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

(ii) To meet special extraordinary and contingent expenses which are deemed essential for good administration but which are not provided in grants from the

Secretary of Labor of the United States and, for this purpose, no expenditures shall be made from this fund except on written authorization by the Governor at the request of the Commissioner of Labor;

(iii) To be transferred to the Nebraska Community College Aid Cash Fund; and

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

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

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

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

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

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

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

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

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

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

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**48-622 Funds lost and improper expenditures; replacement; reimbursement.**

This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future, and applied to the replacement of, any money received from the Secretary of Labor of the United States under Title III of the Social Security Act, any unencumbered balances in the Employment Security Administration Fund, any money granted to this state pursuant to the Wagner-Peyser Act, and any money made available by the state or its political subdivisions and matched by such money granted to this state pursuant to the Wagner-Peyser Act, which the Secretary of Labor finds has, because of any action or contingency, been lost or has been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of the Employment Security Law. To the extent possible such money shall be promptly replaced by money appropriated for such purpose from the Employment Security Special Contingent Fund of this state to the Employment Security Administration Fund for expenditure as provided in section 48-621.

**Source:** Laws 1941, c. 94, § 10, p. 398; C.S.Supp.,1941, § 48-712; R.S. 1943, § 48-622; Laws 1949, c. 163, § 6, p. 423; Laws 1961, c. 238, § 4, p. 710; Laws 1985, LB 339, § 18.

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

(1) There is hereby created in the state treasury a special fund to be known as the State Unemployment Insurance Trust Fund. All state unemployment insurance tax collected under sections 48-648 to 48-661, less refunds, shall be paid into the fund. Such money shall be held in trust for the sole and exclusive use of payment of unemployment insurance benefits. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that interest earned on money in the fund shall be credited to the Nebraska Training and Support Trust Fund at the end of each calendar quarter.

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

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

**Source:** Laws 1994, LB 1337, § 4; Laws 1995, LB 7, § 48; Laws 2009, LB631, § 2.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

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

(1) There is hereby created in the state treasury a special fund to be known as the Nebraska Training and Support Trust Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. All money deposited or paid into the fund is hereby appropriated and made available to the commissioner. No expenditures shall be made from the fund without the written authorization of the Governor upon the recommendation of the commissioner. Any interest earned on money in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Trust Fund.

(2) Money in the Nebraska Training and Support Trust Fund shall be used for (a) administrative costs of establishing, assessing, collecting, and maintaining state unemployment insurance tax liability and payments, (b) administrative costs of creating, maintaining, and dissolving the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Trust Fund, (c) support of public and private job training programs designed to train, retrain, or upgrade work skills of existing Nebraska workers, (d) recruitment of workers to Nebraska, (e) training new employees of expanding Nebraska businesses, (f) the costs of creating a common web portal for the attraction of businesses and workers to Nebraska, and (g) payment of unemployment insurance benefits if solvency of the state's account in the Unemployment Trust Fund and of the State Unemployment Insurance Trust Fund so require.

(3) There is hereby created within the Nebraska Training and Support Trust Fund a separate account to be known as the Administrative Costs Reserve Account. Money shall be allocated from the Nebraska Training and Support Trust Fund to the Administrative Costs Reserve Account in amounts sufficient to pay the anticipated administrative costs identified in subdivisions (2)(a) through (g) of this section. The administrative costs determined to be applicable to creation and operation of the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Trust Fund shall be paid out of the Administrative Costs Reserve Account.

**Source:** Laws 1994, LB 1337, § 5; Laws 1995, LB 7, § 49; Laws 2009, LB631, § 3.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

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

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

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

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

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

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

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

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

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

#### **48-623 Benefits; how paid.**

All benefits provided in the Employment Security Law shall be payable from the Unemployment Compensation Fund. All benefits shall be paid through employment offices in accordance with such rules and regulations as the Commissioner of Labor may prescribe.

**Source:** Laws 1937, c. 108, § 3, p. 374; Laws 1939, c. 56, § 2, p. 233; Laws 1941, c. 94, § 2, p. 381; C.S.Supp.,1941, § 48-703; R.S. 1943, § 48-623; Laws 1985, LB 339, § 19.

#### **48-624 Benefits; weekly benefit amount; calculation.**

(1) For any benefit year beginning on or after January 1, 2001, through December 31, 2005, an individual's weekly benefit amount shall be one-half his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed one-half of the state average weekly wage as annually determined under section 48-121.02.

(2) For any benefit year beginning on or after January 1, 2006, through December 31, 2007, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed two hundred eighty-eight dollars per week.

(3) For any benefit year beginning on or after January 1, 2008, through December 31, 2010, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed the lesser of one-half of the state average weekly wage as annually determined under section 48-121.02 or the previous year's maximum weekly benefit amount plus ten dollars per week.

(4) For any benefit year beginning on or after January 1, 2011, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed one-half of the state average weekly wage as annually determined under section 48-121.02.

(5) For purposes of this section, an individual's average weekly wage shall equal the wages paid for insured work in the highest quarter of the base period divided by thirteen.

**Source:** Laws 1937, c. 108, § 3, p. 375; Laws 1939, c. 56, § 2, p. 233; Laws 1941, c. 94, § 2, p. 381; C.S.Supp.,1941, § 48-703; R.S. 1943, § 48-624; Laws 1945, c. 114, § 2, p. 371; Laws 1949, c. 163, § 1, p. 423; Laws 1951, c. 157, § 1, p. 630; Laws 1953, c.

168, § 1, p. 541; Laws 1955, c. 190, § 5, p. 542; Laws 1957, c. 209, § 1, p. 738; Laws 1959, c. 229, § 1, p. 802; Laws 1963, c. 291, § 1, p. 870; Laws 1965, c. 286, § 1, p. 819; Laws 1967, c. 299, § 1, p. 814; Laws 1969, c. 401, § 1, p. 1394; Laws 1971, LB 651, § 4; Laws 1972, LB 1391, § 1; Laws 1973, LB 333, § 1; Laws 1974, LB 775, § 1; Laws 1975, LB 475, § 1; Laws 1977, LB 337, § 1; Laws 1979, LB 183, § 1; Laws 1983, LB 524, § 1; Laws 1985, LB 216, § 1; Laws 1987, LB 446, § 1; Laws 1990, LB 315, § 1; Laws 1994, LB 286, § 2; Laws 1998, LB 225, § 1; Laws 2005, LB 739, § 5; Laws 2007, LB265, § 8.

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

(1) For benefit years beginning on or before September 30, 2006, 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-half 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-half of such benefit amount but less than his or her full weekly benefit amount, he or she shall be paid an amount equal to one-half of such benefit amount. For any benefit year beginning on or after October 1, 2006, each individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her full weekly benefit amount if he or she has wages payable to him or her with respect to such week equal to one-fourth of such benefit amount or less. In the event he or she has wages payable to him or her with respect to such week greater than one-fourth of such benefit amount, he or she shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. In the event there is any deduction from such individual's weekly benefit amount because of earned wages pursuant to this subsection or as a result of the application of subdivision (5) of section 48-628, the resulting benefit payment, if not an exact dollar amount, shall be computed to the next lower dollar amount.

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

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

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

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

**Source:** Laws 1937, c. 108, § 3, p. 375; Laws 1939, c. 56, § 2, p. 234; Laws 1941, c. 94, § 2, p. 382; C.S.Supp.,1941, § 48-703; R.S. 1943, § 48-625; Laws 1949, c. 163, § 8, p. 424; Laws 1953, c. 167, § 5, p. 531; Laws 1980, LB 800, § 2; Laws 1982, LB 801,

§ 1; Laws 1983, LB 248, § 3; Laws 1986, LB 950, § 2; Laws 1987, LB 461, § 1; Laws 1995, LB 1, § 6; Laws 1999, LB 608, § 3; Laws 2005, LB 739, § 8.

**48-626 Benefits; maximum annual amount; determination.**

Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of (1) twenty-six times his or her benefit amount or (2) 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 the circumstances under which he or she was or could have been determined disqualified under subdivision (1) or (2) of section 48-628, the total benefit amount based on the employment from which he or she was so separated shall be reduced by an amount equal to the number of weeks for which he or she is or would have been disqualified had he or she filed a claim immediately after the separation, multiplied by his or her weekly benefit amount, 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 subdivision (1) of section 48-628. 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. 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 by the commissioner, of the wages of any claimant. If any such employer shall fail to make such 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, will be final as to 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.

The duration of maximum benefits is not affected by discharge for ordinary misconduct. *Grand Island Baking Co. v. Frantz*, 141 Neb. 803, 4 N.W.2d 921 (1942).

**48-627 Benefits; eligibility conditions; availability for work; requirements.**

An unemployed individual shall be eligible to receive benefits with respect to any week, only if the Commissioner of Labor finds:

(1) He or she has registered for work at, and thereafter continued to report at, an employment office in accordance with such rules and regulations as the commissioner may prescribe, except that the commissioner may, by rule and regulation, waive or alter either or both of the requirements of this subdivision

as to individuals attached to regular jobs and as to such other types of cases or situations, with respect to which he or she finds that compliance with such requirements, would be oppressive, or would be inconsistent with the purposes of the Employment Security Law, except that no such rule or regulation shall conflict with section 48-623;

(2) He or she has made a claim for benefits, in accordance with section 48-629;

(3) He or she is able to work and is available for work. No individual, who is otherwise eligible, shall be deemed ineligible, or unavailable for work, because he or she is on vacation without pay during such week, if such vacation is not the result of his or her own action as distinguished from any collective action by a collective-bargaining agent or other action beyond his or her individual control, and regardless of whether he or she has not been notified of the vacation at the time of his or her hiring. An individual who is otherwise eligible shall not be deemed unavailable for work or failing to engage in an active work search solely because such individual is seeking part-time work if the majority of the weeks of work in an individual's base period include part-time work. For purposes of this subdivision, seeking only part-time work shall mean seeking less than full-time work having comparable hours to the individual's part-time work in the base period, except that the individual must be available for work at least twenty hours per week. Receipt of a non-service-connected total disability pension by a veteran at the age of sixty-five or more shall not of itself bar the veteran from benefits as not able to work. An otherwise eligible individual while engaged in a training course approved for him or her by the commissioner shall be considered available for work for the purposes of this section. An inmate in a penal or custodial institution shall be considered unavailable for work for purposes of this section;

(4) He or she has been unemployed for a waiting period of one week. No week shall be counted as a week of unemployment for the purpose of this subdivision (a) unless it occurs within the benefit year, which includes the week with respect to which he or she claims payment of benefits, (b) if benefits have been paid with respect thereto, or (c) unless the individual was eligible for benefits with respect thereto, as provided in sections 48-627 and 48-628, except for the requirements of this subdivision and of subdivision (6) of section 48-628;

(5)(a) For any benefit year beginning on or after January 1, 2006, he or she has, within his or her base period, been paid a total sum of wages for employment by employers equal to not less than two thousand five hundred dollars, of which sum at least eight hundred dollars has been paid in each of two quarters in his or her base period, and subsequent to filing the claim which establishes the previous benefit year, the individual has earned wages in insured work of at least six times his or her weekly benefit amount for the previous benefit year.

(b) For any benefit year beginning on or after July 1, 2011, he or she has (i) within his or her base period, been paid a total sum of wages for employment by employers equal to not less than three thousand seven hundred seventy dollars, of which sum at least one thousand eight hundred fifty dollars has been paid in one quarter in his or her base period and eight hundred dollars has been paid in a second quarter of his or her base period, and (ii) subsequent to filing the claim which establishes the previous benefit year, earned wages in insured work of at least six times his or her weekly benefit amount for the

previous benefit year. Commencing January 1, 2012, and each January 1 thereafter, the amount which an individual is required to earn within his or her base period shall be adjusted annually. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the one-year period ending on the previous September 30.

(c) For the purposes of this subdivision (5), (i) for the determination of monetary eligibility, wages paid within a base period shall not include wages from any calendar quarter previously used to establish a valid claim for benefits, (ii) 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, and (iii) with respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work for benefit purposes with respect to any benefit year shall include wages paid for services as defined by subdivision (4)(a), (b), (c), or (d) of section 48-604 to the extent that such services were not services in employment under subdivision (4)(a) of section 48-604 or section 48-661 immediately prior to September 2, 1977, even though the employer by whom such wages were paid had not satisfied the conditions of subdivision (8), (9), (10), or (11) of section 48-603 with respect to becoming an employer at the time such wages were paid except to the extent that assistance under Title II of the federal Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services; and

(6) He or she is participating in reemployment services at no cost to such individual as directed by the commissioner, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by rule and regulation of the commissioner which is in compliance with section 303(j)(1) of the federal Social Security Act, unless the commissioner determines that: (a) The individual has completed such services; or (b) there is justifiable cause for the claimant's failure to participate in such services.

**Source:** Laws 1937, c. 108, § 4, p. 376; Laws 1939, c. 56, § 3, p. 235; Laws 1941, c. 94, § 3, p. 383; C.S.Supp., 1941, § 48-704; R.S. 1943, § 48-627; Laws 1945, c. 115, § 3, p. 382; Laws 1949, c. 163, § 10, p. 425; Laws 1953, c. 167, § 6, p. 531; Laws 1955, c. 190, § 6, p. 543; Laws 1957, c. 209, § 2, p. 739; Laws 1959, c. 230, § 1, p. 804; Laws 1961, c. 241, § 1, p. 717; Laws 1963, c. 291, § 3, p. 872; Laws 1963, c. 292, § 1, p. 875; Laws 1971, LB 651, § 5; Laws 1973, LB 372, § 1; Laws 1977, LB 509, § 4; Laws 1981, LB 470, § 2; Laws 1985, LB 339, § 21; Laws 1987, LB 446, § 2; Laws 1987, LB 469, § 1; Laws 1988, LB 1033, § 2; Laws 1995, LB 1, § 8; Laws 1995, LB 240, § 1; Laws 1998, LB 225, § 2; Laws 2005, LB 484, § 5; Laws 2005, LB 739, § 9; Laws 2010, LB1020, § 3.

Operative date July 1, 2011.

Availability is required for eligibility to receive unemployment compensation benefits. *Robinson v. Commissioner of Labor*, 267 Neb. 579, 675 N.W.2d 683 (2004).

Without an order from the sentencing court granting the privilege to leave the jail for work, an inmate was not "avail-

able" for work under this section. *Robinson v. Commissioner of Labor*, 267 Neb. 579, 675 N.W.2d 683 (2004).

This section describes weekly requirements for continuing eligibility and does not address the reasons why a person became unemployed or threshold questions of eligibility. *Ponderosa Villa v. Hughes*, 224 Neb. 627, 399 N.W.2d 813 (1987).

A lump-sum severance allowance paid to a claimant is not to be prorated to the calendar quarters immediately following the date of payment in order to determine whether the monetary eligibility requirements of subdivision (e) of this section have been met. *Sorensen v. Meyer*, 220 Neb. 457, 370 N.W.2d 173 (1985).

The provision that a claimant earn a certain amount of wages during any benefit year and during each of two quarters thereof is intended to prevent a claimant from electing to simply collect unemployment benefits rather than work. *Sorensen v. Meyer*, 220 Neb. 457, 370 N.W.2d 173 (1985).

A professional symphony musician employed under a seasonal contract rather than an annual contract was entitled to unemployment benefits for the time he was unemployed during the symphony's "off season". *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).

Registration for work alone is not sufficient to show prima facie a right to benefits. *Hunter v. Miller*, 148 Neb. 402, 27 N.W.2d 638 (1947).

#### **48-628 Benefits; conditions disqualifying applicant; exceptions.**

An individual shall be disqualified for benefits:

(1)(a) For the week in which he or she has left work voluntarily without good cause, if so found by the commissioner, and for the thirteen weeks which immediately follow such week. A temporary employee of a temporary help firm has left work voluntarily without good cause if the temporary employee does not contact the temporary help firm for reassignment upon completion of an assignment and the temporary employee has been advised by the temporary help firm of his or her obligation to contact the temporary help firm upon completion of assignments and has been advised by the temporary help firm that the temporary employee may be denied benefits for failure to do so; or

(b) For the week in which he or she has 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, if so found by the commissioner, and for the two weeks which immediately follow such week;

(2) For the week in which he or she has been discharged for misconduct connected with his or her work, if so found by the commissioner, and for the fourteen weeks which immediately follow such week. If the commissioner finds that such individual's misconduct was gross, flagrant, and willful, or was unlawful, the commissioner shall totally disqualify such individual from receiving benefits with respect to wage credits earned prior to discharge for such misconduct. In addition to the fourteen-week benefit disqualification assessed under this subdivision, the commissioner shall cancel all wage credits earned as a result of employment with the discharging employer if the commissioner finds that the individual was discharged for misconduct in connection with the work which was not gross, flagrant, and willful or unlawful but which included being under the influence of any intoxicating beverage or being under the influence of any controlled substance listed in section 28-405 not prescribed by a physician licensed to practice medicine or surgery when the individual is so under the influence on the worksite or while engaged in work for the employer;

(3)(a) For any week of unemployment in which he or she has failed, without good cause, to apply for available, suitable work when so directed by the employment office or the commissioner, to accept suitable work offered him or her, or to return to his or her customary self-employment, if any, and the commissioner so finds, and for the twelve weeks which immediately follow such week, and his or her total benefit amount to which he or she is then entitled shall be reduced by an amount equal to the number of weeks for which he or she has been disqualified by the commissioner.

(b) In determining whether or not any work is suitable for an individual, the commissioner shall consider the degree of risk involved to the individual's health, safety, and morals, his or her physical fitness and prior training, his or her experience and prior earnings, his or her length of unemployment and prospects for securing local work in his or her customary occupation, and the distance of the available work from his or her residence.

(c) Notwithstanding any other provisions of the Employment Security Law, no work shall be deemed suitable and benefits shall not be denied under such law to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or (iii) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) Notwithstanding any other provisions in subdivision (3) of this section, no otherwise eligible individual shall be denied benefits with respect to any week in which he or she is in training with the approval of the commissioner, by reason of the application of the provisions in subdivision (3) of this section relating to failure to apply for or a refusal to accept suitable work.

(e) No individual shall be disqualified for refusing to apply for available, full-time work or accept full-time work under subdivision (3)(a) of this section solely because such individual is seeking part-time work if the majority of the weeks of work in an individual's base period include part-time work. For purposes of this subdivision, seeking only part-time work shall mean seeking less than full-time work having comparable hours to the individual's part-time work in the base period, except that the individual must be available for work at least twenty hours per week;

(4) For any week with respect to which the commissioner finds that his or her total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he or she is or was last employed, except that this subdivision shall not apply if it is shown to the satisfaction of the commissioner that (a) the individual is not participating in, financing, or directly interested in the labor dispute which caused the stoppage of work and (b) he or she does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating, financing, or directly interested in the dispute. If in any case, separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purposes of this subdivision, be deemed to be a separate factory, establishment, or other premises;

(5) For any week with respect to which he or she is receiving or has received remuneration in the form of (a) wages in lieu of notice, or a dismissal or separation allowance, (b) compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States, (c) retirement or retired pay, pension, annuity, or other similar periodic payment under a plan maintained or contributed to by a base period or chargeable employer, or (d) a gratuity or bonus from an employer, paid after

termination of employment, on account of prior length of service, or disability not compensated under the workers' compensation law. Such payments made in lump sums shall be prorated in an amount which is reasonably attributable to such week. If the prorated remuneration is less than the benefits which would otherwise be due, he or she shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. The prorated remuneration shall be considered wages for the quarter to which it is attributable. Military service-connected disability compensation payable under 38 U.S.C. chapter 11 and primary insurance benefits payable under Title II of the Social Security Act, as amended, or similar payments under any act of Congress shall not be deemed to be disqualifying or deductible from the benefit amount. No deduction shall be made for the part of any retirement pension which represents return of payments made by the individual. In the case of a transfer by an individual or his or her employer of an amount from one retirement plan to a second qualified retirement plan under the Internal Revenue Code, the amount transferred shall not be deemed to be received by the claimant until actually paid from the second retirement plan to the claimant. No deduction shall be made for any benefit received under a supplemental unemployment benefit plan described in subdivision (29)(g) of section 48-602;

(6) For any week with respect to which or a part of which he or she has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or of the United States finally determines that he or she is not entitled to such unemployment benefits, this disqualification shall not apply;

(7) For any week of unemployment if such individual is a student. For the purpose of this subdivision, student shall mean an individual registered for full attendance at and regularly attending an established school, college, or university, unless the major portion of his or her wages for insured work during his or her base period was for services performed while attending school, except that attendance for training purposes under a plan approved by the commissioner for such individual shall not be disqualifying;

(8) For any week of unemployment if benefits claimed are based on services performed:

(a) In an instructional, research, or principal administrative capacity for an educational institution, if such week commences during the period between two successive academic years or terms, or when an agreement provides instead for a similar period between two regular, but not successive, terms during such period, if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(b) In any other capacity for an educational institution, if such week commences during a period between two successive academic years or terms, if such individual performs such services in the first of such academic years or terms, and if there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if benefits are denied to any individual for any week under subdivision (8)(b) of this section and such individual was not offered an opportunity to perform such

services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of subdivision (8)(b) of this section;

(c) In any capacity described in subdivision (8)(a) or (b) of this section if such week commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess;

(d) In any capacity described in subdivision (8)(a) or (b) of this section in an educational institution while in the employ of an educational service agency, and such individual shall be disqualified as specified in subdivisions (8)(a), (b), and (c) of this section. As used in this subdivision, educational service agency shall mean a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions; and

(e) In any capacity described in subdivision (8)(a) or (b) of this section in an educational institution if such services are provided to or on behalf of the educational institution while in the employ of an organization or entity described in section 3306(c)(7) or 3306(c)(8) of the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(7) or (8), and such individual shall be disqualified as specified in subdivisions (8)(a), (b), and (c) of this section;

(9) For any week of unemployment benefits if substantially all the services upon which such benefits are based consist of participating in sports or athletic events or training or preparing to so participate, if such week of unemployment begins during the period between two successive sport seasons or similar periods, if such individual performed such services in the first of such seasons or similar periods, and if there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods;

(10) For any week of unemployment benefits if the services upon which such benefits are based are performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of section 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5). Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence;

(11) Notwithstanding any other provisions of the Employment Security Law, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under section 236(a)(1) of the federal Trade Act of 1974, 19 U.S.C. 2296(a)(1), nor shall such individual be denied benefits by reason of leaving work to enter such training, if the work left is not suitable employment, or because of the application to any such week in training of

provisions of the Employment Security Law, or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, suitable employment shall mean, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974, and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for purposes of such act;

(12) For any week during which the individual is on a leave of absence; and

(13) For any week of unemployment benefits or for waiting week credit if he or she has been disqualified from the receipt of benefits pursuant to section 48-663.01 two or more times in the five-year period immediately prior to filing his or her most recent claim. This subdivision shall not apply if the individual has repaid in full any overpayments established in conjunction with the disqualifications assessed under section 48-663.01 during that five-year period.

**Source:** Laws 1937, c. 108, § 5, p. 377; Laws 1939, c. 56, § 4, p. 236; C.S.Supp., 1941, § 48-705; R.S. 1943, § 48-628; Laws 1945, c. 114, § 4, p. 372; Laws 1955, c. 190, § 7, p. 545; Laws 1961, c. 241, § 2, p. 718; Laws 1965, c. 287, § 1, p. 821; Laws 1967, c. 301, § 1, p. 818; Laws 1969, c. 402, § 1, p. 1395; Laws 1971, LB 651, § 6; Laws 1975, LB 370, § 1; Laws 1976, LB 819, § 1; Laws 1977, LB 509, § 5; Laws 1978, LB 128, § 1; Laws 1979, LB 581, § 3; Laws 1980, LB 800, § 4; Laws 1981, LB 470, § 3; Laws 1982, LB 801, § 2; Laws 1983, LB 248, § 4; Laws 1983, LB 432, § 1; Laws 1984, LB 746, § 2; Laws 1985, LB 339, § 22; Laws 1985, LB 341, § 1; Laws 1987, LB 276, § 1; Laws 1987, LB 469, § 2; Laws 1989, LB 605, § 1; Laws 1991, LB 498, § 1; Laws 1992, LB 878, § 1; Laws 1994, LB 286, § 3; Laws 1994, LB 913, § 1; Laws 1995, LB 1, § 9; Laws 1995, LB 77, § 2; Laws 1995, LB 291, § 1; Laws 1995, LB 759, § 1; Laws 1996, LB 633, § 1; Laws 1998, LB 225, § 3; Laws 2000, LB 953, § 7; Laws 2001, LB 192, § 8; Laws 2002, LB 921, § 2; Laws 2005, LB 484, § 6; Laws 2005, LB 739, § 10; Laws 2010, LB1020, § 4.

Operative date July 1, 2011.

1. Eligibility for benefits
2. Voluntary termination of employment
3. Stoppage of work
4. Misconduct
5. Miscellaneous

#### 1. Eligibility for benefits

In the circumstances of multiple employment, a decision to voluntarily leave part-time employment without good cause does not disqualify one from receiving full unemployment compensation benefits resulting from being laid off from one's full-time position. *Fountain v. Hanlon*, 214 Neb. 700, 335 N.W.2d 319 (1983).

When determining if an employee, discharged for violating a company rule forbidding company employees from having contact with prior employees, is to be disqualified from receiving benefits under this statute, it must be determined if the rule has a reasonable relationship to the employer's interest. Rule here held not to be so related to the employer's interest. *Snyder Industries, Inc. v. Otto*, 212 Neb. 40, 321 N.W.2d 77 (1982).

The disqualification of employees of educational institutions and professional athletes for unemployment benefits under this provision does not include professional symphony musicians.

The provisions of the unemployment compensation act should be liberally construed in favor of those claiming benefits under it. *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).

#### 2. Voluntary termination of employment

In the context of subsection (1)(a) of this section, to leave work voluntarily means to sever the employment relationship with the intent not to return to, or to intentionally terminate, the employment. *Lancaster Cty. Sch. Dist. No. 0001 v. State Dept. of Labor*, 260 Neb. 108, 615 N.W.2d 441 (2000).

Pursuant to subsection (1)(a) of this section, a court will separately consider the circumstances under which each of multiple employments was terminated in determining the benefits against which the statutory disqualification shall apply. *Lancaster Cty. Sch. Dist. No. 0001 v. State Dept. of Labor*, 260 Neb. 108, 615 N.W.2d 441 (2000).

Pursuant to subsection (1)(a) of this section, a paraeducator comes within the scope of this statutory provision. *Lancaster Cty. Sch. Dist. No. 0001 v. State Dept. of Labor*, 260 Neb. 108, 615 N.W.2d 441 (2000).

Pursuant to subsection (1)(a) of this section, an employee has "good cause" for voluntarily leaving employment if the employee's decision to leave is prompted by a circumstance which has some justifiably reasonable connection with or relation to the conditions of the employment. *Lancaster Cty. Sch. Dist. No. 0001 v. State Dept. of Labor*, 260 Neb. 108, 615 N.W.2d 441 (2000).

For purposes of subsection (a)(1) of this section, an employee has not "left work voluntarily without good cause" when the employee voluntarily resigns from work but is subsequently terminated by the employer during the notice period. *Dillard Dept. Stores v. Polinsky*, 247 Neb. 821, 530 N.W.2d 637 (1995).

An employee who has engaged in no misconduct and who desires to keep his or her employment, but nonetheless resigns because the employer has clearly manifested that the employment will be terminated, has not left his or her employment "voluntarily," as that term is used in subsection (a)(1) of this section. *Perkins v. Equal Opportunity Comm.*, 234 Neb. 359, 451 N.W.2d 91 (1990).

An employee has good cause for voluntarily leaving employment if the employee's decision to leave is prompted by a circumstance which has some justifiably reasonable connection with or relation to the conditions of the employment. *Stackley v. State*, 222 Neb. 767, 386 N.W.2d 884 (1986).

A change in work hours, absent some compelling circumstance, does not constitute good cause for leaving employment under subsection (a)(1) of this section. *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 N.W.2d 121 (1985).

Employee failed to meet burden of proof as to good cause of employment termination where employee failed to offer competent medical evidence to substantiate claim that her health would be affected by a change in work hours. *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 N.W.2d 121 (1985).

An employer acts within the meaning of subsection (a) of this section by removing duties after a job change due to the physical incapacity to carry out those particular duties. *Norman v. Sorensen*, 220 Neb. 408, 370 N.W.2d 147 (1985).

To leave work voluntarily means to intentionally terminate the employment, but such leaving is with good cause if it has some justifiably reasonable connection with or relation to the conditions of employment. *McClemens v. United Parcel Serv.*, 218 Neb. 689, 358 N.W.2d 748 (1984).

The burden of proof is on the employee to show that he involuntarily left his employment or did so with good cause. *Taylor v. Collateral Control Corp.*, 218 Neb. 432, 355 N.W.2d 788 (1984).

One is disqualified for benefits if, by leaving work voluntarily and without good cause, one thereby makes oneself unemployed. Each job and the facts of its termination must be considered separately with regard to disqualification for benefits. *Gilbert v. Hanlon*, 214 Neb. 676, 335 N.W.2d 548 (1983).

Evidence held to show that claimant left work voluntarily. To leave work voluntarily under this section means to intentionally sever the employment relationship with the intent not to return to, or to intentionally terminate, the employment. *Gastineau v. Tomahawk Oil Co., Limited*, 211 Neb. 537, 319 N.W.2d 107 (1982).

An employee who desires to retain his employment but resigns because the employer has clearly indicated that if he does not resign his employment will be terminated has not left his employment voluntarily. *School Dist. No. 20 v. Commissioner of Labor*, 208 Neb. 663, 305 N.W.2d 367 (1981).

A wife who voluntarily leaves her employment for the sole and only reason of being with her husband in another city does so without good cause and disqualifies herself as a claimant for unemployment benefits. *Woodmen of the World Life Ins. Soc. v. Olsen*, 141 Neb. 776, 4 N.W.2d 923 (1942).

An employee who leaves work voluntarily has the burden to prove that he or she left employment with good cause. *Speedway Motors v. Commissioner of Labor*, 1 Neb. App. 606, 510 N.W.2d 341 (1993).

### 3. Stoppage of work

A work stoppage cannot be determined solely on the basis of the proportionate number of employees affected. *Bell Fed. Credit Union v. Christianson*, 237 Neb. 519, 466 N.W.2d 546 (1991).

Depending on the facts of the case, various factors become relevant as to the determination of a work stoppage within the meaning of subsection (d) of this section. *Bell Fed. Credit Union v. Christianson*, 237 Neb. 519, 466 N.W.2d 546 (1991).

One disqualified from receiving benefits under subdivision (d) of this section can avoid continued disqualification if the employer fails to prove that for the week in question, the cause of work stoppage is the labor dispute. *IBP, Inc. v. Aanenson*, 234 Neb. 603, 452 N.W.2d 59 (1990).

No work stoppage occurred where workers' refusing to cross a picket line resulted in a four and nine-tenths percent loss in production, together with a two and nine-tenths percent loss of total work hours; there was no total operational shutdown at the plant; ninety-eight percent of the affected positions were filled by the end of the first week following the establishment of the picket line; and the company informed the Department of Labor that no work stoppage had occurred. *George A. Hormel & Co. v. Hair*, 229 Neb. 284, 426 N.W.2d 281 (1988).

One who is a member of the same grade or class of workers participating in a labor dispute is ineligible for unemployment compensation benefits. *Laursen v. Kiewit Constr. Co.*, 223 Neb. 471, 390 N.W.2d 534 (1986).

Members of nonstriking unions and nonunion employees who are not participating in or financing or directly interested in a labor dispute which caused a work stoppage and who do not belong to a grade or class of workers who, immediately before the commencement of the stoppage, were members employed at the premises at which the stoppage occurs, and are participating in, financing, or directly interested in the labor dispute, are not disqualified from receiving benefits. An employee is not directly interested in a labor dispute within the meaning of this provision merely because the employee may obtain a benefit by reason of the labor dispute. *Gilmore Constr. Co. v. Miller*, 213 Neb. 133, 327 N.W.2d 628 (1982).

Disqualification for benefits exists when unemployment is due to stoppage of work because of a labor dispute. *A. Borchman Sons v. Carpenter*, 166 Neb. 322, 89 N.W.2d 123 (1958).

Where a labor dispute develops into a strike, causing a substantial stoppage of work in the business of the employer, the employees striking are not entitled to benefits under the Unemployment Compensation Act. *Magner v. Kinney*, 141 Neb. 122, 2 N.W.2d 689 (1942).

The term stoppage of work, as used in Unemployment Compensation Act, means a substantial curtailment of work in an employing establishment. *Deshler Broom Factory v. Kinney*, 140 Neb. 889, 2 N.W.2d 332 (1942).

### 4. Misconduct

Misconduct has been defined, pursuant to this section, as behavior evidencing (1) wanton and willful disregard of the employer's interests, (2) deliberate violation of rules, (3) disregard of standards of behavior which the employer can rightfully expect from the employee, or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations. *Douglas Cty. Sch. Dist. 001 v. Dutcher*, 254 Neb. 317, 576 N.W.2d 469 (1998).

In order for a violation of an employer's rule to constitute misconduct, the rule must bear a reasonable relationship to the employer's interests. *Dolan v. Svitak*, 247 Neb. 410, 527 N.W.2d 621 (1995).

Under subsection (b) of this section, conduct of a governmental employee which evinces a conscious and intentional disregard of standards of behavior which his or her governmental

employer would have a right to expect from such employee constitutes misconduct in connection with the employee's employment, where continued employment would create a genuine threat to the integrity of the governmental employer and reflect unfavorably upon the governmental employer in the eyes of the general public. *Poore v. City of Minden*, 237 Neb. 78, 464 N.W.2d 791 (1991).

An employee who is discharged for misconduct may be disqualified from unemployment compensation benefits. *Caudill v. Surgical Concepts, Inc.*, 236 Neb. 266, 460 N.W.2d 662 (1990).

The term "misconduct," as used in subsection (b) of this section, includes behavior that evidences wanton and willful disregard of the employer's interests; deliberate violations of rules; disregard of standards of behavior rightfully expected from the employee; or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations. *Jensen v. Mary Lanning Memorial Hosp.*, 233 Neb. 66, 443 N.W.2d 891 (1989).

Where an employee has close personal contact with persons served by the employer, it is not unreasonable for the employer to require the employee to report to work without the odor of alcohol on his breath. Violation of the requirement, after warnings to the employee, is misconduct under subsection (b) of the statute. *Jensen v. Mary Lanning Memorial Hosp.*, 233 Neb. 66, 443 N.W.2d 891 (1989).

Misconduct for which a disqualification from receiving unemployment benefits under subsection (b) of this section may result must be committed in connection with the employee's work. Failure to cooperate with an employer which is attempting to furnish a smoke-free environment by a good faith trial and error method constitutes misconduct in connection with the employee's work sufficient to disqualify the employee from receiving unemployment compensation benefits. Failure to furnish medical justification for prolonged absences from employment, when an employee has stated that such justification will be furnished, also constitutes sufficient misconduct in connection with the employee's work. *Tuma v. Omaha Public Power Dist.*, 226 Neb. 19, 409 N.W.2d 306 (1987).

Misconduct for which a disqualification from receiving unemployment benefits may result must be committed in connection with the employee's work. Conduct of an employee in so acting as to create a situation where garnishments are filed with his or her employer is not "misconduct connected with his or her work" and therefore will not disqualify a discharged employee from receiving unemployment compensation benefits. *Great Plains Container Co. v. Hiatt*, 225 Neb. 558, 407 N.W.2d 166 (1987).

While absences due to illness may not constitute an employee's misconduct, an employee's chronic and excessive absenteeism demonstrates a wanton and willful disregard of the employer's interests for the purpose of this section. *O'Keefe v. Tabitha, Inc.*, 224 Neb. 574, 399 N.W.2d 798 (1987).

Misconduct under subsection (b) of this section is defined as behavior which evidences (1) wanton and willful disregard of the employer's interests, (2) deliberate violation of rules, (3) disregard of standards of behavior which the employer can rightfully expect from the employee, or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations. *Smith v. Sorensen*, 222 Neb. 599, 386 N.W.2d 5 (1986).

The falsifying of entries by an employee of his employer's work records constitutes misconduct. What constitutes misconduct is a fact question. In order for a violation of an employer's rules to constitute misconduct, it is necessary that the rule be a reasonable one. *Smith v. Sorensen*, 222 Neb. 599, 386 N.W.2d 5 (1986).

Misconduct within the meaning of this statute is a deliberate, willful, or wanton disregard of an employer's interest or of the standards of behavior which the employer has a right to expect of his employees, or carelessness or negligence of such a degree

or recurrence as to manifest culpability, wrongful intent, or evil design. *Barada v. Sorensen*, 222 Neb. 391, 383 N.W.2d 799 (1986).

Excessive absences from work, except when excused or authorized by employment rules, may constitute misconduct. *McCarrison v. City of Lincoln*, 215 Neb. 474, 339 N.W.2d 294 (1983).

Misconduct, under this section, is the deliberate, willful, or wanton disregard of an employer's interest or of the standards of behavior which the employer has a right to expect of his employees, or carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design. *Bristol v. Hanlon*, 210 Neb. 37, 312 N.W.2d 694 (1981).

#### 5. Miscellaneous

The language of subsection (5)(b) of this section in its current form does not include temporary total disability as a disqualifying event for the receipt of unemployment benefits. *Memorial Hosp. of Dodge Cty. v. Porter*, 251 Neb. 327, 557 N.W.2d 21 (1996).

In an appeal regarding disqualification under subsection (b) of this section, the Supreme Court retries factual questions de novo on the record and reaches conclusions independent of those reached by the district court. *Jensen v. Mary Lanning Memorial Hosp.*, 233 Neb. 66, 443 N.W.2d 891 (1989).

Subsection (c) of this section disqualifies unemployed persons refusing suitable work from receiving benefits. This subsection does not apply to employed persons who reject demotions. *Ponderosa Villa v. Hughes*, 224 Neb. 627, 399 N.W.2d 813 (1987).

The correct inquiry in cases where an employed person refuses a demotion and quits is whether the employee left with or without good cause. *Ponderosa Villa v. Hughes*, 224 Neb. 627, 399 N.W.2d 813 (1987).

In an appeal regarding disqualification of benefits under this section, the Supreme Court retries factual questions de novo on the record and reaches conclusions independent of those reached by the district court. *O'Keefe v. Tabitha, Inc.*, 224 Neb. 574, 399 N.W.2d 798 (1987).

The burden of proof under subsection (a)(1) of this section is upon the employee to show that he or she left his or her employment for good cause. *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 N.W.2d 121 (1985).

The requirement of subdivision (e) of this section, that a lump-sum severance allowance be prorated, is intended to prevent a claimant from receiving double payments for the same period of time in the form of unemployment benefits and severance compensation. *Sorensen v. Meyer*, 220 Neb. 457, 370 N.W.2d 173 (1985).

Subsection (c) of this section provides an employer with an additional reason for disqualification from benefits when a person refuses suitable work, and work is suitable when duties are excused upon the employee's showing of physical incapacity to perform the particular duties. *Norman v. Sorensen*, 220 Neb. 408, 370 N.W.2d 147 (1985).

Regular terms refers to definite period representing regular division of academic year and does not include six-week summer program. *School Dist. No. 21 v. Ochoa*, 216 Neb. 191, 342 N.W.2d 665 (1984).

"Good cause" as used herein does not include a mere disappointment at not being assigned to a particular job or task. *Heimsoth v. Kellwood Co.*, 211 Neb. 167, 318 N.W.2d 1 (1982).

Up to the point of appeal to district court, interpretation and application of law to facts in each case is made by administrative agency. *Beecham v. Falstaff Brewing Corporation*, 150 Neb. 792, 36 N.W.2d 233 (1949).

The receipt of workers' compensation benefits for temporary total disability is not a disqualifying event for unemployment benefits. *Memorial Hosp. of Dodge Cty. v. Porter*, 4 Neb. App. 716, 548 N.W.2d 361 (1996).

#### **48-628.01 Good cause for voluntarily leaving employment, defined.**

Good cause for voluntarily leaving employment shall include, but not be limited to, the following reasons:

(1) An individual has made all reasonable efforts to preserve the employment but voluntarily leaves his or her work for the necessary purpose of escaping abuse at the place of employment or abuse as defined in section 42-903 between household members;

(2) An individual left his or her employment voluntarily due to a bona fide non-work-connected illness or injury that prevented him or her from continuing the employment or from continuing the employment without undue risk of harm to the individual;

(3) An individual left his or her employment to accompany his or her spouse to the spouse's employment in a different city or new military duty station;

(4) An individual left his or her employment because his or her employer required the employee to relocate;

(5)(a) An individual is a construction worker and left his or her employment voluntarily for the purpose of accepting previously secured insured work in the construction industry if the commissioner finds that:

(i)(A) The quit occurred within thirty days immediately prior to the established termination date of the job which the individual voluntarily leaves, (B) the specific starting date of the new job is prior to the established termination date of the job which the worker quits, (C) the new job offered employment for a longer period of time than remained available on the job which the construction worker voluntarily quit, and (D) the worker had worked at least twenty days or more at the new job after the established termination date of the previous job unless the new job was terminated by a contract cancellation; or

(ii)(A) The construction worksite of the job which the worker quit was more than fifty miles from his or her place of residence, (B) the new construction job was fifty or more miles closer to his or her residence than the job which he or she quit, and (C) the worker actually worked twenty days or more at the new job unless the new job was terminated by a contract cancellation.

(b) The provisions of this subdivision (5) shall not apply if the individual is separated from the new job under conditions resulting in a disqualification from benefits under subdivision (1) or (2) of section 48-628;

(6) An individual accepted a voluntary layoff to avoid bumping another worker;

(7) An individual left his or her employment as a result of being directed to perform an illegal act;

(8) An individual left his or her employment because of unlawful discrimination or workplace harassment on the basis of race, sex, or age;

(9) An individual left his or her employment because of unsafe working conditions; or

(10) Equity and good conscience demand a finding of good cause.

**Source:** Laws 2005, LB 739, § 7.

**48-628.02 Extended benefits; terms, defined; weekly extended benefit amount; payment of emergency unemployment compensation.**

(1) As used in the Employment Security Law, unless the context otherwise requires:

(a) Extended benefit period means a period which begins with the third week after a week for which there is a state "on" indicator and ends with either of

the following weeks, whichever occurs later: (i) The third week after the first week for which there is a state "off" indicator or (ii) the thirteenth consecutive week of such period, except that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state;

(b) Extended benefits means benefits, including benefits payable to federal civilian employees and to ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. chapter 85, payable to an individual for weeks of unemployment in his or her eligibility period;

(c) Eligibility period of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. Notwithstanding any other provision of the Employment Security Law, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year multiplied by the individual's weekly benefit amount for extended benefits;

(d) Exhaustee means an individual who, with respect to any week of unemployment in his or her eligibility period:

(i)(A) Has received, prior to such week, all of the regular benefits that were available to him or her under the Employment Security Law of this state or under the unemployment insurance law of any other state, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen or ex-servicewomen under 5 U.S.C. chapter 85, in his or her current benefit year that includes such week, except for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits that were available to him or her although as a result of a pending appeal with respect to wages or employment or both wages and employment that were not considered in the original monetary determination in his or her benefit year, he or she may subsequently be determined to be entitled to added regular benefits; or (B) his or her benefit year having expired prior to such week, has no, or insufficient, wages or employment or both wages and employment on the basis of which he or she could establish a new benefit year that would include such week;

(ii) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(iii) Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if he or she is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under such law he or she is considered an exhaustee;

(e) Rate of insured unemployment means the percentage, used by the commissioner in determining whether there is a state "on" or state "off" indicator, derived by dividing (i) the average weekly number of individuals filing claims

for regular compensation under the Employment Security Law for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the commissioner on the basis of his or her reports to the United States Secretary of Labor, by (ii) the average monthly employment covered under the Employment Security Law for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period;

(f) Regular benefits means benefits payable to an individual under the Employment Security Law of this state or under the unemployment insurance law of any other state, including benefits payable to federal civilian employees and to ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. chapter 85, other than extended benefits;

(g) State “off” indicator means a week that the commissioner determines that, for the period consisting of such week and the immediately preceding twelve weeks, neither subdivision (1)(h)(i) or (1)(h)(ii) of this section was satisfied; and

(h) State “on” indicator means a week that the commissioner determines that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, not seasonally adjusted, under the Employment Security Law: (i) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded five percent or (ii) equaled or exceeded six percent.

(2) Except when the result would be inconsistent with the other provisions of this section, as provided in the rules and regulations of the commissioner, the provisions of the Employment Security Law which apply to claims for or payment of regular benefits shall apply to claims for and payment of extended benefits. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period only if the commissioner finds that with respect to such week: (a) Such individual is an exhaustee; (b) such individual has satisfied the requirements of the Employment Security Law for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; (c) sections 48-628.03 and 48-628.04 do not apply; and (d) such individual has been paid wages for insured work during the individual’s base period equal to at least one and one-half times the wages paid in that calendar quarter of the individual’s base period in which such wages were highest.

(3) The weekly extended benefit amount payable to an individual for a week of total unemployment in his or her eligibility period shall be an amount equal to the weekly benefit amount payable to him or her during his or her applicable benefit year. The total extended benefit amount payable to any eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts: Fifty percent of the total amount of regular benefits which were payable to him or her under the Employment Security Law in his or her applicable benefit year; or thirteen times his or her weekly benefit amount which was payable to him or her under the Employment Security Law for a week of total unemployment in the applicable benefit year.

(4) Whenever an extended benefit period is to become effective in this state as a result of a state “on” indicator or an extended benefit period is to be

terminated in this state as a result of a state "off" indicator, the commissioner shall make an appropriate public announcement. Computations required to determine the rate of insured unemployment shall be made by the commissioner in accordance with regulations prescribed by the United States Secretary of Labor. Any amount of extended benefits payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

(5) Notwithstanding any other provision of the Employment Security Law, during an extended benefit period, the Governor may provide for the payment of emergency unemployment compensation pursuant to Public Law 110-252, as amended, or any substantially similar federal unemployment compensation paid entirely from federal funds to individuals prior to the payment of extended benefits pursuant to sections 48-628.02 to 48-628.04.

**Source:** Laws 1971, LB 651, § 7; Laws 1972, LB 1392, § 5; Laws 1977, LB 509, § 6; Laws 1979, LB 581, § 4; Laws 1981, LB 470, § 4; Laws 1982, LB 801, § 3; Laws 1984, LB 746, § 3; Laws 1985, LB 339, § 23; Laws 2010, LB1055, § 1.

**48-628.03 Extended benefits; eligibility; seek or accept suitable work; suitable work, defined.**

(1) An individual shall be ineligible for payment of extended benefits for any week of unemployment in his or her eligibility period if the commissioner finds that during such period (a) he or she failed to accept any offer of suitable work or failed to apply for any suitable work to which he or she was referred by the commissioner or (b) he or she failed to actively engage in seeking work as prescribed under subsection (5) of this section.

(2) Any individual who has been found ineligible for extended benefits by reason of subsection (1) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he or she (a) has been employed in each of four subsequent weeks, whether or not consecutive, and (b) has earned remuneration equal to not less than four times the extended weekly benefit amount.

(3) For purposes of this section, the term suitable work shall mean, with respect to any individual, any work which is within such individual's capabilities and for which the gross average weekly remuneration payable for the work exceeds the sum of the individual's average weekly benefit amount payable to him or her during his or her applicable benefit year, plus the amount, if any, of supplemental unemployment compensation benefits as defined in section 501(c)(17)(D) of the Internal Revenue Code payable to such individual for such week. Such work must also pay wages equal to the higher of the federal minimum wage or the applicable state or local minimum wage. No individual shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitability contained in this subsection if (a) the position was not offered to such individual in writing or was not listed with the employment service, (b) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in subdivision (3) of section 48-628, to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subsection, or (c) the individual furnishes satisfactory evidence to the commissioner that his or her prospects for obtaining work in his or her customary occupation within a

reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in subdivision (3) of section 48-628 without regard to the definition specified by this subsection.

(4) Notwithstanding the provisions of subsection (3) of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions set forth under subdivision (3)(c) of section 48-628, nor shall an individual be denied benefits if such benefits would be deniable by reason of the provision set forth in subdivision (3)(d) of section 48-628.

(5) For the purposes of subsection (1) of this section, an individual shall be treated as actively engaged in seeking work during any week if the individual has engaged in a systematic and sustained effort to obtain work during such week and the individual furnishes tangible evidence that he or she has engaged in such effort during such week.

(6) The state employment service shall refer any claimant entitled to extended benefits under this section to any suitable work which meets the criteria prescribed in subsection (3) of this section.

(7) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period if such individual has been disqualified for benefits under subdivision (1), (2), or (3) of section 48-628 unless such individual has earned wages for services performed in subsequent employment in an amount not less than four hundred dollars.

**Source:** Laws 1981, LB 470, § 5; Laws 1982, LB 801, § 4; Laws 1993, LB 47, § 1; Laws 1995, LB 1, § 10; Laws 1995, LB 574, § 53; Laws 2000, LB 953, § 8; Laws 2010, LB1055, § 2.

#### **48-628.04 Extended benefits; payments not required; when.**

(1) Except as provided in subsection (2) of this section, payment of extended benefits shall not be made to any individual for any week if (a) extended benefits would, but for this section, have been payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan, and (b) an extended benefit period is not in effect for such week in such state.

(2) Subsection (1) of this section shall not apply with respect to the first two weeks for which extended benefits are payable, determined without regard to this section, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the benefit year.

**Source:** Laws 1981, LB 470, § 6.

#### **48-628.05 Additional unemployment benefits; conditions; amount; when benefits payable.**

(1) In addition to any other unemployment benefits to which an individual is entitled under the Employment Security Law, an individual who has exhausted all regular unemployment benefits for which he or she has been determined eligible shall continue to be eligible for up to twenty-six additional weeks of unemployment benefits if such individual:

(a)(i) Was involuntarily separated from employment as a result of a permanent reduction of operations at the individual's place of employment or (ii) is unemployed as the result of a separation from a declining occupation;

(b) Is enrolled and making satisfactory progress in a (i) training program approved for him or her by the commissioner or (ii) job training program authorized under the federal Workforce Investment Act of 1998, as amended;

(c) Is receiving training which is preparing the individual for entry into a high-demand occupation;

(d) Is enrolled in training no later than the end of the benefit year established with respect to the separation that makes the individual eligible for the training benefit. Individuals shall be notified of the enrollment requirement at the time of their initial determination of eligibility for regular benefits; and

(e) Is not receiving similar stipends or other training allowances for nontraining costs. Similar stipend means an amount provided under a program with similar aims, such as providing training to increase employability, and in approximately the same amounts.

(2) The amount of unemployment benefits payable to an individual for a week of unemployment under this section shall be equal to the amount of unemployment benefits which he or she has been determined eligible for under section 48-624 less any deductions or offsets authorized under the Employment Security Law.

(3) If an individual begins to receive unemployment benefits under this section while enrolled in a training program described in subsection (1) of this section during a benefit year, such individual shall continue to receive such benefits so long as he or she continues to make satisfactory progress in such training program, except that such benefits shall not exceed twenty-six times the individual's weekly benefit amount for the most recent benefit year as determined under section 48-624.

(4) No benefits shall be payable under this section until the individual has exhausted all (a) regular unemployment benefits, (b) extended benefits as defined in subdivision (1)(b) of section 48-628.02, and (c) unemployment benefits paid entirely from federal funds to which he or she is entitled, including, but not limited to, trade readjustment assistance, emergency unemployment compensation, or other similar federally funded unemployment benefits.

(5) For purposes of this section, regular unemployment benefits means all unemployment benefits for which an individual is eligible payable under sections 48-624 to 48-626, extended unemployment benefits payable under section 48-628.02, and any unemployment benefits funded solely by the federal government.

**Source:** Laws 2010, LB1020, § 5.

Operative date July 1, 2011.

#### **48-629 Claims; rules and regulations for filing.**

Claims for benefits shall be made in accordance with such rules and regulations as the commissioner may prescribe. Each employer shall post and maintain printed statements of such rules and regulations in places readily accessible to individuals in his or her service and shall make available to each such individual at the time he or she becomes unemployed, a printed statement

of such rules and regulations. Such printed statements shall be supplied by the commissioner to each employer without cost to the employer.

**Source:** Laws 1937, c. 108, § 6, p. 378; Laws 1941, c. 94, § 4, p. 384; C.S.Supp.,1941, § 48-706; R.S.1943, § 48-629; Laws 1985, LB 339, § 24.

Claims for benefits were filed under this section. A. Borchman  
Sons v. Carpenter, 166 Neb. 322, 89 N.W.2d 123 (1958).

**48-629.01 Claims; advisement to claimant; amounts deducted; how treated.**

(1) An individual filing a new claim for unemployment compensation shall, at the time of the filing of such claim, be advised that:

- (a) Unemployment compensation is subject to federal and state income tax;
- (b) Requirements exist pertaining to estimated tax payments;
- (c) The individual may elect to have federal income tax withheld from the individual's payment of unemployment compensation at the amount specified in the Internal Revenue Code; and
- (d) The individual shall be permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the Unemployment Compensation Fund until transferred to the federal Internal Revenue Service as a payment of income tax.

(3) The commissioner shall follow all procedures specified by the United States Department of Labor and the federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld under this section only after amounts are deducted and withheld for any overpayments of unemployment compensation, child support obligations, or any other amounts required to be withheld under the Employment Security Law.

**Source:** Laws 1996, LB 1072, § 2.

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

A determination upon a claim filed pursuant to section 48-629 shall be made promptly by a representative designated by the commissioner, hereinafter referred to as a deputy, and shall include a statement as to whether and in what amount claimant is entitled to benefits for the week with respect to which the determination is made and, in the event of a denial, shall state the reasons therefor. A determination with respect to the first week of a benefit year shall also include a statement as to whether the claimant has been paid the wages required under subdivision (5) of section 48-627, and, if so, the first day of the benefit year, his or her weekly benefit amount, and the maximum total amount of benefits payable to him or her with respect to such benefit year. Any benefits to which a claimant has been found eligible shall not be withheld because of the filing of an appeal under section 48-634 and such benefits shall be paid until the appeal tribunal has rendered its decision modifying or reversing the determination allowing such benefits if the claimant is otherwise eligible. Any benefits received by any person to which, under a redetermination or decision pursuant to sections 48-630 to 48-640, he or she has been found not entitled shall be treated as excessive payments in accordance with the provisions of section 48-665. Whenever any claim involves the application of the provisions

of subdivision (4) of section 48-628, the deputy shall promptly transmit his or her full findings of fact, with respect to that subdivision, to the commissioner, who, on the basis of the evidence submitted and such additional evidence as he or she may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issue involved under the subdivision, which shall be deemed to be the decision of the deputy. All claims arising out of the same alleged labor dispute may be considered at the same time. The parties shall be promptly notified of the determination, together with the reasons therefor, and such determination shall be deemed to be the final decision on the claim, unless an appeal is filed with the appeal tribunal in the manner prescribed in section 48-634.

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

Deputy commissioner of labor is agent who is required initially to make determination of case. Beecham v. Falstaff Brewing Corporation, 150 Neb. 792, 36 N.W.2d 233 (1949).

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

The deputy may reconsider a determination whenever he finds that an error in computation or identity has occurred in connection therewith, or that wages of the claimant pertinent to such determination, but not considered in connection therewith, have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentations of fact, but no such redetermination shall be made after two years from the date of the original determination. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in section 48-630 with respect to notice of an original determination. If the amount of benefits is increased or decreased upon such redetermination, an appeal therefrom solely with respect to the matters involved in such increase or decrease may be filed in the manner and subject to the limitations provided in section 48-633. Subject to the same limitations and for the same reasons, the Commissioner of Labor may reconsider the determination, in any case in which the final decision has been rendered by an appeal tribunal or a court, and may apply to the tribunal or court which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

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

#### **48-632 Claims; determination; notice; persons entitled.**

Notice of a determination upon a claim shall be promptly given to the claimant by delivery thereof or by mailing such notice to his or her last-known address. In addition, notice of any determination, together with the reasons therefor, shall be promptly given in the same manner to any employer by whom claimant was employed on or after the first day of his or her base period, and who has indicated prior to the determination, in such manner as required by

rule and regulation of the commissioner, that such individual may be ineligible or disqualified under any provision of the Employment Security Law.

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

**48-633 Appeal tribunals; qualifications; powers; duties.**

(1) To hear and decide disputed claims, the commissioner shall appoint one or more impartial appeal tribunals consisting in each case of an administrative law judge, who shall be an attorney selected in accordance with section 48-609.

(2) Whenever the commissioner finds that the hearing of an appeal will be unreasonably delayed by the unavailability of an administrative law judge appointed in accordance with subsection (1) of this section, he or she may appoint a special administrative law judge to conduct the hearing. Such special administrative law judge may be appointed without regard to the qualifications set forth in subsection (1) of this section and shall have all the powers and perform all the duties of an administrative law judge appointed in accordance with subsection (1) of this section.

(3) Recognizing that a clear separation of functions and the protection of fair and impartial hearings are fundamental to the integrity of the adjudicative process, administrative oversight of the appeal tribunal and its administrative law judges shall be the responsibility of the commissioner. The commissioner shall provide the appeal tribunals with proper facilities and assistants for the execution of their functions. Notwithstanding any delegation of administrative oversight, the commissioner shall maintain the appeal tribunal and its staff as an identifiable unit within the division or office to which it is assigned, under the supervision of a chief administrative law judge. In determining eligibility of a claimant for unemployment benefits, an appeal tribunal shall not be bound by department policy or interpretations that are not part of a duly adopted regulation or that have not been approved by a court of competent jurisdiction. No administrative law judge shall be subject to discipline, poor evaluation, or loss of pay or pay increase for failure to follow a department policy or interpretation on unemployment benefit eligibility that has not been adopted as a regulation or approved by a court of competent jurisdiction. An attorney employed by the commissioner shall not appear before an appeal tribunal in any appeal hearing presided over by an administrative law judge for whom he or she is the immediate supervisor.

**Source:** Laws 1937, c. 108, § 6, p. 380; Laws 1941, c. 94, § 4, p. 386; C.S.Supp.,1941, § 48-706; R.S.1943, § 48-633; Laws 1947, c. 175, § 7, p. 576; Laws 1955, c. 190, § 8, p. 547; Laws 1967, c. 298, § 2, p. 813; Laws 1982, LB 410, § 1; Laws 2001, LB 192, § 9.

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

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

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

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

Before appeal tribunal of Labor Department may take jurisdiction over appeal filed beyond limitation date for newly discovered evidence, appellant must demonstrate new evidence would make a valid claim or defense. *Nicholson v. City of Bellevue*, 215 Neb. 540, 339 N.W.2d 758 (1983).

A notice of appeal filed pursuant to this section, which is properly addressed and to which sufficient postage has been

affixed, shall be valid if it is deposited in the United States mail within ten days after the mailing of the notice of the deputy's determination. *Parson v. Chizek*, 201 Neb. 754, 272 N.W.2d 48 (1978).

Administrative appeal within division is provided. *A. Borchman Sons v. Carpenter*, 166 Neb. 322, 89 N.W.2d 123 (1958).

#### **48-635 Administrative appeals; procedure; rules of evidence; record.**

The manner in which disputed claims shall be presented and the conduct of hearings and appeals shall be in accordance with rules and regulations prescribed by the commissioner for determining the rights of the parties, whether or not such rules and regulations conform to common-law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with the disputed claims. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

**Source:** Laws 1937, c. 108, § 6, p. 380; Laws 1941, c. 94, § 4, p. 387; C.S.Supp.,1941, § 48-706; R.S.1943, § 48-635; Laws 1985, LB 339, § 26.

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

Except insofar as reconsideration of any determination is had under sections 48-630 to 48-632, any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination which has become final, or in a decision on appeal which has become final, shall be conclusive for all the purposes of the Employment Security Law as between the Commissioner of Labor, the claimant, and all employers who had notice of such determination, redetermination, or decision. Subject to appeal proceedings and judicial review as provided in sections 48-633 to 48-644, any determination, redetermination, or decision as to rights to benefits shall be conclusive for all the purposes of such law and shall not be subject to collateral attack by any employer.

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

A determination made pursuant to the Employment Security Law is conclusive only for the purpose of proceedings governed by the Employment Security Law. *Ballard v. Giltner Pub. Sch.*, 241 Neb. 970, 492 N.W.2d 855 (1992).

Denial of unemployment compensation benefits on ground of employee misconduct was not res judicata precluding employee's action for breach of employment contract. A determination made pursuant to Employment Security Law is conclusive only for purpose of proceedings governed by Employment Security

Law. *Ballard v. Giltner Public Schools, School District No. 2, Hamilton County*, 241 Neb. 970, 492 N.W.2d 855 (1992).

Administrative law judge's decision reversing finding at initial unemployment determination that employees were guilty of willful intentional misconduct was not entitled to res judicata effect in employees' subsequent action against their employer challenging their discharge. *White v. Ardan, Inc.*, 230 Neb. 11, 430 N.W.2d 27 (1988).

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

The final decisions of an appeal tribunal, and the principles of law declared by it in arriving at such decisions, unless expressly or impliedly overruled by a later decision of the tribunal or by a court of competent jurisdiction, shall be binding upon the commissioner and any deputy in subsequent proceedings which involve similar questions of law; *Provided*, that if in connection with any subsequent proceeding the commissioner or a deputy has serious doubt as to the correctness of any principle so declared he may certify his findings of fact in such case, together with the question of law involved to the appeal tribunal, which, after giving notice and reasonable opportunity for hearing upon the law to all parties to such proceedings, shall thereupon certify to the commissioner, such deputy and such parties its answer to the question submitted. If the question thus certified to the appeal tribunal arises in connection with a claim for benefits, the tribunal in its discretion may remove to itself the entire proceedings on such claim, and, after proceeding in accordance with the requirements of sections 48-633 to 48-643 with respect to proceedings before an appeal tribunal, shall render its decision upon the entire claim.

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

Provision is made for appeal to district court from determination of appeal tribunal. *Beecham v. Falstaff Brewing Corporation*, 150 Neb. 792, 36 N.W.2d 233 (1949).

#### **48-638 Appeal to district court; procedure.**

Any party to the proceedings before the appeal tribunal may appeal the tribunal's decision by filing a petition (1) in the district court of the county in which the individual claiming benefits claims to have been last employed or in which such claimant resides, (2) in any district court of this state upon which the parties may agree, or (3) if neither subdivision (1) or (2) of this section applies, then in the district court of Lancaster County. If the commissioner is not the petitioning party, he or she shall be a party defendant in every appeal. Such appeal shall otherwise be governed by the Administrative Procedure Act.

**Source:** Laws 1941, c. 94, § 4, p. 388; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-638; Laws 1945, c. 115, § 4, p. 384; Laws 1957, c. 208, § 4, p. 731; Laws 1979, LB 328, § 2; Laws 1986, LB 950, § 4; Laws 1988, LB 352, § 85; Laws 1996, LB 1072, § 4.

#### **Cross References**

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

In an appeal to the district court under this section by the Commissioner of Labor the filing of the transcript required by the statute is not jurisdictional. The transcript filing requirement in this section is distinguishable from that in an error proceeding because it applies only to the commissioner, review in the district court is de novo, and the statute permits the introduc-

tion of additional evidence in the review proceeding. *Sorensen v. Bernhardt*, 223 Neb. 395, 389 N.W.2d 583 (1986).

The Employment Security Law provides one avenue of judicial appeal when the dispute concerns benefit liability and another when the dispute concerns contribution liability. North-

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ern Messenger v. Sorensen, 218 Neb. 846, 359 N.W.2d 787 (1984).

Appeal from decision of appeal tribunal is provided. A. Borchman Sons v. Carpenter, 166 Neb. 322, 89 N.W.2d 123 (1958).

The Commissioner of Labor is an interested party in any action under the provisions of the Unemployment Compensation

Act, and may appeal when he feels himself aggrieved. Woodmen of the World Life Ins. Soc. v. Olsen, 141 Neb. 12, 2 N.W.2d 353 (1942).

An employee who has established rights to benefits under the Unemployment Compensation Act is a necessary party for a review of the decision on appeal. Brown v. Haith, 140 Neb. 717, 1 N.W.2d 825 (1942).

**48-639 Repealed. Laws 1988, LB 352, § 190.****48-640 Appeal; procedure.**

An appeal may be taken from the decision of the district court to the Court of Appeals in accordance with the Administrative Procedure Act.

**Source:** Laws 1941, c. 94, § 4, p. 389; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-640; Laws 1985, LB 338, § 3; Laws 1985, LB 339, § 28; Laws 1988, LB 352, § 86; Laws 1991, LB 732, § 114.

**Cross References**

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

The Supreme Court reviews appeals under this section in the same manner as the court reviews appeals in civil cases. IBP, Inc. v. Aanenson, 234 Neb. 603, 452 N.W.2d 59 (1990).

Supreme Court considers appeal de novo upon the record and court will reach independent conclusion on statutory interpretation question. School Dist. No. 21 v. Ochoa, 216 Neb. 191, 342 N.W.2d 665 (1984).

This section contemplates that the Supreme Court will review de novo on the record, and it is the duty of the Supreme Court to retry the issues of fact involved in the findings complained of

and to reach an independent conclusion thereon. Heimsoth v. Kellwood Co., 211 Neb. 167, 318 N.W.2d 1 (1982).

An appeal from proceedings under this section, the Employment Security Law, is considered by the Supreme Court de novo on the record. Glionna v. Chizek, 204 Neb. 37, 281 N.W.2d 220 (1979).

Supreme Court considers appeal de novo upon the record. A. Borchman Sons v. Carpenter, 166 Neb. 322, 89 N.W.2d 123 (1958).

**48-641 Appeals generally; bond and filing fees not required; costs.**

No bond shall be required as a condition of initiating a proceeding for judicial review or entering an appeal from the decision of the court upon such review. Costs which would be otherwise taxed to a claimant shall be taxed in such courts to the commissioner regardless of the result of any such action unless justice and equity otherwise require. Notwithstanding any general statute to the contrary, no filing fee shall be charged by an appeal tribunal or by the clerk of any court for any service required by sections 48-634 to 48-640.

**Source:** Laws 1941, c. 94, § 4, p. 389; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-641; Laws 1947, c. 175, § 8, p. 577; Laws 1988, LB 352, § 87.

**48-642 Appeals; commissioner a party; representation on judicial review.**

The commissioner shall be a party entitled to notice in any proceeding involving a claim for benefits before an appeal tribunal. In any proceeding for judicial review pursuant to sections 48-638 to 48-640 the commissioner may be represented by any qualified attorney employed and designated by him for that purpose, or at the commissioner's request by the Attorney General.

**Source:** Laws 1941, c. 94, § 4, p. 389; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-642.

**48-643 Witnesses; fees.**

Witnesses subpoenaed pursuant to sections 48-629 to 48-644 shall be allowed fees at a rate fixed by the commissioner and not exceeding the amount allowed

for witness fees in district court. Such fees shall be deemed a part of the expense of administering the Employment Security Law.

**Source:** Laws 1937, c. 108, § 6, p. 380; Laws 1941, c. 94, § 4, p. 389; C.S.Supp.,1941, § 48-706; R.S.1943, § 48-643; Laws 1985, LB 339, § 29.

**Cross References**

For witness fees in district court, see section 33-139.

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

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

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

Generally, where there has been an award of benefits, the employee is not to be left without those benefits during appeal. *Gibson v. Kurt Mfg.*, 255 Neb. 255, 583 N.W.2d 767 (1998).

**48-645 Benefits; waiver, release, and deductions void; discrimination in hire or tenure unlawful; penalty.**

Any agreement by an individual to waive, release, or commute his or her rights to benefits or any other rights under the Employment Security Law shall be void. Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under such law from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him or her, or require or accept any waiver of any right hereunder by any individual in his or her employ, or discriminate in regard to the hiring, rehiring, or tenure of work of any individual on account of any claim made by such individual for benefits under the Employment Security Law, or in any manner obstruct or impede the filing of claims for benefits. Any employer, officer, or agent of an employer who violates any provision of this section shall be guilty of a Class II misdemeanor.

**Source:** Laws 1937, c. 108, § 15, p. 399; Laws 1941, c. 94, § 11, p. 399; C.S.Supp.,1941, § 48-714; R.S.1943, § 48-645; Laws 1977, LB 40, § 292; Laws 1985, LB 339, § 30.

**48-646 Benefits; action to recover; fees; representation.**

No individual claiming benefits shall be charged fees of any kind in any proceeding under the Employment Security Law except as provided herein. Any individual claiming benefits in any proceeding before the commissioner or an appeal tribunal or his, her, or its representative may be represented by counsel, any other duly authorized agent, or a person of his or her choice. Any

individual claiming benefits in any proceeding before a court may be represented by counsel. Such counsel may charge a reasonable fee for such services.

**Source:** Laws 1937, c. 108, § 15, p. 399; C.S.Supp.,1941, § 48-714; R.S.1943, § 48-646; Laws 1947, c. 175, § 9, p. 577; Laws 1949, c. 163, § 11, p. 427; Laws 1977, LB 40, § 293; Laws 1982, LB 410, § 2; Laws 1985, LB 339, § 31; Laws 1986, LB 950, § 5.

This statute requires that the amount of attorney fees charged by a lawyer to his client be approved by the Commissioner of Labor. It does not authorize the district court to award attorney fees for which approval by the commissioner has not been sought. School Dist. No. 20 v. Commissioner of Labor, 208 Neb. 663, 305 N.W.2d 367 (1981).

**48-647 Benefits; assignments void; exemption from legal process; exception; child support obligations; Supplemental Nutrition Assistance Program benefits overissuance; disclosure required; collection.**

(1) Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under sections 48-623 to 48-626 shall be void except as set forth in this section. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his or her spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void. Any assignment, pledge, or encumbrance of any right or claim to contributions or to any money credited to any employer's reserve account in the Unemployment Compensation Fund shall be void, and the same shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt, and any waiver of any exemption provided for in this section shall be void.

(2)(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes child support obligations as defined under subdivision (h) of this subsection. If such individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the Department of Health and Human Services that the individual has been determined to be eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation otherwise payable to an individual disclosing child support obligations:

(i) The amount specified by the individual to the commissioner to be deducted under this subsection, if neither subdivision (ii) nor (iii) of this subdivision is applicable;

(ii) The amount, if any, determined pursuant to an agreement between the Department of Health and Human Services and such individual owing the child support obligations to have a specified amount withheld and such agreement being submitted to the commissioner, unless subdivision (iii) of this subdivision is applicable; or

(iii) The amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in subdivision (2)(i) of this section, properly served upon the commissioner.

(c) Any amount deducted and withheld under subdivision (b) of this subsection shall be paid by the commissioner to the Department of Health and Human Services.

(d) Any amount deducted and withheld under subdivision (b) or (g) of this subsection shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the Department of Health and Human Services in satisfaction of his or her child support obligations.

(e) For purposes of subdivisions (a) through (d) and (g) of this subsection, the term unemployment compensation shall mean any compensation payable under the Employment Security Law and including amounts payable by the commissioner pursuant to an agreement by any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This subsection shall apply only if appropriate arrangements have been made for reimbursement by the Department of Health and Human Services for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the department.

(g) The Department of Health and Human Services and the commissioner shall develop and implement a collection system to carry out the intent of this subdivision. The collection system shall, at a minimum, provide that:

(i) The commissioner shall periodically notify the Department of Health and Human Services of the information listed in section 43-1719 with respect to individuals determined to be eligible for unemployment compensation during such period;

(ii) Unless the county attorney, the authorized attorney, or the Department of Health and Human Services has sent a notice on the same support order under section 43-1720, upon the notification required by subdivision (2)(g)(i) of this section, the Department of Health and Human Services shall send notice to any such individual who owes child support obligations and who is subject to income withholding pursuant to subdivision (2)(a), (2)(b)(ii), or (2)(b)(iii) of section 43-1718.01. The notice shall be sent by certified mail to the last-known address of the individual and shall state the same information as required under section 43-1720;

(iii)(A) If the support obligation is not based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the Department of Health and Human Services shall hold a hearing within fifteen days of the date of receipt of the request. The hearing shall be in accordance with the Administrative Procedure Act. The assignment shall be held in abeyance pending the outcome of the hearing. The department shall notify the individual and the commissioner of its decision within fifteen days of the date the hearing is held; and

(B) If the support obligation is based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the county attorney or authorized attorney shall apply the procedures described in sections 43-1732 to 43-1742;

(iv)(A) If no hearing is requested by the individual under this subsection or pursuant to a notice sent under section 43-1720, (B) if after a hearing under this subsection or section 43-1721 the Department of Health and Human Services determines that the assignment should go into effect, (C) in cases in

which the court has ordered income withholding for child support pursuant to subsection (1) of section 43-1718.01, or (D) in cases in which the court has ordered income withholding for child support pursuant to section 43-1718.02 and the case subsequently becomes one in which child support collection services are being provided under Title IV-D of the federal Social Security Act, as amended, the Department of Health and Human Services shall certify to the commissioner the amount to be withheld for child support obligations from the individual's unemployment compensation. Such amount shall not in any case exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld to satisfy an arrearage of child support when added to the amount withheld to pay current support shall not exceed such maximum amount;

(v) The collection system shall comply with the requirements of Title III and Title IV-D of the federal Social Security Act, as amended;

(vi) The collection system shall be in addition to and not in substitution for or derogation of any other available remedy; and

(vii) The Department of Health and Human Services and the commissioner shall adopt and promulgate rules and regulations to carry out subdivision (2)(g) of this section.

(h) For purposes of this subsection, the term child support obligations shall include only obligations which are being enforced pursuant to a plan described in section 454 of the federal Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the federal Social Security Act.

(i) For purposes of this subsection, the term legal process shall mean any writ, order, summons, or other similar process in the nature of garnishment, which:

(i) Is issued by a court of competent jurisdiction of any state, territory, or possession of the United States or an authorized official pursuant to order of such a court of competent jurisdiction or pursuant to state law. For purposes of this subdivision, the chief executive officer of the Department of Health and Human Services shall be deemed an authorized official pursuant to order of a court of competent jurisdiction or pursuant to state law; and

(ii) Is directed to, and the purpose of which is to compel, the commissioner to make a payment for unemployment compensation otherwise payable to an individual in order to satisfy a legal obligation of such individual to provide child support.

(j) Nothing in this subsection shall be construed to authorize withholding from unemployment compensation of any support obligation other than child support obligations.

(3)(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes an uncollected overissuance, as defined in 7 U.S.C. 2022(c)(1) as such section existed on January 1, 2009, of Supplemental Nutrition Assistance Program benefits, if not otherwise known or disclosed to the state Supplemental Nutrition Assistance Program agency. The commissioner shall notify the state Supplemental Nutrition Assistance Program agency enforcing such obligation of any individual disclosing that he or she owes an uncollected overissuance

whom the commissioner determines is eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance (i) the amount specified by the individual to the commissioner to be deducted and withheld under this subsection, (ii) the amount, if any, determined pursuant to an agreement submitted to the state Supplemental Nutrition Assistance Program agency under 7 U.S.C. 2022(c)(3)(A) as such section existed on January 1, 2009, or (iii) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to 7 U.S.C. 2022(c)(3)(B) as such section existed on January 1, 2009.

(c) Any amount deducted and withheld under this subsection shall be paid by the commissioner to the state Supplemental Nutrition Assistance Program agency.

(d) Any amount deducted and withheld under subdivision (b) of this subsection shall be treated for all purposes as if it were paid to the individual as unemployment compensation and paid by such individual to the state Supplemental Nutrition Assistance Program agency as repayment of the individual's uncollected overissuance.

(e) For purposes of this subsection, unemployment compensation means any compensation payable under the Employment Security Law, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This subsection applies only if arrangements have been made for reimbursement by the state Supplemental Nutrition Assistance Program agency for the administrative costs incurred by the commissioner under this subsection which are attributable to the repayment of uncollected overissuances to the state Supplemental Nutrition Assistance Program agency.

**Source:** Laws 1937, c. 108, § 15, p. 400; C.S.Supp.,1941, § 48-714; R.S.1943, § 48-647; Laws 1982, LB 801, § 5; Laws 1985, LB 339, § 32; Laws 1985, Second Spec. Sess., LB 7, § 76; Laws 1990, LB 974, § 1; Laws 1993, LB 523, § 26; Laws 1994, LB 1224, § 81; Laws 1995, LB 240, § 3; Laws 1996, LB 1044, § 275; Laws 1996, LB 1155, § 21; Laws 1997, LB 307, § 106; Laws 1997, LB 864, § 5; Laws 1998, LB 1073, § 56; Laws 2007, LB296, § 217; Laws 2009, LB288, § 15.

**Cross References**

Administrative Procedure Act, see section 84-920.

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

(1) Combined tax shall accrue and become payable by each employer not otherwise entitled to make payments in lieu of contributions for each calendar year in which he or she is subject to the Employment Security Law, with respect to wages for employment. Such combined tax shall become due and be paid by each employer to the commissioner for the State Unemployment Insurance Trust Fund and the Unemployment Trust Fund in such manner and

at such times as the commissioner may, by rule and regulation, prescribe and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. For all tax years beginning before January 1, 2010, the commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to file combined tax returns and pay combined taxes owed by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing the combined tax return or payment of the tax by an electronic method would work a hardship on the employer. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to file combined tax returns and pay combined taxes owed by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing the combined tax return or payment of the tax by an electronic method would work a hardship on the employer. In the payment of any combined tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. If the combined tax due for any reporting period is less than five dollars, the employer need not remit the combined tax.

(2) If two or more related corporations or limited liability companies concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations or limited liability companies, each such corporation or limited liability company shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations or limited liability companies. An employee of a wholly owned subsidiary shall be considered to be concurrently employed by the parent corporation, company, or other entity and the wholly owned subsidiary whether or not both companies separately provide remuneration.

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

**Source:** Laws 1937, c. 108, § 7, p. 382; Laws 1941, c. 94, § 5, p. 390; C.S.Supp., 1941, § 48-707; R.S. 1943, § 48-648; Laws 1971, LB 651, § 8; Laws 1981, LB 279, § 1; Laws 1985, LB 339, § 33; Laws 1992, LB 879, § 2; Laws 1994, LB 1337, § 7; Laws 1998, LB 834, § 1; Laws 2002, LB 921, § 3; Laws 2005, LB 484, § 7; Laws 2009, LB 631, § 5.

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

The Commissioner of Labor may require by rule and regulation that each employer subject to the Employment Security Law shall submit to the commissioner quarterly wage reports on such forms and in such manner as the commissioner may prescribe. For all tax years beginning before January 1,

2010, the commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to file wage reports by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing by an electronic method would work a hardship on the employer. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to file wage reports by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing by an electronic method would work a hardship on the employer. The quarterly wage reports shall be used by the commissioner to make monetary determinations of claims for benefits.

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

#### **48-648.02 Wages, defined.**

As used in sections 48-648 and 48-649 only, the term wages shall not include that part of the remuneration paid to an individual by an employer or by the predecessor of such employer with respect to employment within this or any other state during a calendar year which exceeds (1) seven thousand dollars in calendar year 2005, (2) eight thousand dollars in calendar year 2006, and (3) nine thousand dollars in calendar year 2007 and each calendar year thereafter unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

**Source:** Laws 2005, LB 739, § 6.

#### **48-649 Combined tax rate; how computed.**

The commissioner shall, for each calendar year, determine the combined tax rate applicable to each employer on the basis of his or her actual experience in the payment of contributions and with respect to benefits charged against his or her separate experience account, in accordance with the following requirements:

(1) The commissioner shall, by December 1 of each calendar year, and based upon information available through the department, determine the state unemployment insurance tax rate for the following year. The state unemployment insurance tax rate shall be zero percent if:

(a) The average balance in the State Unemployment Insurance Trust Fund at the end of any three months in the preceding calendar year is greater than one percent of state taxable wages for the same preceding year; or

(b) The balance in the State Unemployment Insurance Trust Fund equals or exceeds thirty percent of the average month end balance of the state's account in the Unemployment Trust Fund for the three lowest calendar months in the preceding year;

(2)(a) If the state unemployment insurance tax rate is not zero percent as determined in this section, the combined tax rate shall be divided so that not less than eighty percent of the combined tax rate equals the contribution rate and not more than twenty percent of the combined tax rate equals the state

unemployment insurance tax rate except for employers who are assigned a combined tax rate of five and four-tenths percent or more. For those employers, the state unemployment insurance tax rate shall equal zero and their combined tax rate shall equal their contribution rate.

(b) When the state unemployment insurance tax rate is determined to be zero percent pursuant to subdivision (1) of this section, the contribution rate for all employers shall equal one hundred percent of the combined tax rate;

(3) In calendar year 2005, an employer's combined tax rate shall be three and five-tenths percent of his or her annual payroll unless and until (a) benefits have been payable from and chargeable to his or her experience account throughout the preceding one calendar year and (b) contributions have been payable to the fund and credited to his or her experience account with respect to the two preceding calendar years. Subject to fair and reasonable rules and regulations of the commissioner issued with due regard for the solvency of the fund, in calendar year 2005 the combined tax rate required of each employer who meets the requirements of subdivisions (a) and (b) of this subdivision shall be based directly on his or her contributions to and benefit experience of his or her experience account and shall be determined by the commissioner for each calendar year at its beginning. Such rate shall not be greater than three and five-tenths percent of his or her annual payroll if his or her experience account exhibits a positive balance as of the beginning of such calendar year, but for any employer who has been subject to the payment of contributions for any two preceding calendar years, regardless of whether such years are consecutive, and whose experience account exhibits a negative balance as of the beginning of such calendar year, the rate shall be greater than three and five-tenths percent of his or her annual payroll but not greater than five and four-tenths percent of his or her annual payroll until such time as the experience account exhibits a positive balance, and thereafter the rate shall not be greater than three and five-tenths percent of his or her annual payroll. For calendar year 2005, the standard rate shall be five and four-tenths percent of the employer's annual payroll. As used in this subdivision, standard rate shall mean the rate from which all reduced rates are calculated;

(4)(a) Effective January 1, 2006, an employer's combined tax rate (i) for employers other than employers engaged in the construction industry shall be the lesser of the state's average combined tax rate as determined pursuant to subdivisions (4)(e), (4)(f), and (4)(g) of this section or two and five-tenths percent and (ii) for employers in the construction industry shall be the category twenty rate determined pursuant to subdivisions (4)(e) and (4)(f) of this section, unless and until:

(A) Benefits have been payable from and chargeable to his or her experience account throughout the preceding four calendar quarters; and

(B) Wages for employment have been paid by the employer in each of the two preceding four-calendar-quarter periods.

For purposes of this subdivision (4)(a), employers engaged in the construction industry means all employers primarily engaged in business activities classified as sector 23 business activities under the North American Industry Classification System.

(b) In no event shall the combined tax rate for employers who fail to meet the requirements of subdivision (4)(a) of this section be less than one and twenty-five hundredths percent.

(c) For any employer who has not paid wages for employment during each of the two four-calendar-quarter periods ending on September 30 of any year, but has paid wages for employment in any two four-calendar-quarter periods, regardless of whether such four-calendar-quarter periods are consecutive, such employer's combined tax rate for the following tax year shall be:

(i) The highest combined tax rate for employers with a positive experience account balance if the employer's experience account balance exhibits a positive balance as of September 30 of the year of rate computation; or

(ii) The standard rate if the employer's experience account exhibits a negative balance as of September 30 of the year of rate computation.

(d) Beginning with rate calculations for calendar year 2006 and each year thereafter, the combined tax rate for employers who meet the requirements of subdivision (4)(a) of this section shall be calculated according to subdivisions (4)(e), (4)(f), and (4)(g) of this section and shall be based upon the employer's experience rating record and determined from the employer's reserve ratio, which is the percent obtained by dividing the amount by which, if any, the employer's contributions credited from the time the employer first or most recently became an employer, whichever date is later, and up to and including September 30 of the year the rate computation is made, plus any part of the employer's contributions due for that year paid on or before October 31 of such year, exceed the employer's benefits charged during the same period, by the employer's average annual taxable payroll for the sixteen-consecutive-calendar-quarter period ending September 30 of the year in which the rate computation is made. For an employer with less than sixteen consecutive calendar quarters of contribution experience, the employer's average taxable payroll shall be determined based upon the four-calendar-quarter periods for which contributions are payable.

(e) Each eligible experience rated employer shall be assigned to one of twenty rate categories with a corresponding experience factor as follows:

Category	Experience Factor
1	0.00
2	0.25
3	0.40
4	0.45
5	0.50
6	0.60
7	0.65
8	0.70
9	0.80
10	0.90
11	0.95
12	1.00
13	1.05
14	1.10
15	1.20
16	1.35
17	1.55
18	1.80
19	2.15
20	2.60

Eligible experience rated employers shall be assigned to rate categories from highest to lowest according to their experience reserve ratio with category one

being assigned to accounts with the highest reserve ratios and category twenty being assigned to accounts with the lowest reserve ratios. Each category shall be limited to no more than five percent of the state's total taxable payroll, except that:

(i) Any employer which has a portion of its taxable wages fall into one category and a portion into the next higher category shall be assigned to the lower category;

(ii) No employer with a reserve ratio calculated to five decimal places equal to another employer similarly calculated shall be assigned to a higher rate than the employer to which it has the equal reserve ratio; and

(iii) No employer with a positive experience account balance shall be assigned to category twenty.

(f) The state's reserve ratio shall be calculated by dividing the amount available to pay benefits in the Unemployment Trust Fund and the State Unemployment Insurance Trust Fund as of September 30, 2005, and each September 30 thereafter, less any outstanding obligations and amounts appropriated therefrom by the state's total wages from the four calendar quarters ending on such September 30. For purposes of this section, total wages means all remuneration paid by an employer in employment. The state's reserve ratio shall be applied to the table in this subdivision to determine the yield factor for the upcoming rate year.

State's Reserve Ratio	Yield Factor
1.45 percent and above	= 0.70
1.30 percent up to but not including 1.45	= 0.75
1.15 percent up to but not including 1.30	= 0.80
1.00 percent up to but not including 1.15	= 0.90
0.85 percent up to but not including 1.00	= 1.00
0.70 percent up to but not including 0.85	= 1.10
0.60 percent up to but not including 0.70	= 1.20
0.50 percent up to but not including 0.60	= 1.25
0.45 percent up to but not including 0.50	= 1.30
0.40 percent up to but not including 0.45	= 1.35
0.35 percent up to but not including 0.40	= 1.40
0.30 percent up to but not including 0.35	= 1.45
Below 0.30 percent	= 1.50

Once the yield factor for the upcoming rate year has been determined, it is multiplied by the amount of unemployment benefits paid from combined tax during the four calendar quarters ending September 30 of the preceding year. The resulting figure is the planned yield for the rate year. The planned yield is divided by the total taxable wages for the four calendar quarters ending September 30 of the previous year and carried to four decimal places to create the average combined tax rate for the rate year.

(g) The average combined tax rate is assigned to rate category twelve as established in subdivision (4)(e) of this section. Rates for each of the remaining nineteen categories are determined by multiplying the average combined tax rate by the experience factor associated with each category and carried to four decimal places. Employers who are delinquent in filing their combined tax reports as of October 31 of any year shall be assigned to category twenty for the following calendar year unless the delinquency is corrected prior to December 31 of the year of rate calculation.

(h) As used in this subdivision (4) of this section, standard rate means the rate assigned to category twenty for that year. For calendar years 2006 and thereafter, the standard rate shall be not less than five and four-tenths percent of the employer's annual taxable payroll;

(5) Any employer may at any time make voluntary contributions up to the amount necessary to qualify for one rate category reduction, additional to the required contributions, to the fund to be credited to his or her account. Voluntary contributions received after March 10, 2005, for rate year 2005 or January 10 for rate year 2006 and thereafter shall not be used in rate calculations for the same calendar year;

(6) As used in sections 48-648 to 48-654, the term payroll means the total amount of wages during a calendar year, except as otherwise provided in section 48-654, by which the combined tax was measured; and

(7)(a) The state or any of its instrumentalities shall make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of the state or any of its instrumentalities. The commissioner after the end of each calendar quarter shall notify any state instrumentality or other public employer of the amount of regular benefits and one-half the amount of extended benefits paid that are attributable to service in its employment and the instrumentality or public employer so notified shall reimburse the fund within thirty days after receipt of such notice. For all tax years beginning before January 1, 2010, the commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to pay the reimbursement by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that payment of the reimbursement by an electronic method would work a hardship on the employer. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to pay the reimbursement by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that payment of the reimbursement by an electronic method would work a hardship on the employer.

(b) After December 31, 1977, the state or any of its political subdivisions and any instrumentality of one or more of the foregoing or any other governmental entity for which services in employment as is provided by subdivision (4)(a) of section 48-604 are performed shall be required to pay contributions and after December 31, 1996, combined tax on wages paid for services rendered in its or their employment on the same basis as any other employer who is liable for the payment of combined tax under the Employment Security Law, unless the state or any political subdivision thereof and any instrumentality of one or more of the foregoing or any other governmental entity for which such services are performed files with the commissioner its written election not later than January 31, 1978, or if such employer becomes subject to this section after January 1, 1978, not later than thirty days after such subjectivity begins, to become liable to make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer prior to December 31, 1978, and in an

amount equal to the full amount of regular benefits plus the full amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer after January 1, 1979. Eligible employers electing to make payments in lieu of contributions shall not be liable for state unemployment insurance tax payments. The commissioner, after the end of each calendar quarter, shall notify any such employer that has so elected of the amount of benefits for which it is liable to pay pursuant to its election that have been paid that are attributable to service in its employment and the employer so notified shall reimburse the fund within thirty days after receipt of such notice.

(c) Any employer which makes an election in accordance with subdivision (b) of this subdivision to become liable for payments in lieu of contributions shall continue to be liable for payments in lieu of contributions for all benefits paid based upon wages paid for service in employment of such employer while such election is effective and such election shall continue until such employer files with the commissioner, not later than December 1 of any calendar year, a written notice terminating its election as of December 31 of that year and thereafter such employer shall again be liable for the payment of contributions and for the reimbursement of such benefits as may be paid based upon wages paid for services in employment of such employer while such election was effective.

**Source:** Laws 1937, c. 108, § 7, p. 382; Laws 1939, c. 56, § 5, p. 239; Laws 1941, c. 94, § 5, p. 390; C.S.Supp., 1941, § 48-707; R.S. 1943, § 48-649; Laws 1947, c. 175, § 10, p. 577; Laws 1949, c. 163, § 12, p. 427; Laws 1953, c. 167, § 8, p. 533; Laws 1955, c. 190, § 9, p. 548; Laws 1972, LB 1392, § 8; Laws 1976, LB 819, § 2; Laws 1977, LB 509, § 7; Laws 1984, LB 249, § 1; Laws 1985, LB 339, § 34; Laws 1994, LB 1337, § 8; Laws 1995, LB 334, § 1; Laws 2005, LB 484, § 9; Laws 2005, LB 739, § 11; Laws 2007, LB265, § 9; Laws 2009, LB631, § 7.

Under the Nebraska Employment Security Law, the contribution type of financing as provided by section 48-649, R.R.S. 1943, and reimbursement financing under section 48-660.01, R.R.S. 1943, are separate and distinct systems, and a nonprofit

organization must elect to use one or the other. West Nebraska General Hospital v. Hanlon, 208 Neb. 173, 302 N.W.2d 694 (1981).

#### **48-649.01 Repealed. Laws 2007, LB 265, § 39.**

#### **48-650 Combined tax rate; determination of employment; notice; review; redetermination; proceedings; appeal.**

The commissioner shall determine the rate of combined tax applicable to each employer pursuant to section 48-649 and may determine, at any time during the year, whether services performed by an individual were employment or for an employer. Any such determination shall become conclusive and binding upon the employer unless, within thirty days after the prompt mailing of notice thereof to his or her last-known address or in the absence of mailing within thirty days after the delivery of such notice, the employer files an appeal with an appeal tribunal. No employer shall have standing, in any proceeding involving his or her combined tax rate or combined tax liability, to contest the chargeability to his or her account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to sections 48-629 to 48-644 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in

employment for him or her and only in the event that he or she was not a party to such determination, redetermination, or decision or to any other proceedings under the Employment Security Law in which the character of such services was determined. A full and complete record shall be kept of all proceedings in connection with such hearing. All testimony at any such hearing shall be recorded but need not be transcribed unless there is a further appeal. The employer shall be promptly notified of the appeal tribunal's decision which shall become final unless the employer or the commissioner appeals within thirty days after the date of service of the decision of the appeal tribunal. The appeal shall otherwise be governed by the Administrative Procedure Act.

**Source:** Laws 1941, c. 94, § 5, p. 391; C.S.Supp.,1941, § 48-707; R.S. 1943, § 48-650; Laws 1985, LB 339, § 35; Laws 1985, LB 342, § 1; Laws 1988, LB 352, § 88; Laws 1994, LB 1337, § 9; Laws 2001, LB 192, § 11.

#### Cross References

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

A petition for judicial review of the Nebraska Commissioner of Labor's determination of an employer's unemployment insurance contributions must be filed in the county where the first adjudicated hearing of a disputed claim took place. *Metro Renovation v. State*, 249 Neb. 337, 543 N.W.2d 715 (1996).

The Employment Security Law provides one avenue of judicial appeal when the dispute concerns benefit liability and another when the dispute concerns contribution liability. *North-*

*ern Messenger v. Sorensen*, 218 Neb. 846, 359 N.W.2d 787 (1984).

Judicial review of decision of the Nebraska Appeal Tribunal reviewing a decision under this section of the Nebraska Department of Labor, Division of Employment, may only be had in the District Court of Lancaster County. *Whitehouse Energy Savers v. Hanlon*, 214 Neb. 572, 334 N.W.2d 802 (1983).

#### **48-651 Employer's account; benefit payments; notice; effect.**

The commissioner may provide by rule and regulation for periodic notification to employers of benefits paid and chargeable to their accounts or of the status of such accounts, and for notification to all base period employers of any individual of the establishment of such individual's benefit year, and any such notification, in the absence of an application for redetermination filed in such manner and within such period as the commissioner may prescribe, shall become conclusive and binding upon the employer for all purposes. Such redeterminations, made after notice and opportunity for hearing, and the commissioner's findings of fact in connection therewith may be introduced in any subsequent administrative or judicial proceedings involving the determination of the combined tax rate of any employer for any calendar year.

**Source:** Laws 1941, c. 94, § 5, p. 392; C.S.Supp.,1941, § 48-707; R.S. 1943, § 48-651; Laws 1985, LB 339, § 36; Laws 1994, LB 1337, § 10.

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

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

(b) A separate reimbursement account shall be established for each employer who is liable for payments in lieu of contributions. All benefits paid with respect to service in employment for such employer shall be charged to his or her

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

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

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

in training approved under section 236(a)(1) of the federal Trade Act of 1974, 19 U.S.C. 2296(a)(1).

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

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

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

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

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

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

(7) If an individual's base period wage credits represent part-time employment for a contributory employer and the contributory employer continues to employ the individual to the same extent as during the base period, then the contributory employer's experience account shall not be charged if the contributory employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner.

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

Operative date July 1, 2011.

Where employees have left work voluntarily without good cause or have been discharged for misconduct, an employer is not charged with benefits paid to its employees. *Fauss v. Messerly*, 200 Neb. 326, 263 N.W.2d 668 (1978).

**48-653 Repealed. Laws 1949, c. 163, § 19.**

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

Subject to section 48-654.01, any employer that acquires the organization, trade, or business, or substantially all the assets thereof, of another employer shall immediately notify the commissioner thereof, and prior to September 6, 1985, shall, and on and after September 6, 1985, may, pursuant to rules and regulations prescribed by the commissioner, assume the position of such employer with respect to the resources and liabilities of such employer's experience account as if no change with respect to such employer's experience account has occurred. The commissioner may provide by rule and regulation for partial transfers of experience accounts, except that such partial transfers of accounts shall be construed to allow computation and fixing of contribution rates only on and after January 1, 1953, where an employer has transferred at any time subsequent to or on January 1, 1950, a definable and segregable portion of his or her payroll and business to a transferee-employer. For an acquisition which occurs during either of the first two calendar quarters of a calendar year or during the fourth quarter of the preceding calendar year, a new rate of contributions, payable by the transferee-employer with respect to wages paid by him or her after midnight of the last day of the calendar quarter in which such acquisition occurs and prior to midnight of the following September 30, shall be computed in accordance with this section. For the

purpose of computing such new rate of contributions, the computation date with respect to any such acquisition shall be September 30 of the preceding calendar year and the term payroll shall mean the total amount of wages by which contributions to the transferee's account and to the transferor's account were measured for four calendar quarters ending September 30 preceding the computation date.

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

This section, which allows an acquiring organization to assume the position of its predecessor with respect to the latter's experience account, is referring to the contribution rate of that employer. The experience account balance is used to determine the rate at which the employer must contribute, and it is not a cash account which may be treated as a liquid asset. West Nebraska General Hospital v. Hanlon, 208 Neb. 173, 302 N.W.2d 694 (1981).

**48-654.01 Employer's experience account; transferable; when; violation; penalty.**

(1) For purposes of this section:

(a) Knowingly means having actual knowledge of or acting with deliberate ignorance or reckless disregard of the prohibition involved;

(b) Person means an individual, a partnership, a limited liability company, a corporation, or any other legally recognized entity;

(c) Trade or business includes the employer's workforce; and

(d) Violates or attempts to violate includes intent to evade, misrepresentation, or willful nondisclosure.

(2) Notwithstanding any other provision of law, the following shall apply regarding assignment of combined tax rates and transfer of an employer's experience account:

(a) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, then the employer's experience account attributable to the transferred trade or business shall be transferred to the employer to whom such business is transferred. The rates of both employers shall be recalculated in accordance with section 48-654. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce and such trade or business is performed by the employer to whom the workforce is transferred. If, following a transfer of experience under this subdivision, the commissioner determines that a substantial purpose of the transfer of trade or business was to obtain a lower combined tax rate, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account; or

(b) Whenever a person is not an employer at the time it acquires the trade or business of an employer, the employer's experience account of the acquired business shall not be transferred to such person if the commissioner finds that the business was acquired solely or primarily for the purpose of obtaining a lower combined tax rate. Instead, such person shall be assigned the new employer combined tax rate under section 48-649. In determining whether the

business was acquired solely or primarily for the purpose of obtaining a lower combined tax rate, the commissioner shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to the acquisition.

(3)(a) If a person knowingly violates or attempts to violate this section, or if a person knowingly advises another person in a way that results in a violation of this section and:

(i) The person is an employer, such employer shall be assigned the highest combined tax rate assignable under section 48-649 for the rate year during which the violation or attempted violation occurred and for the three rate years immediately following such rate year. However, if the person's business is already at the highest combined tax rate or if the amount of increase in the combined tax rate would be less than two percent, then a penalty combined tax rate of two percent of taxable wages shall be imposed for the rate year during which the violation or attempted violation occurred and for the three rate years immediately following such year; or

(ii) The person is not an employer, such person shall be subject to a civil penalty of not more than five thousand dollars.

(b) In addition to any civil penalties that may apply under this subsection, such person shall be guilty of a Class IV felony.

(4) The commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of evading combined tax liability.

**Source:** Laws 2005, LB 484, § 11.

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

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

(2) The commissioner may by rule and regulation provide for the offset from a person's personal federal income tax refund of contributions, penalties, and interest due and payable for which the commissioner has determined the person to be liable due to fraud and which remain uncollected for not more than ten years. Such rules and regulations shall comply with Public Law 110-328 (2008) and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor, by certified mail return receipt requested, that the commissioner plans to recover the debt through offset against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or not due to fraud. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and due to fraud before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the person's federal income tax refund is not subject to offset does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed offset.

**Source:** Laws 1937, c. 108, § 14, p. 398; Laws 1939, c. 56, § 11, p. 249; C.S.Supp., 1941, § 48-713; R.S. 1943, § 48-655; Laws 1947, c. 175, § 14, p. 582; Laws 1949, c. 163, § 14(1), p. 429; Laws 1971, LB 651, § 10; Laws 1985, LB 337, § 1; Laws 1986, LB 811, § 137; Laws 1993, LB 46, § 14; Laws 1994, LB 1337, § 12; Laws 1995, LB 1, § 13; Laws 2000, LB 953, § 10; Laws 2009, LB 631, § 10.

**48-655.01 State; jurisdiction over employer; when.**

Employing one or more individuals to perform service within this state shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such employer in any action under sections 48-655 to 48-655.02.

**Source:** Laws 1949, c. 163, § 14(2), p. 430; Laws 1957, c. 208, § 6, p. 734; Laws 1983, LB 447, § 71.

**48-655.02 Combined taxes; courts; jurisdiction; actions.**

The courts of this state shall in the manner provided in sections 48-655 to 48-655.02 entertain actions to collect combined taxes or interest thereon for which liability has accrued under the employment security law of any other state or of the federal government.

**Source:** Laws 1949, c. 163, § 14(3), p. 430; Laws 1994, LB 1337, § 13.

**48-656 Combined taxes; report or return; requirements; assessment; notice; protest; penalty.**

(1) If any employer fails to file a report or return required by the commissioner for the determination of combined taxes, the commissioner may make such reports or returns or cause them to be made and determine the combined taxes payable, on the basis of such information as he or she may be able to obtain, and shall collect the combined taxes as determined together with any interest thereon due under section 48-655. The commissioner shall immediately notify the employer of the assessment, in writing, by registered or certified mail, in the usual course, and such assessment shall be final unless the employer protests such assessment within fifteen days after the mailing of the notice. If

the employer protests such assessment, the employer shall have an opportunity to be heard by an appeal tribunal upon written request therefor. After the hearing the appeal tribunal shall immediately notify the employer in writing of its decision, and the assessment, if any, shall be final upon issuance of such notice.

(2) If any employer files a report or return required by the commissioner for the determination of combined taxes but fails to pay all or some part of the combined taxes actually due for the reported period, the commissioner may determine the combined taxes actually payable on the basis of such information as he or she may be able to obtain and shall collect the combined taxes as determined together with any interest due under section 48-655. The commissioner shall immediately notify the employer of the assessment, in writing by registered or certified mail in the usual course, and such assessment shall be final unless the employer protests such assessment within fifteen days after the mailing of the notice. If the employer protests such assessment, the employer shall have an opportunity to be heard by an appeal tribunal upon a written request therefor. After the hearing, the appeal tribunal shall immediately notify the employer in writing of its decision and the assessment, if any, shall be final upon issuance of such notice.

(3) Beginning with the first calendar quarter of 1990, any employer or any officer or agent of an employer who fails to file a required quarterly combined tax report and wage schedule by the tenth day of the second month following the end of the calendar quarter shall pay a penalty to the commissioner of one-tenth of one percent of the total wages paid during the quarter, except that the penalty shall not be less than twenty-five nor more than two hundred dollars. For good cause shown, the commissioner may waive the penalty in accordance with rules and regulations adopted and promulgated by the commissioner. The commissioner shall remit any penalty collected to the State Treasurer who shall credit it to the pool account of the Employment Security Special Contingent Fund.

**Source:** Laws 1939, c. 56, § 11, p. 249; C.S.Supp.,1941, § 48-713; R.S. 1943, § 48-656; Laws 1957, c. 208, § 7, p. 735; Laws 1989, LB 414, § 1; Laws 1994, LB 1337, § 14; Laws 2001, LB 192, § 12.

**48-657 Combined tax or interest; default; lien; contracts for public works; requirements.**

(1)(a) If any employer defaults in any payment of combined tax or interest, the commissioner may make in any manner feasible and cause to be filed as a secured transaction as provided in article 9, Uniform Commercial Code, and in the real estate mortgage records of any county in which such employer is engaged in business or owns real or personal property, a statement, under oath, showing the amount of combined tax and interest in default, which statement, when filed for record, shall operate as a lien and mortgage on all of the real and personal property of the employer, subject only to the liens of prior record, and the property of such employer shall be subject to seizure and sale for the payment of such combined taxes and interest. Such lien on personal property may be enforced or dissolved in the manner provided by article 9, Uniform Commercial Code, and such liens on real estate may be enforced or dissolved in the manner provided by Chapter 25, article 21, in the enforcing and dissolving

of real estate mortgages. This subdivision shall only apply to liens filed prior to May 1, 1999.

(b) A lien for unpaid combined taxes filed or recorded pursuant to subdivision (a) of this subsection shall lapse at the earlier of its expiration date or the fifth anniversary of the filing or recording date, unless the commissioner files a notice of continuation in the place of the original filing or recording and with the appropriate filing officer in the manner provided for in the Uniform State Tax Lien Registration and Enforcement Act before such lien lapses. A notice of continuation shall include all of the information required by the act, the date of the filing or recording of the original lien, and a statement that the original lien is to be continued for ten years. Thereafter, such lien shall be enforced and notices of continuation filed in accordance with the act.

(c) On and after May 1, 1999, if any employer defaults in any payment of combined tax or interest, the commissioner may file a lien against such employer in accordance with the Uniform State Tax Lien Registration and Enforcement Act. Such liens shall set forth the amount of combined tax and interest in default and shall be continued and enforced as provided in the Uniform State Tax Lien Registration and Enforcement Act.

(2) It shall be the duty of the State of Nebraska, or any department or agency thereof, county boards, the contracting board of all cities, villages, and school districts, all public boards empowered by law to enter into a contract by public bidding for the erecting and finishing or the repairing of any public building, bridge, highway, or other public structure or improvement, and any officer or officers so empowered by law to enter into such contract to provide in such contract that the person, persons, firm, or corporation to whom the contract is awarded will pay to the Unemployment Compensation Fund of the State of Nebraska and the State Unemployment Insurance Trust Fund unemployment combined tax and interest due under the Employment Security Law on wages paid to individuals employed in the performance of such contract.

(3) No contract referred to in subsection (2) of this section shall be entered into by the State of Nebraska, a department or agency thereof, an officer or officers, or a board referred to in such subsection unless the contract contains the proviso mentioned in such subsection.

(4) Before final payment may be made on the final three percent of any such contract awarded on or after June 1, 1957, the State of Nebraska, department or agency thereof, officer or officers, or board awarding the contract must have received from the contractor a written clearance from the commissioner certifying that all payments then due of combined tax or interest which may have arisen under such contract have been made by the contractor or his or her subcontractor to the Unemployment Compensation Fund.

(5) The final three percent of any such contract referred to in subsection (4) of this section may be paid if the contractor has supplied a bond with a satisfactory surety company guaranteeing full payment to the Unemployment Compensation Fund and the State Unemployment Insurance Trust Fund of all combined tax and interest due under the Employment Security Law.

**Source:** Laws 1937, c. 108, § 14, p. 398; Laws 1939, c. 56, § 11, p. 250; C.S.Supp.,1941, § 48-713; R.S.1943, § 48-657; Laws 1957, c. 208, § 8, p. 735; Laws 1969, c. 404, § 1, p. 1401; Laws 1969, c. 405,

§ 1, p. 1403; Laws 1985, LB 339, § 39; Laws 1993, LB 604, § 1; Laws 1994, LB 1337, § 15; Laws 1999, LB 165, § 1; Laws 1999, LB 550, § 10; Laws 2001, LB 192, § 13.

**Cross References**

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

Statutory lien for unemployment taxes, even though recorded, was subject to lien for federal income taxes. In re Kobiela, 152 F.Supp. 489 (D. Neb. 1957).

**48-658 Combined tax; transfer of business; notice; succeeding employer's liability; action.**

Any person, group of individuals, partnership, limited liability company, corporation, or employer which acquires the organization, trade, or business or substantially all the assets thereof of an employer shall notify the commissioner thereof in writing by registered or certified mail not later than five days prior to the acquisition. Unless such notice is given such acquisition shall be void as against the commissioner if, at the time of the acquisition, any combined tax is due and unpaid by the previous employer. The commissioner shall have the right to proceed against such person, group of individuals, partnership, limited liability company, corporation, or employer and the assets so acquired.

**Source:** Laws 1939, c. 56, § 11, p. 250; C.S.Supp.,1941, § 48-713; R.S. 1943, § 48-658; Laws 1957, c. 208, § 9, p. 737; Laws 1993, LB 121, § 293; Laws 1994, LB 1337, § 16.

**48-659 Combined tax and interest; legal distribution of employer's assets; priorities.**

In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including dissolution, reorganization, administration of estates of decedents, receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, any claims for combined tax and interest thereon due or accrued under the Employment Security Law which have not been reduced to a lien in accordance with section 48-657 shall receive the priority of a tax.

**Source:** Laws 1937, c. 108, § 14, p. 398; Laws 1939, c. 56, § 11, p. 251; C.S.Supp.,1941, § 48-713; R.S.1943, § 48-659; Laws 1953, c. 167, § 10, p. 536; Laws 1985, LB 339, § 40; Laws 1994, LB 1337, § 17.

**48-660 Combined tax or interest; adjustments; refunds.**

If more than the correct amounts of combined tax or interest are collected, then, under rules and regulations made under section 48-607, proper adjustments with respect thereto shall be made, without interest, in connection with subsequent combined tax. If such adjustment cannot be made within a reasonable time, the commissioner shall refund the excess from the appropriate fund. Applications for adjustments or refunds shall be made within four years after the date of such overcollection.

**Source:** Laws 1937, c. 108, § 14, p. 399; Laws 1939, c. 56, § 11, p. 251; C.S.Supp.,1941, § 48-713; R.S.1943, § 48-660; Laws 1945, c. 115, § 7, p. 386; Laws 1985, LB 339, § 41; Laws 1994, LB 1337, § 18.

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

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

(2)(a) Any nonprofit organization which is, or becomes, subject to the Employment Security Law on or after January 1, 1972, shall pay contributions under sections 48-648 to 48-661 and after December 31, 1995, shall pay combined tax under such sections unless it elects, in accordance with this subdivision, to pay to the commissioner for the unemployment fund an amount, equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(b) Any nonprofit organization which is, or becomes, subject to the Employment Security Law on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than one taxable year beginning with January 1, 1972, if it files with the commissioner a written notice of its election within the thirty-day period immediately following such date or within a like period immediately following the date of enactment of this subdivision, whichever occurs later. Any eligible employer electing to become liable for payments in lieu of contributions shall not be liable for state unemployment insurance tax.

(c) Any nonprofit organization which becomes subject to the Employment Security Law after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

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

(e) Any nonprofit organization which has been paying contributions or combined tax under the Employment Security Law for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

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

(g) The commissioner, in accordance with such rules and regulations as he or she may adopt and promulgate, shall notify each nonprofit organization of any determination which he or she may make of its status as an employer and of the

effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to redetermination and appeal, and the appeal shall be in accordance with the Administrative Procedure Act.

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

(a) At the end of each calendar quarter, or at the end of any other period as determined by the commissioner, the commissioner shall bill each nonprofit organization, or group of such organizations, which has elected to make payment in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization;

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

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

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

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

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

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

each employer that is liable for such payments shall be determined in accordance with section 48-652.

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

#### Cross References

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

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

Under the Nebraska Employment Security Law, the contribution type of financing as provided by section 48-649, R.R.S. 1943, and reimbursement financing under section 48-660.01, R.R.S.1943, are separate and distinct systems, and a nonprofit organization must elect to use one or the other. West Nebraska General Hospital v. Hanlon, 208 Neb. 173, 302 N.W.2d 694 (1981).

### **48-661 Employer; election to become subject to Employment Security Law; written election to become or cease to be an employer; termination of coverage.**

(1) Except as otherwise provided in subsections (2) and (3) of this section, any employer not otherwise subject to the Employment Security Law, who is or becomes an employer subject to such law within any calendar year, shall be subject to such law during the whole of such calendar year.

(2) Except as otherwise provided in subsection (3) of this section, an employer, other than an employer subject by reason of subdivision (4)(a) of section 48-604, shall cease to be an employer subject to the Employment Security Law only as of January 1 of any calendar year, if he or she files with the commissioner, on or before January 31 of such year, a written application for termination of coverage, and the commissioner finds: (a) That there were no twenty different days, each day being in a different calendar week, within the preceding calendar year within which such employer employed one or more individuals in employment subject to such law and there was no calendar quarter within the preceding calendar year in which such employer paid wages for employment in the total sum of fifteen hundred dollars or more; (b) if the employer is subject by reason of subdivision (9) of section 48-603 there were no twenty different days, each being in a different calendar week, within the preceding calendar year within which such employer employed four or more individuals in employment subject to that section; (c) if the employer is subject by reason of subdivision (10) of section 48-603 there were no twenty different days, each being in a different calendar week, within the preceding calendar year within which such employer employed ten or more individuals in employment subject to that section and there was no calendar quarter within the preceding calendar year in which such employer paid remuneration in cash for employment subject to that section in the total sum of twenty thousand dollars or more; or (d) if the employer is subject by reason of subdivision (11) of section 48-603 there was no calendar quarter within the preceding calendar year in which such employer paid cash remuneration in the total sum of one thousand dollars or more for services in employment subject to that section. The commissioner may on his or her motion terminate the coverage of any employer who has not made such written request, but is otherwise eligible to terminate. Any employer whose entire experience account has been transferred to another employer under section 48-654 may request termination as of the date of such transfer if such request is made within thirty days after the determination is made allowing the transfer.

(3) An employer not otherwise subject to the Employment Security Law, who files with the commissioner his or her written election to become an employer subject thereto for not less than two calendar years, shall, with the written approval of such election by the commissioner, become an employer subject thereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject thereto as of January 1 of any calendar year subsequent to such two calendar years, only if on or before January 31 of such year, he or she has filed with the commissioner a written notice to that effect. Any employer of any person in this state for whom services that do not constitute employment as defined in section 48-604 are performed, may file with the commissioner a written election that all such services performed by individuals in his or her employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of the Employment Security Law for not less than two calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to such law from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if on or before January 31 of such year such employer has filed with the commissioner a written notice to that effect.

**Source:** Laws 1937, c. 108, § 8, p. 386; Laws 1939, c. 56, § 6, p. 243; Laws 1941, c. 94, § 6, p. 394; C.S.Supp., 1941, § 48-708; R.S. 1943, § 48-661; Laws 1953, c. 167, § 11, p. 537; Laws 1955, c. 190, § 10, p. 549; Laws 1963, c. 293, § 1, p. 878; Laws 1967, c. 302, § 1, p. 821; Laws 1971, LB 651, § 12; Laws 1973, LB 35, § 1; Laws 1977, LB 509, § 9; Laws 1985, LB 339, § 43; Laws 1995, LB 1, § 14.

**48-662 State employment service; establishment; functions; funds available; agreements authorized.**

The state employment service is hereby established in the Department of Labor, State of Nebraska. The commissioner of such department, in the conduct of such service, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of the Employment Security Law and for the purpose of performing such functions as are within the purview of the Act of Congress entitled An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes, approved June 6, 1933, (48 Stat. 113; 29 U.S.C. 49 (c)), as amended, herein referred to as the Wagner-Peyser Act. The provisions of the Act of Congress are hereby accepted by this state and the Department of Labor is hereby designated and constituted the agency of this state for the purposes of such act. All money received by this state under the Act of Congress shall be paid into the Employment Security Administration Fund and shall be expended solely for the maintenance of the state system of public employment offices. There shall also be credited to the Employment Security Administration Fund for the same purpose, any sums appropriated by the Legislature from the General Fund of the state for the purposes of maintaining public employment offices or of matching funds granted under the Wagner-Peyser Act. For the purpose of establishing and maintaining free public employment offices and promoting the use of their facilities, the commissioner is authorized to enter

into agreements with the Railroad Retirement Board, any other agency of the United States or of this or any other state charged with the administration of any law whose purposes are reasonably related to the purposes of such sections, any political subdivision of this state, or any private nonprofit organization and as a part of such agreements may accept money, services, or quarters as a contribution to the maintenance of the state system of public employment offices or as reimbursement for services performed. All money received for such purposes shall be paid into the Employment Security Administration Fund.

**Source:** Laws 1941, c. 94, § 17, p. 402; C.S.Supp.,1941, § 48-726; R.S. 1943, § 48-662; Laws 1949, c. 163, § 15, p. 430; Laws 1961, c. 239, § 3, p. 713; Laws 1984, LB 747, § 5; Laws 1985, LB 339, § 44.

**48-663 Benefits; prohibited acts by employee; penalty; limitation of time for prosecution.**

Whoever obtains or increases any benefit or other payment under sections 48-623 to 48-629 or under an employment security law of any other state, the federal government, or a foreign government, either for himself or herself or for any other person, (1) by making a false statement or representation knowing it to be false by oral, written, or electronic communication that can be attributed to such person by use of a personal identification number or other identification process or (2) by knowingly failing to disclose a material fact shall be guilty of a Class III misdemeanor. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense. Prosecution under this section may be instituted within three years after the time the offense was committed in any county where any part of the crime was committed, including the county in which the person received the benefits.

**Source:** Laws 1937, c. 108, § 16, p. 400; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-663; Laws 1949, c. 163, § 16(1), p. 432; Laws 1953, c. 167, § 12, p. 538; Laws 1957, c. 208, § 10, p. 737; Laws 1977, LB 40, § 294; Laws 1985, LB 340, § 1; Laws 1986, LB 950, § 7; Laws 2001, LB 192, § 14.

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

(1) Notwithstanding any other provision of this section, or of section 48-627 or 48-663, an individual who willfully fails to disclose amounts earned during any week with respect to which benefits are claimed by him or her or who willfully fails to disclose or has falsified as to any fact which would have disqualified him or her or rendered him or her ineligible for benefits during such week, shall forfeit all or part of his or her benefit rights, as determined by a deputy, with respect to uncharged wage credits accrued prior to the date of such failure or to the date of such falsifications. An appeal may be taken from any such determination in the manner provided in section 48-634.

(2)(a) If any person liable to repay an overpayment of unemployment benefits resulting from a determination under subsection (1) of this section fails or refuses to repay such overpayment within twelve months after the date the overpayment determination becomes final, the commissioner may issue a levy

on salary, wages, or other regular payments due to or received by such person and such levy shall be continuous from the date the levy is served until the amount of the levy is satisfied. Notice of the levy shall be mailed to the person whose salary, wages, or other regular payment is levied upon at his or her last-known address not later than the date that the levy is served. Exemptions or limitations on the amount of salary, wages, or other regular payment that can be garnished or levied upon by a judgment creditor shall apply to levies made pursuant to this section. Appeal of a levy may be made in the manner provided in section 48-634, but such appeal shall not act as a stay of the levy.

(b) Any person upon whom a levy is served who fails or refuses to honor the levy without cause may be held liable for the amount of the levy up to the value of the assets of the person liable to repay the overpayment that are under the control of the person upon whom the levy is served at the time of service and thereafter.

**Source:** Laws 1949, c. 163, § 16(2), p. 432; Laws 2007, LB265, § 11.

**48-664 Benefits; false statements by employer; penalty; failure or refusal to make combined tax payment.**

Any employer, whether or not subject to the Employment Security Law, or any officer or agent of such an employer or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, to obtain benefits for an individual not entitled thereto, to avoid becoming or remaining subject to such law, or to avoid or reduce any contribution or other payment required from an employer under sections 48-648 and 48-649, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required under the Employment Security Law or to produce or permit the inspection or copying of records as required under such law, shall be guilty of a Class III misdemeanor. Each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense. An individual employer, partner, corporate officer, or member of a limited liability company or limited liability partnership who willfully fails or refuses to make any combined tax payment shall be jointly and severally liable for the payment of such combined tax and any penalties and interest owed thereon. When an unemployment benefit overpayment occurs, in whole or in part, as the result of a violation of this section by an employer, the amount of the overpayment recovered shall not be credited back to such employer's experience account.

**Source:** Laws 1937, c. 108, § 16, p. 400; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-664; Laws 1953, c. 167, § 13, p. 539; Laws 1977, LB 40, § 295; Laws 1985, LB 339, § 45; Laws 2005, LB 484, § 12; Laws 2007, LB265, § 12.

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

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

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

(2) The commissioner may by rule and regulation provide for the offset from a person's personal federal income tax refund of any person who has received any sum as benefits under the Employment Security Law to which he or she was not entitled as a result of fraud and which remain uncollected for not more than ten years. Such rules and regulations shall comply with Public Law 110-328 (2008) and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor that the commissioner plans to recover the debt through offset against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or not due to fraud. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and due to fraud before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the person's federal income tax refund is not subject to offset does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed offset.

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

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

Any person who has received any sum as benefits to which he or she was not entitled from any agency which administers an employment security law of another state or foreign government and who has been found liable to repay benefits received under such law may be required to repay to the commissioner for such state or foreign government the amount found due. Such amount, without interest, may be collected (1) by civil action in the name of the commissioner acting as agent for such agency, (2) by offset against any future benefits payable to the claimant under the Employment Security Law for any benefit year which may commence within three years after the claimant was notified such amount was due, except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience, or (3) by setoff against any state income tax refund due the claimant pursuant to sections 77-27,197 to 77-27,209.

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

**48-666 Violations; general penalty.**

Any person who shall willfully violate any provision of the Employment Security Law or any order, rule, or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of such law, and for which a penalty is neither prescribed in such law nor provided by any other applicable statute, shall be guilty of a Class III misdemeanor. Each day such violation continues shall be a separate offense.

**Source:** Laws 1937, c. 108, § 16, p. 401; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-666; Laws 1977, LB 40, § 296; Laws 1985, LB 339, § 47.

**48-667 Commissioner of Labor; civil and criminal actions; representation.**

(1) In any civil action to enforce the Employment Security Law, the commissioner and the state may be represented by any qualified attorney who is employed by the commissioner and is designated by him or her for this purpose or at the commissioner's request by the Attorney General.

(2) All criminal actions for violation of any provision of the Employment Security Law or of any rules or regulations issued pursuant thereto shall be prosecuted by the county attorney of any county in which the violation, or a part thereof, occurred.

**Source:** Laws 1937, c. 108, § 17, p. 402; C.S.Supp.,1941, § 48-716; R.S.1943, § 48-667; Laws 1953, c. 167, § 15, p. 540; Laws 1985, LB 339, § 48.

**48-668 Unemployment compensation; services performed in another state; arrangements with other states.**

(1) The commissioner is hereby authorized to enter into arrangements with the appropriate and duly authorized agencies of other states or the federal government, or both, whereby:

(a) Services performed by an individual for a single employer for which services are customarily performed by such individual in more than one state shall be deemed to be services performed entirely within any one of the states in which (i) any part of such individual's service is performed, (ii) such individual has his or her residence, or (iii) the employer maintains a place of business, if there is in effect, as to such services, an election by an employer with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which services performed by such individual for such employer are deemed to be performed entirely within such state;

(b) Service performed by not more than three individuals, on any portion of a day but not necessarily simultaneously, for a single employer which customarily operates in more than one state shall be deemed to be service performed entirely within the state in which such employer maintains the headquarters of his or her business if there is in effect, as to such service, an approved election by an employer with the affirmative consent of each such individual, pursuant to which service performed by such individual for such employer is deemed to be performed entirely within such state;

(c) Potential rights to benefits under the Employment Security Law may constitute the basis for payment of benefits by another state or the federal government and potential rights to benefits accumulated under the law of

another state or the federal government may constitute the basis for the payment of benefits by this state. Such benefits shall be paid under the Employment Security Law or under the law of such state or the federal government or under such combination of the provisions of both laws, as may be agreed upon as being fair and reasonable to all affected interests. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such benefits as are paid on the basis of wages and service subject to the law of another state or the federal government, and provision for reimbursement from the fund for such benefits as are paid by another state or the federal government on the basis of wages and service subject to the Employment Security Law. Reimbursements paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of the Employment Security Law; and

(d) Wages, upon the basis of which an individual may become entitled to benefits under an employment security law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his or her benefits under the Employment Security Law; and wages for insured work, on the basis of which an individual may become entitled to benefits under the Employment Security Law, shall be deemed to be wages on the basis of which unemployment insurance is payable under such law of another state or of the federal government. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such of the benefits paid under the Employment Security Law upon the basis of such wages and provision for reimbursement from the fund for such benefits paid under such other law upon the basis of wages for insured work, as the commissioner finds will be fair and reasonable to all affected interests. Reimbursement paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of the Employment Security Law.

(2) Notwithstanding any other provisions of this section, the commissioner shall participate in any arrangements for the payment of benefits on the basis of combining an individual's wages and employment covered under the Employment Security Law with his or her wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of benefits in such situations and which include provisions for (a) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws and (b) avoiding the duplicate use of wages and employment by reason of such combining. However, no benefits paid pursuant to an agreement to combine wages entered into under this subsection shall be charged against any employer's experience account if the employer's experience account, under the same or similar circumstances, would not be charged under the Employment Security Law. Benefits received by a claimant pursuant to an agreement entered into under this subsection to which he or she is not entitled shall be credited to an employer's experience account or reimbursement account in the same manner as claims paid based solely upon the laws of this state.

**Source:** Laws 1937, c. 108, § 18, p. 402; Laws 1939, c. 56, § 12, p. 251; C.S.Supp., 1941, § 48-717; R.S. 1943, § 48-668; Laws 1945, c. 115, § 8, p. 387; Laws 1949, c. 163, § 17(1), p. 432; Laws 1971, LB 651, § 13; Laws 1985, LB 339, § 49; Laws 2009, LB631, § 12.

**48-668.01 Unemployment compensation; services performed in another state; arrangements with other states; alter.**

If after entering into an arrangement provided by sections 48-668 to 48-668.03 the commissioner finds that the employment security law of any state or of the federal government participating in such arrangement has been changed in a material respect, the commissioner shall make a new finding as to whether such arrangement shall be continued with such state or with the federal government.

**Source:** Laws 1949, c. 163, § 17(2), p. 434.

**48-668.02 Unemployment compensation; services performed in another state; reimbursements to and from other states.**

Reimbursements paid from the fund pursuant to subdivisions (1)(c) and (1)(d) of section 48-668 shall be deemed to be benefits for the purposes of the Employment Security Law. The commissioner is authorized to make to other state or federal agencies and to receive from such other state or federal agencies reimbursements from or to the fund in accordance with arrangements entered into pursuant to section 48-668.

**Source:** Laws 1937, c. 108, § 18, p. 402; Laws 1939, c. 56, § 12, p. 251; C.S.Supp.,1941, § 48-717; R.S.1943, § 48-668; Laws 1945, c. 115, § 8, p. 387; Laws 1949, c. 163, § 17(3), p. 434; Laws 1985, LB 339, § 50; Laws 2009, LB631, § 13.

**48-668.03 Unemployment compensation; services performed in foreign country; facilities and services; utilize.**

To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under the Employment Security Law and facilities and services provided under the unemployment compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the unemployment insurance law of this state or under a similar law of such government.

**Source:** Laws 1937, c. 108, § 18, p. 402; Laws 1939, c. 56, § 12, p. 251; C.S.Supp.,1941, § 48-717; R.S.1943, § 48-668; Laws 1945, c. 115, § 8, p. 387; Laws 1949, c. 163, § 17(4), p. 434; Laws 1985, LB 339, § 51.

**48-669 Claimant; benefit amounts; how computed.**

(1) With respect to any claimant for whom there is current a benefit year, which has not expired prior to the effective date of any change in the weekly benefit amounts prescribed in section 48-624 or the maximum annual benefit amount prescribed in section 48-626, the weekly benefit amount and the maximum annual benefit amount shall be those amounts determined prior to the effective date of such change.

(2) After December 31, 1995, any changes in the weekly benefit amounts prescribed in section 48-624 or in the maximum annual benefit amount prescribed in section 48-626 shall become effective on January 1 of the year following such legislative enactment.

(3) After December 31, 2000, any change in the weekly benefit amounts prescribed in section 48-624 or any change in the maximum annual benefit amount prescribed in section 48-626 shall be applicable for the calendar year following the annual determination made pursuant to section 48-121.02.

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

**48-670 Federal law; adjudged unconstitutional, invalid, or stayed; effect.**

If Public Law 94-566 or the federal acts it amends is adjudged unconstitutional or invalid in its application or stayed pendente lite by any court of competent jurisdiction, then the coverage under the Employment Security Law of those employees of any political subdivision is automatically stayed or repealed.

**Source:** Laws 1977, LB 509, § 10; Laws 1985, LB 339, § 52.

**48-671 City or village; levy a tax; when; limitation.**

Any city or village of the state which makes any contributions or payments required to be made by the Employment Security Law shall levy a tax in order to defray the cost to such city or village in meeting the obligations arising by reason of such law. Such tax shall be in excess of and in addition to all other taxes now or hereafter authorized to be levied by such city. The revenue so raised shall be limited to the amount needed to defray the cost to such city or village in meeting the obligations arising by reason of the Employment Security Law and shall be used for no other purpose.

**Source:** Laws 1977, LB 509, § 11; Laws 1985, LB 339, § 53.

**ARTICLE 7**

**BOILER INSPECTION**

Section	
48-701.	Transferred to section 48-721.
48-702.	Transferred to section 48-722.
48-703.	Transferred to section 48-723.
48-704.	Transferred to section 48-724.
48-705.	Transferred to section 48-725.
48-706.	Transferred to section 48-726.
48-707.	Transferred to section 48-727.
48-708.	Transferred to section 48-728.
48-709.	Transferred to section 48-729.
48-710.	Transferred to section 48-730.
48-711.	Repealed. Laws 1961, c. 284, § 1.
48-712.	Transferred to section 48-731.
48-713.	Transferred to section 48-732.
48-714.	Transferred to section 48-733.

## Section

- 48-714.01. Repealed. Laws 1987, LB 462, § 21.  
 48-714.02. Transferred to section 48-734.  
 48-715. Transferred to section 48-735.  
 48-716. Transferred to section 48-736.  
 48-717. Transferred to section 48-737.  
 48-718. Transferred to section 48-738.  
 48-719. Act, how cited.  
 48-720. Terms, defined.  
 48-721. State boiler inspector; appointment; deputy inspectors; qualifications; bond or insurance.  
 48-722. State boiler inspector; inspection; exception; contract with authorized inspection agency; certification.  
 48-723. Commissioner and boiler inspectors; right of entry.  
 48-724. Certificate of inspection; certificate of registration; fees.  
 48-725. Excessive pressure prohibited.  
 48-726. Boilers and vessels to which act does not apply.  
 48-727. Commissioner; adopt rules and regulations; adopt schedule of fees; incorporation of codes.  
 48-728. Boiler explosion; investigation; report.  
 48-729. State boiler inspector; record of equipment.  
 48-730. Equipment; installation; notice to commissioner; reinspection.  
 48-731. Special inspector commission; requirements; inspection under provision of a city ordinance; inspection under the act not required; when; insurance coverage required.  
 48-732. Defective boiler; notice to user.  
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**48-701 Transferred to section 48-721.**

**48-702 Transferred to section 48-722.**

**48-703 Transferred to section 48-723.**

**48-704 Transferred to section 48-724.**

**48-705 Transferred to section 48-725.**

**48-706 Transferred to section 48-726.**

**48-707 Transferred to section 48-727.**

**48-708 Transferred to section 48-728.**

**48-709 Transferred to section 48-729.**

**48-710 Transferred to section 48-730.**

**48-711 Repealed. Laws 1961, c. 284, § 1.**

**48-712 Transferred to section 48-731.**

**48-713 Transferred to section 48-732.**

**48-714 Transferred to section 48-733.**

**48-714.01 Repealed. Laws 1987, LB 462, § 21.**

**48-714.02 Transferred to section 48-734.**

**48-715 Transferred to section 48-735.**

**48-716 Transferred to section 48-736.**

**48-717 Transferred to section 48-737.**

**48-718 Transferred to section 48-738.**

**48-719 Act, how cited.**

Sections 48-719 to 48-743 shall be known and may be cited as the Boiler Inspection Act.

**Source:** Laws 1987, LB 462, § 1; Laws 1988, LB 863, § 1; Laws 1995, LB 438, § 1.

**48-720 Terms, defined.**

As used in the Boiler Inspection Act, unless the context otherwise requires:

(1) Authorized inspection agency means an authorized inspection agency as defined in NB-369, National Board Qualifications and Duties for Authorized Inspection Agencies (AIAs) Performing Inservice Inspection Activities and Qualifications for Inspectors of Boilers and Pressure Vessels;

(2) Board means the Boiler Safety Code Advisory Board;

(3) Boiler means a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam or vapor is superheated, or any combination thereof, under pressure or vacuum, for internal or external use to itself, by the direct application of heat and an unfired pressure vessel in which the pressure is obtained from an external source or by the application of heat from an indirect or direct source. Boiler includes a fired unit for heating or vaporizing liquids other than water only when such unit is separate from processing systems and complete within itself;

(4) Commissioner means the Commissioner of Labor; and

(5) Department means the Department of Labor.

**Source:** Laws 1987, LB 462, § 2; Laws 1988, LB 863, § 2; Laws 1997, LB 641, § 1; Laws 2007, LB226, § 1.

**48-721 State boiler inspector; appointment; deputy inspectors; qualifications; bond or insurance.**

The commissioner shall appoint a state boiler inspector who shall work under the direct supervision of the commissioner or his or her designee and devote his or her full time to the duties of the office. The person so appointed shall (1) be a practical boilermaker, technical engineer, operating engineer, or boiler inspector and hold a commission from the National Board of Boiler and Pressure Vessel Inspectors with an "A" endorsement. The state boiler inspector shall also either hold a "B" endorsement to his or her commission or acquire a "B"

endorsement within eighteen months of appointment, (2) be qualified by not less than ten years' experience in the construction, installation, repair, inspection, or operation of boilers, steam generators, and superheaters, (3) have a knowledge of their operation and use for the generating of steam for power, heating, or other purposes, and (4) neither directly nor indirectly be interested in the manufacture, ownership, or agency of the same. The commissioner may appoint deputy inspectors as necessary to carry out the Boiler Inspection Act. Deputy inspectors shall hold a commission from the National Board of Boiler and Pressure Vessel Inspectors or acquire the same within twelve months of appointment. Such deputy inspectors shall otherwise be subject to and governed by the same rules and regulations applicable to and governing the acts and conduct of the state boiler inspector. Before entering upon his or her duties under the Boiler Inspection Act, the state boiler inspector and each deputy inspector shall be bonded or insured as required by section 11-201.

**Source:** Laws 1943, c. 112, § 1, p. 392; R.S.1943, § 48-701; Laws 1978, LB 653, § 12; R.S.1943, (1984), § 48-701; Laws 1987, LB 462, § 3; Laws 1998, LB 395, § 12; Laws 1999, LB 66, § 1; Laws 2004, LB 884, § 23.

**48-722 State boiler inspector; inspection; exception; contract with authorized inspection agency; certification.**

(1) Except as provided in subsections (3) and (4) of this section, the state boiler inspector shall inspect or cause to be inspected at least once every twelve months all boilers required to be inspected by the Boiler Inspection Act to determine whether the boilers are in a safe and satisfactory condition and properly constructed and maintained for the purpose for which the boiler is used, except that (a) hobby boilers, steam farm traction engines, portable and stationary show engines, and portable and stationary show boilers, which are not otherwise exempted from the act pursuant to section 48-726, shall be subject to inspection at least once every twenty-four months and (b) the commissioner may, by rule and regulation, establish inspection periods for pressure vessels of more than twelve months, but not to exceed the inspection period recommended in the National Board Inspection Code or the American Petroleum Institute Pressure Vessel Inspection Code API-510 for pressure vessels being used for similar purposes. In order to ensure that inspections are performed in a timely manner, the department may contract with an authorized inspection agency to perform any inspection authorized under the Boiler Inspection Act. If the department contracts with an authorized inspection agency to perform inspections, such contract shall be in writing and shall contain an indemnification clause wherein the authorized inspection agency agrees to indemnify and defend the department for loss occasioned by negligent or tortious acts committed by special inspectors employed by such authorized inspection agency when performing inspections on behalf of the department.

(2) No boilers required to be inspected by the act shall be operated without valid and current certification pursuant to rules and regulations adopted and promulgated by the commissioner in accordance with the requirements of the Administrative Procedure Act. The owner of any boiler installed after September 2, 1973, shall file a manufacturer's data report covering the construction of such boiler with the state boiler inspector. Such reports shall be used to assist the state boiler inspector in the certification of boilers. No boiler required to be inspected by the Boiler Inspection Act shall be operated at any type of public

gathering or show without first being inspected and certified as to its safety by the state boiler inspector or a special inspector commissioned pursuant to section 48-731. Antique engines with boilers may be brought into the state from other states without inspection, but inspection as provided in this section shall be made and the boiler certified as safe before being operated.

(3) The commissioner may, by rule and regulation, waive the inspection of unfired pressure vessels registered with the State of Nebraska if the commissioner finds that the owner or user of the unfired pressure vessel follows a safety inspection and repair program that is based upon nationally recognized standards.

(4) A boiler that is used as a water heater to supply potable hot water and that is not otherwise exempt from inspection under the act pursuant to section 48-726 shall be subject to inspection at least once every twenty-four months in accordance with a schedule of inspection established by the commissioner by rule and regulation.

**Source:** Laws 1943, c. 112, § 2(1), p. 392; R.S.1943, § 48-702; Laws 1961, c. 235, § 5, p. 698; Laws 1971, LB 886, § 1; Laws 1973, LB 481, § 1; R.S.1943, (1984), § 48-702; Laws 1987, LB 462, § 4; Laws 1995, LB 438, § 2; Laws 1997, LB 641, § 2; Laws 1998, LB 395, § 13; Laws 1999, LB 66, § 2; Laws 2007, LB226, § 2; Laws 2009, LB627, § 1.

#### Cross References

Administrative Procedure Act, see section 84-920.

#### **48-723 Commissioner and boiler inspectors; right of entry.**

The commissioner and the boiler inspectors shall have the right and power to enter any building or structure, public or private, for the purpose of inspecting any boilers required to be inspected by the Boiler Inspection Act or gathering information relating to such boilers.

**Source:** Laws 1943, c. 112, § 2(2), p. 393; R.S.1943, § 48-703; R.S.1943, (1984), § 48-703; Laws 1987, LB 462, § 5; Laws 1995, LB 438, § 3.

#### **48-724 Certificate of inspection; certificate of registration; fees.**

(1) Upon making an inspection of any boilers required to be inspected by the Boiler Inspection Act and upon receipt of the inspection fee and certificate fee or registration fee, the boiler inspector shall give to the owner or user of the boilers a certificate of inspection or certificate of registration upon forms prescribed by the commissioner. The certificate shall be posted in a place near the location of such boiler.

(2) The commissioner shall establish the amount of the inspection fee, certificate fee, and registration fee by rule or regulation at the level necessary to meet the costs of administering the act.

**Source:** Laws 1943, c. 112, § 2(3), p. 393; R.S.1943, § 48-704; Laws 1965, c. 288, § 1, p. 824; Laws 1980, LB 959, § 1; R.S.1943, (1984), § 48-704; Laws 1987, LB 462, § 6; Laws 1995, LB 438, § 4; Laws 1996, LB 1047, § 2; Laws 1998, LB 395, § 14.

#### **48-725 Excessive pressure prohibited.**

The owner, user, or person or persons in charge of any boiler required to be inspected by the Boiler Inspection Act shall not allow or permit a greater pressure in any unit than is stated in the certificate of inspection issued by the inspector.

**Source:** Laws 1943, c. 112, § 2(4), p. 393; R.S.1943, § 48-705; R.S.1943, (1984), § 48-705; Laws 1987, LB 462, § 7; Laws 1995, LB 438, § 5.

**48-726 Boilers and vessels to which act does not apply.**

The Boiler Inspection Act shall not apply to:

- (1) Boilers of railway locomotives subject to federal inspection;
- (2) Boilers operated and regularly inspected by railway companies operating in interstate commerce;
- (3) Boilers under the jurisdiction and subject to regular periodic inspection by the United States Government;
- (4) Boilers used exclusively for agricultural purposes;
- (5) Steam heating boilers in single-family residences and apartment houses with four or less units using a pressure of less than fifteen pounds per square inch and having a safety valve set at not higher than fifteen pounds pressure per square inch;
- (6) Heating boilers using water in single-family residences and apartment houses with four or less units using a pressure of less than thirty pounds per square inch and having a safety valve set at not higher than thirty pounds pressure per square inch;
- (7) Fire engine boilers brought into the state for temporary use in times of emergency;
- (8) Boilers of a miniature model locomotive or boat or tractor or stationary engine constructed and maintained as a hobby and not for commercial use and having a diameter of less than ten inches inside diameter and a grate area not in excess of one and one-half square feet and that are properly equipped with a safety valve;
- (9) Hot water supply boilers if none of the following limitations is exceeded:
  - (a) Two hundred thousand British thermal units of input;
  - (b) one hundred twenty gallons of nominal capacity; or
  - (c) two hundred ten degrees Fahrenheit output;
- (10) Unfired pressure vessels not exceeding (a) five cubic feet in volume or (b) a pressure of two hundred fifty pounds per square inch;
- (11) Unfired pressure vessels owned and maintained by a district or corporation organized under the provisions of Chapter 70, article 6; and
- (12) Unfired pressure vessels (a) not exceeding a maximum allowable working pressure of five hundred pounds per square inch, (b) that contain carbon dioxide, helium, oxygen, nitrogen, argon, hydrofluorocarbon refrigerant, or any other nonflammable gas determined by the commissioner not to be a risk to the public, (c) that are manufactured and repaired in accordance with applicable American Society of Mechanical Engineers standards, and (d) that are installed in accordance with the manufacturer's specifications.

**Source:** Laws 1943, c. 112, § 3, p. 393; R.S.1943, § 48-706; Laws 1965, c. 288, § 2, p. 825; Laws 1969, c. 406, § 1, p. 1404; R.S.1943,

(1984), § 48-706; Laws 1987, LB 462, § 8; Laws 1995, LB 438, § 6; Laws 1997, LB 641, § 3; Laws 1998, LB 395, § 15; Laws 1999, LB 66, § 3; Laws 2005, LB 122, § 1.

**48-727 Commissioner; adopt rules and regulations; adopt schedule of fees; incorporation of codes.**

The commissioner may adopt and promulgate rules and regulations for the purpose of effectuating the Boiler Inspection Act, including rules and regulations for the methods of testing equipment, the construction and installation of new boilers, and a schedule of inspection and certificate fees for boilers required to be inspected by the act. Such rules and regulations may incorporate by reference any portion of (1) the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers, as amended, (2) the National Board Inspection Code for Boilers and Pressure Vessels, as amended, (3) the American Society of Mechanical Engineers Code for Controls and Safety Devices for Automatically Fired Boilers, as amended, concerning controls and safety devices for automatically fired boilers, (4) the American Petroleum Institute Pressure Vessel Inspection Code API-510, and (5) the National Fire Protection Association, series 85, code for controls and safety devices, including codes referenced in such code. A copy of all rules and regulations adopted and promulgated under the Boiler Inspection Act, including copies of all codes incorporated by reference, shall be kept on file in the office of the commissioner and shall be known as the Boiler Safety Code.

**Source:** Laws 1943, c. 112, § 4(1), p. 393; R.S.1943, § 48-707; R.S.1943, (1984), § 48-707; Laws 1987, LB 462, § 9; Laws 1995, LB 438, § 7; Laws 1999, LB 66, § 4.

**48-728 Boiler explosion; investigation; report.**

The state boiler inspector shall investigate and report to the commissioner the cause of any boiler explosion that may occur in the state, the loss of life, the injuries sustained, the estimated loss of property, if any, and such other data as may be of benefit in preventing other similar explosions.

**Source:** Laws 1943, c. 112, § 4(2), p. 394; R.S.1943, § 48-708; R.S.1943, (1984), § 48-708; Laws 1987, LB 462, § 10.

**48-729 State boiler inspector; record of equipment.**

The state boiler inspector shall keep in the office of the commissioner a complete and accurate record of the name of the owner or user of any boiler required to be inspected by the Boiler Inspection Act and a full description of the equipment including the type, dimensions, age, condition, amount of pressure allowed, and date when last inspected.

**Source:** Laws 1943, c. 112, § 4(3), p. 394; R.S.1943, § 48-709; R.S.1943, (1984), § 48-709; Laws 1987, LB 462, § 11; Laws 1995, LB 438, § 8.

**48-730 Equipment; installation; notice to commissioner; reinspection.**

Before any boiler required to be inspected by the Boiler Inspection Act is installed, a ten days' written notice of intention to install the boiler shall be given to the commissioner, except that the commissioner may, upon application

and good cause shown, waive the ten-day prior notice requirement. The notice shall designate the proposed place of installation, the type and capacity of the boiler, the use to be made of the boiler, the name of the company which manufactured the boiler, and whether the boiler is new or used. A boiler moved from one location to another shall be reinspected prior to being placed back into use.

**Source:** Laws 1943, c. 112, § 5, p. 394; R.S.1943, § 48-710; R.S.1943, (1984), § 48-710; Laws 1987, LB 462, § 12; Laws 1995, LB 438, § 9; Laws 1998, LB 395, § 16; Laws 2007, LB226, § 3.

**48-731 Special inspector commission; requirements; inspection under provision of a city ordinance; inspection under the act not required; when; insurance coverage required.**

(1)(a) The commissioner may issue a special inspector commission to an inspector in the employ of a company if the inspector has previously passed the examination prescribed by the National Board of Boiler and Pressure Vessel Inspectors and the company is an insurance company authorized to insure boilers in this state against loss from explosion or is an authorized inspection agency.

(b) Each special inspector employed by an insurance company or authorized inspection agency who has been issued a special inspector commission under this section shall submit to the state boiler inspector complete data of each boiler required to be inspected by the Boiler Inspection Act which is insured or inspected by such insurance company or authorized inspection agency on forms approved by the commissioner.

(c) Insurance companies shall notify the department of new, canceled, or suspended risks relating to insured boilers. Insurance companies shall notify the department of all boilers which the company insures, or any boiler for which insurance has been canceled, not renewed, or suspended within thirty days after such action. Authorized inspection agencies shall notify the department of any new or canceled agreements relating to the inspection of boilers or pressure vessels within thirty days after such action.

(d) Insurance companies and authorized inspection agencies shall immediately notify the department of defective boilers. If a special inspector employed by an insurance company, upon the first inspection of new risk, finds that the boiler or any of the appurtenances are in such condition that the inspector's company refuses insurance, the company shall immediately submit a report of the defects to the state boiler inspector.

(2) The inspection required by the act shall not be required if (a) an annual inspection is made under a city ordinance which meets the standards set forth in the act, (b) a certificate of inspection of the boiler is filed with the commissioner with a certificate fee, and (c) the inspector for the city making such inspection is required by such ordinance to either hold a commission from the National Board of Boiler and Pressure Vessel Inspectors commensurate with the type of inspections performed by the inspector for the city or acquire the commission within twelve months after appointment.

(3) The commissioner may, by rule and regulation, provide for the issuance of a special inspector commission to an inspector in the employ of a company using or operating an unfired pressure vessel subject to the act for the limited

purpose of inspecting unfired pressure vessels used or operated by such company.

(4) All inspections made by a special inspector shall be performed in accordance with the act, and a complete report of such inspection shall be filed with the department in the time, manner, and form prescribed by the commissioner.

(5) The state boiler inspector may, at his or her discretion, inspect any boiler to which a special inspector commission applies.

(6) The commissioner may, for cause, suspend or revoke any special inspector commission.

(7) No authorized inspection agency shall perform inspections of boilers in the State of Nebraska unless the authorized inspection agency has insurance coverage for professional errors and omissions and comprehensive and general liability under a policy or policies written by an insurance company authorized to do business in this state in effect at the time of such inspection. Such insurance policy or policies shall be in an amount not less than the minimum amount as established by the commissioner. Such minimum amount shall be established with due regard to the protection of the general public and the availability of insurance coverage, but such minimum insurance coverage shall not be less than one million dollars for professional errors and omissions and one million dollars for comprehensive and general liability.

**Source:** Laws 1943, c. 112, § 6(2), p. 394; R.S.1943, § 48-712; Laws 1947, c. 176, § 1, p. 584; Laws 1980, LB 959, § 2; R.S.1943, (1984), § 48-712; Laws 1987, LB 462, § 13; Laws 1995, LB 438, § 10; Laws 1998, LB 395, § 17; Laws 2007, LB226, § 4.

#### **48-732 Defective boiler; notice to user.**

The state boiler inspector shall notify the user in writing of any boiler found to be unsafe or unfit for operation setting forth the nature and extent of such defects and condition. The notice shall indicate whether or not the boiler may be used without making repair or replacement of defective parts or may be used in a limited capacity before repairs or replacements are made. The state boiler inspector may permit the user a reasonable time to make such repairs or replacements.

**Source:** Laws 1943, c. 112, § 6(3), p. 395; R.S.1943, § 48-713; R.S.1943, (1984), § 48-713; Laws 1987, LB 462, § 14; Laws 1995, LB 438, § 11.

#### **48-733 Boiler; inspection; fees.**

The owner or user of a boiler required to be inspected under the Boiler Inspection Act or inspected by request of the boiler owner shall pay a fee for such inspection or inspections in accordance with the rules and regulations adopted and promulgated by the commissioner. Any boiler required to be inspected by the act may be inspected by the state boiler inspector if the owner or his or her agent makes written request to the state boiler inspector. Fees will be imposed as required for services in support of the act in accordance with rules and regulations adopted and promulgated by the commissioner.

**Source:** Laws 1943, c. 112, § 7, p. 395; R.S.1943, § 48-714; Laws 1963, c. 294, § 1, p. 880; Laws 1980, LB 959, § 3; R.S.1943, (1984), § 48-714; Laws 1987, LB 462, § 15; Laws 1995, LB 438, § 12.

**48-734 Repealed. Laws 1995, LB 438, § 17.**

**48-735 Repealed. Laws 1995, LB 438, § 17.**

**48-735.01 Boiler Inspection Cash Fund; created; use; investment.**

The Boiler Inspection Cash Fund is created. The commissioner shall use the fund for the administration of the boiler inspection program pursuant to the Boiler Inspection Act. The fund shall consist of money appropriated to it by the Legislature and fees collected in the administration of the act. Fees so collected shall be remitted to the State Treasurer with an itemized statement showing the source of collection. The State Treasurer shall credit the fees to the fund and the money in the fund shall not lapse into the General Fund. Any money in the Boiler Inspection 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 1995, LB 438, § 13.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**48-736 Violation; penalty.**

Any person, persons, corporations, and the directors, managers, superintendents, and officers of such corporations violating the Boiler Inspection Act shall be guilty of a Class III misdemeanor.

**Source:** Laws 1943, c. 112, § 9, p. 396; R.S.1943, § 48-716; Laws 1977, LB 40, § 297; R.S.1943, (1984), § 48-716; Laws 1987, LB 462, § 18; Laws 2007, LB226, § 5.

**48-737 Defective boiler; commissioner; state boiler inspector; powers.**

In addition to any and all other remedies, if any owner, user, or person in charge of any boiler required to be inspected by the Boiler Inspection Act continues to use the same after receiving a notice of defect as provided by the act, without first correcting the defects or making replacements, the commissioner may apply to the district court or any judge thereof by petition in equity, in an action brought in the name of the state, for a writ of injunction to restrain the use of the alleged defective boiler or if the continued operation of the boiler poses serious risk or harm to the general public, the state boiler inspector may take those actions required to immediately shut down and cause to be inoperable any boiler required to be inspected by the act.

**Source:** Laws 1943, c. 112, § 10, p. 396; R.S.1943, § 48-717; R.S.1943, (1984), § 48-717; Laws 1987, LB 462, § 19; Laws 1995, LB 438, § 14.

**48-738 Petition for injunction; notice to owner or user; procedure.**

The commissioner shall notify the owner or user of the equipment in writing of the time and place of hearing of the petition, as fixed by the court or judge, and serve the notice on the defendant at least five days prior to the hearing in the same manner as original notices are served. The general provisions relating to civil practice and procedure, insofar as the same may be applicable, shall govern such proceedings except as otherwise provided in the Boiler Inspection

Act. In the event the defendant does not appear or plead to such action, default shall be entered against the defendant. The action shall be tried in equity, and the court or judge shall make such order or decree as the evidence warrants.

**Source:** Laws 1943, c. 112, § 11, p. 396; R.S.1943, § 48-718; R.S.1943, (1984), § 48-718; Laws 1987, LB 462, § 20.

**48-739 Boiler Safety Code Advisory Board; created; members; terms.**

There is hereby created the Boiler Safety Code Advisory Board. The board shall consist of seven members appointed by the Governor with the approval of the Legislature. Within thirty days after July 9, 1988, the Governor shall appoint three members for terms of two years and four members for terms of four years. Each succeeding member of the board shall be appointed for a term of four years, except that a member appointed to fill a vacancy shall serve for the unexpired term. If the Legislature is not in session when members of the board are appointed, such members shall take office and act as appointees until the next session of the Legislature.

**Source:** Laws 1988, LB 863, § 3.

**48-740 Board; members; qualifications.**

The membership of the board shall consist of one member who represents owners and users of boilers and has experience with boilers, one member who represents sellers of boilers, one member who represents the crafts involved in the construction, repair, or operation of boilers, one member who represents the insurance industry, one member who is a licensed professional engineer with experience with boilers, one member who represents the interest of public safety, and one member who represents the public. The state boiler inspector shall be a nonvoting member of the board.

**Source:** Laws 1988, LB 863, § 4.

**48-741 Board; meetings; chairperson; quorum.**

The members of the board shall conduct an annual meeting in July of each year, or at such other time as the board determines, and shall elect a chairperson from their members at the annual meeting. Other meetings of the board shall be held when called with at least seven days' notice to all members by the chairperson of the board or pursuant to a call signed by four other members. Four members of the board shall constitute a quorum for the transaction of business.

**Source:** Laws 1988, LB 863, § 5; Laws 1998, LB 395, § 18.

**48-742 Board member; compensation; expenses.**

Each board member shall be paid the sum of fifty dollars per day while actually engaged in the business of the board. The members of the board shall be paid their mileage and expenses in attending meetings of the board and carrying out their official duties as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1988, LB 863, § 6.

**48-743 Board; duties.**

The board shall hold hearings and advise the commissioner on rules and regulations for methods of testing equipment and construction and installation of new boilers required to be inspected by the Boiler Inspection Act and for inspection and certificate fees for such boilers.

**Source:** Laws 1988, LB 863, § 7; Laws 1995, LB 438, § 15.

## ARTICLE 8

### COMMISSION OF INDUSTRIAL RELATIONS

#### Cross References

#### Constitutional provisions:

Industrial Commission, controversies between employer and employee, see Article XV, section 9, Constitution of Nebraska.

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

**Unified or reorganized school districts**, collective-bargaining agreements, see section 79-852.

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48-831.	Repealed. Laws 1969, c. 407, § 8.
48-832.	Repealed. Laws 1969, c. 407, § 8.
48-833.	Repealed. Laws 1969, c. 407, § 8.
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48-837.	Public employees; employee organization; bargaining.
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48-840.	Repealed. Laws 1987, LB 782, § 4.
48-841.	Repealed. Laws 1987, LB 782, § 4.
48-842.	State employees; jurisdiction of commission; restricted.

**48-801 Terms, defined.**

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

(1) Person shall include an individual, partnership, limited liability company, association, corporation, business trust, or other organized group of persons;

(2) Governmental service shall mean all services performed under employment by the State of Nebraska, any political or governmental subdivision thereof, any municipal corporation, or any public power district or public power and irrigation district;

(3) Public utility shall include any individual, partnership, limited liability company, association, corporation, business trust, or other organized group of persons, any political or governmental subdivision of the State of Nebraska, any public corporation, or any public power district or public power and irrigation district, which carries on an intrastate business in this state and over which the government of the United States has not assumed exclusive regulation and control, that furnishes transportation for hire, telephone service, telegraph service, electric light, heat and power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more thereof;

(4) Employer shall mean the State of Nebraska or any political or governmental subdivision of the State of Nebraska except the Nebraska National Guard or state militia. Employer shall also mean any municipal corporation, any public power district or public power and irrigation district, or any public utility;

(5) Employee shall include any person employed by any employer;

(6) Labor organization shall mean any organization of any kind or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(7) Industrial dispute shall include any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, or refusal to discuss terms or conditions of employment;

(8) Commission shall mean the Commission of Industrial Relations;

(9) Commissioner shall mean a member of the commission; and

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

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

- 1. Constitutionality
- 2. Jurisdiction of commission
- 3. Bargaining units
- 4. Miscellaneous

**1. Constitutionality**

The statutes which give the Court of Industrial Relations jurisdiction over public employees are not unconstitutional. *American Fed. of S., C. & M. Emp. v. Department of Public Institutions*, 195 Neb. 253, 237 N.W.2d 841 (1976).

To pass scrutiny of Constitution of the United States, Nebraska Court of Industrial Relations, in case within its jurisdiction, must be deemed to have sufficient power to fully vindicate, preserve, and protect a federal constitutional right. *Teamsters Pub. Emp. U. Loc. 594 v. City of West Point*, 338 F.Supp. 927 (D. Neb. 1972).

**2. Jurisdiction of commission**

A mere request by a union for information regarding employee transfer lists and test results which is declined by the employer does not constitute an industrial dispute. *Neb. Pub. Emp. v. City of Omaha*, 235 Neb. 768, 457 N.W.2d 429 (1990).

A uniquely personal termination of employment does not constitute an industrial dispute, notwithstanding the fact it may involve a controversy concerning terms, tenure, or conditions of employment. *Wood v. Tesch*, 222 Neb. 654, 386 N.W.2d 436 (1986).

The Commission of Industrial Relations has jurisdiction, that is, authorized power, to resolve industrial disputes between agencies or departments of the State of Nebraska and their employees. *State Code Agencies Ed. Assn. v. Department of Pub. Insts.*, 219 Neb. 555, 364 N.W.2d 44 (1985).

The authority of the Court of Industrial Relations, now Commission of Industrial Relations, is limited to industrial disputes, as defined in this section. *University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 277 N.W.2d 529 (1979).

The University of Nebraska has the primary authority for establishing its own schedule of wages, terms and conditions of employment, and hours of labor but when an industrial dispute, as defined in this section, arises, the Commission of Industrial Relations acquires jurisdiction for the limited purpose of resolving such dispute. *University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 277 N.W.2d 529 (1979).

**3. Bargaining units**

House officers of the University of Nebraska Medical Center are employees of the state entitled to participate in an appropriate bargaining unit. *House Officers Assn. v. University of Nebraska Medical Center*, 198 Neb. 697, 255 N.W.2d 258 (1977).

Supervisory or managerial personnel may not enter into a bargaining unit with rank and file employees and may not retain

the same bargaining agent. *Nebraska Assn. of Pub. Emp. v. Nebraska Game & Parks Commission*, 197 Neb. 178, 247 N.W.2d 449 (1976).

**4. Miscellaneous**

Employees lose the statutory protection of the Industrial Relations Act for conduct or speech if it is flagrant misconduct, which includes, but is not limited to, statements or actions that (1) are of an outrageous and insubordinate nature, (2) compromise the public employer's ability to accomplish its mission, or (3) disrupt discipline, as well as conduct that is clearly outside the bounds of any protection such as assault and battery or racial discrimination. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

Public employees belonging to a labor organization have the protected right to engage in conduct and make remarks, including publishing statements through the media, concerning wages, hours, or terms and conditions of employment. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

The Commission of Industrial Relations must balance the employee's right to engage in protected activity, which permits some leeway for impulsive behavior, against the employer's right to maintain order and respect for its supervisory staff. Factors that the commission may consider, but would not necessarily be determinative, include: (1) the place and subject matter of the conduct or speech, (2) whether the employee's conduct or speech was impulsive or designed, (3) whether the conduct or speech was provoked by the employer's conduct, and (4) the nature of the intemperate language or conduct. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

The Industrial Relations Act is not only an attempt to level the employment playing field, but is also a mechanism designed to protect the citizens of Nebraska from the effects and consequences of labor strife in public sector employment. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

Teachers in Class III, IV, and VI school districts are subject to provisions of Teachers' Professional Negotiation Act. *Lincoln Ed. Assn. v. School Dist. of Lincoln*, 214 Neb. 895, 336 N.W.2d 587 (1983).

School districts are employers and teachers are employees within terms of this act. *Sidney Education Assn. v. School Dist. of Sidney*, 189 Neb. 540, 203 N.W.2d 762 (1973).

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

Sections 48-801 to 48-838 shall be known and may be cited as the Industrial Relations Act.

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

**48-802 Public policy.**

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

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

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

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

**Source:** Laws 1947, c. 178, § 2, p. 587.

If the Commission of Industrial Relations finds that an accused party has committed a prohibited practice under subsection (2) of section 48-825, it has the authority to order an appropriate remedy, and such authority is to be liberally construed to effectuate the public policy enunciated in this section. *Operating Engrs. Local 571 v. City of Plattsmouth*, 265 Neb. 817, 660 N.W.2d 480 (2003).

If public employees may not refuse to work without risk of discharge, public employers may not refuse to pay employees the wage established by the governmental employer for such work. *AFSCME Local No. 2088 v. County of Douglas*, 208 Neb. 511, 304 N.W.2d 368 (1981).

It is the public interest in having uninterrupted public service that is principally sought to be protected by the Commission of Industrial Relations Act, not the creation of a specialty forum

for the trying of breach of contract cases by public employees. *Transport Workers of America v. Transit Authority of City of Omaha*, 205 Neb. 26, 286 N.W.2d 102 (1979).

Supervisory or managerial personnel may not enter into a bargaining unit with rank and file employees and may not retain the same bargaining agent. *Nebraska Assn. of Pub. Emp. v. Nebraska Game & Parks Commission*, 197 Neb. 178, 247 N.W.2d 449 (1976).

While there are many nebulous areas that may overlap working conditions, school boards should not be required to enter into negotiations which are predominately of educational policy, management prerogatives, or statutory duties of the board of education. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

**48-803 Commission of Industrial Relations; created.**

In order to carry out the public policy of the State of Nebraska as set forth in section 48-802, there is hereby created an industrial commission to be known as the Commission of Industrial Relations.

**Source:** Laws 1947, c. 178, § 3, p. 588; Laws 1979, LB 444, § 1.

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

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

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

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

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

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

**Cross References**

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

**48-804.01 Presiding officer; clerk; personnel; appointment; duties.**

The presiding officer of the commission shall, with the advice and consent of the Governor, appoint a clerk of such commission who shall hold office at the pleasure of the commission. The presiding officer shall in like manner appoint such other assistants and employees as he or she may deem necessary. The clerk shall, under the direction of the presiding officer, keep a full and true record of the proceedings of the commission and record all pleadings and other papers filed with the commission, and no other action shall be taken thereon until the same has been recorded. The clerk shall in like manner issue all necessary notices and writs, superintend the business of the commission, and perform such other duties as the commission may direct. All other assistants and employees of the commission shall perform such duties, pertaining to the affairs thereof, as the commission may direct. The clerk of the commission shall administratively determine, prior to a hearing on the question of representation, the validity of the employee authorizations for representation by an employee labor organization.

**Source:** Laws 1974, LB 819, § 3; Laws 2007, LB472, § 3.

**48-804.02 Clerk, employees; salaries; approval by Governor; expenses.**

The clerk and all other assistants and employees of the commission shall receive such salaries as the commission may with the approval of the Governor determine, but not to exceed the amount of the appropriation made for such purpose. Such salaries shall be payable in the same manner as the salaries of other state employees. The clerk and other assistants and employees of the commission shall be entitled, while traveling on the business of the commission,

to be reimbursed by the state for necessary traveling expenses as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1974, LB 819, § 4; Laws 1981, LB 204, § 82.

**48-804.03 Clerk; bond or insurance; oath.**

The clerk of the Commission of Industrial Relations shall be bonded or insured as required by section 11-201 before entering upon or discharging any of the duties of his or her office. Such clerk shall, before entering upon the duties of his or her office, take and subscribe the statutory oath of office.

**Source:** Laws 1974, LB 819, § 5; Laws 1978, LB 653, § 13; Laws 2004, LB 884, § 24.

**48-805 Commissioners; qualifications.**

The commissioners shall not be appointed because they are representatives of either capital or labor, but they shall be appointed because of their experience and knowledge in legal, financial, labor, and industrial matters.

**Source:** Laws 1947, c. 178, § 5, p. 589; Laws 2007, LB472, § 4.

**48-806 Commissioner; compensation; expenses.**

As soon as the same may be legally paid under the Constitution of Nebraska, the compensation of each commissioner shall be four hundred seventy-five dollars per day for each day's time actually engaged in the performance of the duties of his or her office. Each commissioner shall also be paid his or her necessary traveling expenses incurred while away from his or her place of residence upon business of the commission in accordance with sections 81-1174 to 81-1177.

**Source:** Laws 1947, c. 178, § 6, p. 599; Laws 1971, LB 822, § 1; Laws 1976, LB 710, § 1; Laws 1977, LB 302, § 1; Laws 1979, LB 444, § 3; Laws 1981, LB 188, § 1; Laws 1981, LB 204, § 83; Laws 1991, LB 856, § 1; Laws 2007, LB211, § 1; Laws 2007, LB472, § 5.

**48-807 Commission; office; location; records.**

The Commission of Industrial Relations may have its office at the Capitol in the city of Lincoln or such other location as the commission may, with the approval of the Governor, determine. It shall keep a record of all of its proceedings, which shall be a public record and subject to inspection the same as other public records of this state.

**Source:** Laws 1947, c. 178, § 7, p. 589; Laws 1974, LB 819, § 2.

**48-808 Reporter; duties.**

The commission may also appoint a reporter to report and transcribe in duplicate all testimony given in hearings and trials before the commission and file such testimony with the commission. The commission shall certify and transmit one copy to the Clerk of the Supreme Court in all cases in which there is an appeal under section 48-812.

**Source:** Laws 1947, c. 178, § 8, p. 589; Laws 1974, LB 819, § 6; Laws 1986, LB 809, § 3; Laws 1991, LB 732, § 115; Laws 1992, LB 360, § 27.

**48-809 Commission; powers.**

The Commission of Industrial Relations is hereby granted full power to adopt all reasonable and proper regulations to govern its proceedings, the filing of pleadings, the issuance and service of process, the issuance of subpoenas for attendance of witnesses, the power to administer oaths, and to regulate the mode and manner of all its investigations, inspections, hearings and trials. In the taking of evidence, the rules of evidence, prevailing in the trial of civil cases in Nebraska shall be observed by the Commission of Industrial Relations.

**Source:** Laws 1947, c. 178, § 9, p. 590.

Under powers granted in this section, Court of Industrial Relations may adopt rules required under the Administrative Procedures Act. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

**48-810 Commission; jurisdiction.**

Except as provided in the State Employees Collective Bargaining Act, industrial disputes involving governmental service, service of a public utility, or other disputes as the Legislature may provide shall be settled by invoking the jurisdiction of the Commission of Industrial Relations.

**Source:** Laws 1947, c. 178, § 10, p. 590; Laws 1965, c. 289, § 14, p. 829; Laws 1967, c. 305, § 1, p. 828; Laws 1969, c. 407, § 3, p. 1407; Laws 1987, LB 524, § 1; Laws 1987, LB 661, § 23.

**Cross References**

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

The statutory jurisdiction of the Commission of Industrial Relations is to settle pending controversies. *NAPE v. Game & Parks Comm.*, 220 Neb. 883, 374 N.W.2d 46 (1985).

The provisions of the Teachers' Professional Negotiation Act must be exhausted by covered teachers before the action can be taken before the Commission of Industrial Relations. *Lincoln Ed. Assn. v. School Dist. of Lincoln*, 214 Neb. 895, 336 N.W.2d 587 (1983).

A uniquely personal termination of office does not constitute an industrial dispute. *Nebraska Dept. of Roads Employees Assn. v. Department of Roads*, 189 Neb. 754, 205 N.W.2d 110 (1973).

Employees covered by the Teachers' Professional Negotiations Act must await exhaustion thereof before invoking jurisdiction of the Court of Industrial Relations, but this does not deny them

the right to invoke that jurisdiction. *Sidney Education Assn. v. School Dist. of Sidney*, 189 Neb. 540, 203 N.W.2d 762 (1973).

Labor organization organized under provisions of the act may file a petition with the Court of Industrial Relations when industrial dispute exists between parties as set forth in this section. *Mid-Plains Education Assn. v. Mid-Plains Nebraska Tech. College*, 189 Neb. 37, 199 N.W.2d 747 (1972).

While Court of Industrial Relations may not order a school district to enter into a contract, it has the power to settle a dispute. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

Judicial remedies given employee discharged for joining labor union inadequate. *American Federation of State, Co., & Mun. Emp. v. Woodward*, 406 F.2d 137 (8th Cir. 1969).

**48-810.01 State or political subdivision; exempt from contract with labor organization.**

Notwithstanding any other provision of law, the State of Nebraska and any political or governmental subdivision thereof cannot be compelled to enter into any contract or agreement, written or otherwise, with any labor organization concerning grievances, labor disputes, rates of pay, hours of employment or conditions of work.

**Source:** Laws 1967, c. 304, § 2, p. 827.

If a school district refuses to recognize a teachers organization it cannot be compelled to do so, and the problems are then for solution by the Court of Industrial Relations. *Sidney Education Assn. v. School Dist. of Sidney*, 189 Neb. 540, 203 N.W.2d 762 (1973).

While Court of Industrial Relations may not order a school district to enter into a contract, it has the power to settle a dispute. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

**48-810.02 Repealed. Laws 1969, c. 407, § 8.****48-811 Commission; filing of petition; effect.**

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

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

#### Cross References

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

The statutory words employment status mean that no employer may without cause change an employee's status as an employee under this section, pending disposition of the petition. *Transport Workers v. Transit Auth. of Omaha*, 216 Neb. 455, 344 N.W.2d 459 (1984).

Prior to its amendment, this section did not give the Commission of Industrial Relations jurisdiction to generally find and declare what is known elsewhere in labor law as "unfair labor

practices". *University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 277 N.W.2d 529 (1979).

Labor organization organized under provisions of the act may file a petition with the Court of Industrial Relations when industrial dispute exists between the parties as set forth in section 48-810, R.S.Supp.,1969. *Mid-Plains Education Assn. v. Mid-Plains Nebraska Tech. College*, 189 Neb. 37, 199 N.W.2d 747 (1972).

#### **48-811.01 Docket fee; disposition.**

Any person who files a petition with the Commission of Industrial Relations pursuant to section 48-811 shall, at the time of such filing, pay a docket fee of one hundred dollars to the clerk of such commission. All fees so collected shall be deposited in the state treasury and by the State Treasurer credited to the General Fund.

**Source:** Laws 1983, LB 617, § 1.

#### **48-811.02 School district, educational service unit, or community college; appointment of special master; decision; additional proceeding.**

(1) This section shall apply only if the employer is a school district, an educational service unit, or a community college, and this section shall not apply if the employer is the state or any other political subdivision of the state.

(2) After a petition has been filed under section 48-811, if the parties are eligible pursuant to subsection (1) of this section and both parties agree, they may request the appointment of a special master. The commission shall provide the parties with the names of five individuals qualified to serve as the special master. If the parties cannot agree on an individual, each party shall alternately strike names. The remaining individual shall serve as the special master. The special master shall have the authority to:

- (a) Determine whether the issues are ready for adjudication;
- (b) Identify for resolution terms and conditions of employment that are in dispute and which were negotiated in good faith but upon which no agreement was reached;
- (c) Accept stipulations;
- (d) Schedule hearings;
- (e) Prescribe rules of conduct for the hearings;
- (f) Order additional mediation if necessary; and

(g) Take any other action which may aid in resolution of the industrial dispute.

(3) The special master may consult with a party ex parte only with the concurrence of all parties.

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

(5) Should either party to a special master proceeding be dissatisfied with the special master's decision, such party shall have the right to file an action with the commission seeking a determination of terms and conditions of employment pursuant to section 48-818. Such proceeding shall not constitute an appeal of the special master's decision, but rather shall be heard by the commission as an action brought pursuant to section 48-818. The commission shall resolve, pursuant to the mandates of such section, all of the issues identified by either party and which were recognized by the special master as an industrial dispute. Such action shall be filed within thirty days after the filing with the commission of the decision of the special master or the decision of the special master shall be deemed final and binding.

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

**Source:** Laws 1995, LB 365, § 3.

#### **48-812 Commission; proceedings; appeal.**

Except as modified by the commission under section 48-809 or the other provisions of the Industrial Relations Act, proceedings before the commission shall conform to the code of civil procedure applicable to the district courts of the state and appeals from its final orders shall be taken in the same manner and time as appeals from the district court, except that an order determining a bargaining unit or units shall not be appealable until after the results of the election have been certified by the commission. Appeals shall be heard and disposed of in the appellate court in the manner provided by law.

**Source:** Laws 1947, c. 178, § 12, p. 590; Laws 1979, LB 444, § 4; Laws 1986, LB 809, § 4; Laws 1991, LB 732, § 116; Laws 1992, LB 360, § 28.

1. Right to appeal
2. Manner of consideration
3. Miscellaneous

#### **1. Right to appeal**

A party appealing from an order of the Commission of Industrial Relations is not required to file a motion for new trial before the commission as a prerequisite to an appeal to the Nebraska Supreme Court. *Fraternal Order of Police v. County of Adams*, 205 Neb. 682, 289 N.W.2d 535 (1980); *Plattsmouth Police Dept. Collective Bargaining Committee v. City of Plattsmouth*, 205 Neb. 567, 288 N.W.2d 729 (1980).

In the absence of a specific statute requiring it, the filing of a motion for new trial is not a prerequisite to the appeal of a decision of an administrative body. This section creates no such requirement for appeals from the Commission of Industrial Relations. *Plattsmouth Pol. Dept. Collective Bargaining Committee v. City of Plattsmouth*, 205 Neb. 567, 288 N.W.2d 729 (1980).

An order of the Court of Industrial Relations establishing bargaining units is a final order under this section, and becomes

immediately appealable. *American Assn. of University Professors v. Board of Regents*, 198 Neb. 243, 253 N.W.2d 1 (1977).

## 2. Manner of consideration

In reviewing the findings and order of the Commission of Industrial Relations, the Supreme Court will only consider whether the order of the commission is supported by substantial evidence, whether the commission acted within the scope of its authority, and whether its action was arbitrary, capricious, or unreasonable. *Fraternal Order of Police v. County of Adams*, 205 Neb. 682, 289 N.W.2d 535 (1980).

Review of collective bargaining decision by Court of Industrial Relations is in manner provided for disposition of equity cases. *American Fed. S., C., & M. Emp., AFL-CIO v. County of Lancaster*, 196 Neb. 89, 241 N.W.2d 523 (1976).

Appeals from the Court of Industrial Relations are to be heard and disposed of de novo, but the superior position of the

original trier of fact is to be respected and accorded great weight. *Crete Education Assn. v. School Dist. of Crete*, 193 Neb. 245, 226 N.W.2d 752 (1975); *Mid-Plains Education Assn. v. Mid-Plains Nebraska Tech. College*, 189 Neb. 37, 199 N.W.2d 747 (1972).

## 3. Miscellaneous

Adversary proceedings before the Commission of Industrial Relations must conform to the code of civil procedure applicable to district courts. *IAFF Local 831 v. City of No. Platte*, 215 Neb. 89, 337 N.W.2d 716 (1983).

An intervenor in a proceeding before the Commission of Industrial Relations may be required to make a reasonable showing of interest in support of the intervention. *American Assn. of University Professors v. Board of Regents*, 203 Neb. 628, 279 N.W.2d 621 (1979).

## **48-813 Commission; notice of pendency of proceedings; service; response; filing; hearing; waiver of notice.**

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

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

(3) Any party, including the State of Nebraska or any of its employer-representatives as defined in section 81-1371 or any political subdivision of the State of Nebraska, may waive such notice and may enter a voluntary appearance in any matter in the Commission of Industrial Relations. The giving of such notice in such manner shall subject the employers, the labor organiza-

tions, and the persons therein to the jurisdiction of the Commission of Industrial Relations.

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

The Commission of Industrial Relations, as an administrative body, has only that authority specifically conferred upon it by statute or by construction necessary to achieve the purpose of the relevant act. *Jolly v. State*, 252 Neb. 289, 562 N.W.2d 61 (1997).

Under the Industrial Relations Act, section 48-801 et seq., and the State Employees Collective Bargaining Act, section 81-1369 et seq., the Commission of Industrial Relations does not have the statutory authority to entertain or grant motions for sum-

mary judgment. *Jolly v. State*, 252 Neb. 289, 562 N.W.2d 61 (1997).

A city attorney is not a "principal officer" within the meaning of that phrase in this section. *Communication Workers of America, AFL-CIO v. City of Hastings*, 198 Neb. 668, 254 N.W.2d 695 (1977).

The provision that a case shall be heard within sixty days and order entered thirty days thereafter is directory and not mandatory. *Local Union No. 647 v. City of Grand Island*, 196 Neb. 693, 244 N.W.2d 515 (1976).

#### **48-814 Commission; employees; compensation.**

The Commission of Industrial Relations may employ such expert accountants, engineers, stenographers, attorneys, and other employees as the commission finds necessary. Officers and employees of the commission, whose salaries are not fixed by law, shall be paid such compensation as may be fixed by the commission with the approval of the Governor.

**Source:** Laws 1947, c. 178, § 14, p. 591; Laws 1955, c. 78, § 2, p. 233; Laws 1974, LB 819, § 8.

#### **48-815 Commission; seal; attendance of witnesses and parties; subpoena.**

The commission shall provide itself with a proper seal and shall have the power and authority to issue subpoenas and to compel the attendance of witnesses and parties and to compel the production of relevant books, correspondence, files, records, and accounts of any person, corporation, association, or labor organization affected, and to make any and all investigations necessary to ascertain the truth in regard to the matters before the commission. Subpoenas for the production of books, correspondence, files, records and accounts shall be issued by the commission only after notice to the owner and person in possession thereof and opportunity to be heard as to the relevancy of such subpoena.

**Source:** Laws 1947, c. 178, § 15, p. 591; Laws 1974, LB 819, § 9.

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

(1) After a petition has been filed under section 48-811, the clerk shall immediately notify the commission which shall promptly take such preliminary proceedings as may be necessary to ensure prompt hearing and speedy adjudication of the industrial dispute. The commission shall have power and authority upon its own initiative or upon request of a party to the dispute to make such temporary findings and orders as may be necessary to preserve and protect the status of the parties, property, and public interest involved pending final determination of the issues. In the event of an industrial dispute between an employer and an employee or a labor organization when such employer and employee or labor organization have failed or refused to bargain in good faith concerning the matters in dispute, the commission may order such bargaining to begin or resume, as the case may be, and may make any such order or orders as may be appropriate to govern the situation pending such bargaining. The

commission shall require good faith bargaining concerning the terms and conditions of employment of its employees by any employer. Upon the request of either party, the commission shall require the parties to an industrial dispute to submit to mediation or factfinding. Upon the request of both parties, a special master may be appointed if the parties are within the provisions of section 48-811.02. The commission shall appoint mediators, factfinders, or special masters for such purpose. Such orders for bargaining, mediation, factfinding, or a special master proceeding may be issued at any time during the pendency of an action to resolve an industrial dispute. To bargain in good faith shall mean the performance of the mutual obligation of the employer and the labor organization to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

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

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

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

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

administrators employed by a Class V school district, except the exempt administrators, may form a separate bargaining unit represented either by the same bargaining agent for all collective-bargaining purposes as the teachers and other certificated employees or by another collective-bargaining agent of such administrators' choice. If a separate bargaining unit is formed by election as provided in section 48-838, a Class V school district shall recognize the bargaining unit and its agent for all purposes of collective bargaining. Such separate bargaining unit may also be recognized by a Class V school district as provided in subsection (2) of this section.

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

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

(6) A party to an action filed with the commission may request the commission to send survey forms or data request forms. The requesting party shall prepare its own survey forms or data request forms and shall provide the commission the names and addresses of the entities to whom the documents shall be sent, not to exceed twenty addresses in any case. All costs resulting directly from the reproduction of such survey or data request forms and the cost of mailing such forms shall be taxed by the commission to the requesting party. The commission shall have the authority (a) to make studies and analyses of and act as a clearinghouse of information relating to conditions of employment of public employees throughout the state, (b) to request from any government, and such governments are authorized to provide, such assistance, services, and data as will enable it properly to carry out its functions and powers, (c) to conduct studies of problems involved in representation and negotiation, including, but not limited to, those subjects which are for determination solely by the appropriate legislative body, and make recommendations from time to time for legislation based upon the results of such studies, (d) to make available to employee organizations, governments, mediators, factfinding boards and joint study committees established by governments, and employee organizations statistical data relating to wages, benefits, and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve complex issues in negotiations, and (e) to establish, after consulting representatives of employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators, special masters, or members of factfinding boards.

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

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

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

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

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

#### Cross References

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

1. Commission authority
2. Collective bargaining units
3. Miscellaneous

#### 1. Commission authority

The Commission of Industrial Relations has the statutory authority to enter temporary orders concerning wages, hours, or terms and conditions of employment, pending the resolution of an industrial dispute. *Transport Workers v. Transit Auth. of Omaha*, 216 Neb. 455, 344 N.W.2d 459 (1984).

The authority granted to the Commission of Industrial Relations under this section is limited in nature. *University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 277 N.W.2d 529 (1979).

While Court of Industrial Relations may not order a school district to enter into a contract, it has the power to settle a dispute. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

Court of Industrial Relations does not have power to order collective bargaining by a public utility operated by government in a proprietary capacity. *International Brotherhood of Electrical Workers v. City of Hastings*, 179 Neb. 455, 138 N.W.2d 822 (1965).

#### 2. Collective bargaining units

A deviation clause in a teacher contract falls under the category of "wages, hours, and other terms of employment, or any question arising thereunder," as stated in subsection (1) of this section, and is a subject of mandatory bargaining. *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011*, 269 Neb. 956, 698 N.W.2d 45 (2005).

Pursuant to subsection (3)(a) of this section, a single bargaining unit cannot include supervisors and those whom the supervisors responsibly direct. *PLPSO v. Papillion/La Vista School Dist.*, 252 Neb. 308, 562 N.W.2d 335 (1997).

The enactment of subsection (3)(c) of this section, exempting certain Class V school district administrators from the operation of subsection (3)(a), does not evidence a legislative purpose or intent to permit like administrators in school districts of whatever class to do the same. *PLPSO v. Papillion/La Vista School Dist.*, 252 Neb. 308, 562 N.W.2d 335 (1997).

A community of interest is presumed among all police officers holding positions subordinate to the chief of the department and his or her immediate assistants. *City of Omaha v. Omaha Police Union Local 101*, 222 Neb. 197, 382 N.W.2d 613 (1986).

Supervisory or managerial personnel may not enter into a bargaining unit with rank and file employees and may not retain the same bargaining agent. *Nebraska Assn. of Pub. Emp. v. Nebraska Game & Parks Commission*, 197 Neb. 178, 247 N.W.2d 449 (1976).

This section in classifying officers of municipal police and fire departments differently in regard to membership in bargaining units from officers in other departments is not thereby rendered unconstitutional as special legislation. *Local Union No. 647 v. City of Grand Island*, 196 Neb. 693, 244 N.W.2d 515. (1976).

The 1969 amendment authorizing public employers to recognize employee organizations and to negotiate collectively cannot

be attacked as unconstitutional by city which invokes its provisions. *City of Grand Island v. American Federation of S. C. & M. Employees*, 186 Neb. 711, 185 N.W.2d 860 (1971).

### 3. Miscellaneous

Police response time to a two-officer 911 emergency dispatch call relates to officer safety, and, thus, the manner in which it is determined affects a condition of employment. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

For purposes of bringing error proceedings, this statute does not require public employers to act in a judicial manner when administering pay scale grievances. *Kropp v. Grand Island Pub. Sch. Dist. No. 2*, 246 Neb. 138, 517 N.W.2d 113 (1994).

Subsection (1) of this section requires good faith bargaining, but only after a petition has been filed invoking the jurisdiction of the commission. Subsection (4) of this section does not require good faith bargaining; it simply authorizes public employers to negotiate with unions regarding the settlement of grievances and the establishment of written agreements as to wages, hours, and other conditions of employment. Subsection (5) of this section requires good faith bargaining, but only after an employer receives a request to bargain from the union. This section, unlike the National Labor Relations Act, does not establish a duty to bargain. Without this statutory authorization, a public employer would not have the right to bargain with public employees. *Kuhl v. Skinner*, 245 Neb. 794, 515 N.W.2d 641 (1994).

#### 48-816.01 Hearing officer; appointment; when.

The presiding officer of the commission may, when he or she deems it necessary to expedite the determination of cases filed with the commission, appoint a hearing officer to hear evidence and make recommended findings and orders in any case or to make recommended determinations after a representation election has been ordered and during the course of such election. Any person appointed as a hearing officer shall be an attorney admitted to practice in Nebraska and shall be knowledgeable in the rules of civil procedure and evidence applicable to the district courts.

**Source:** Laws 1979, LB 444, § 6; Laws 2007, LB472, § 6.

#### 48-816.02 Temporary relief; initial hearing; when held.

In any request for temporary relief under the Industrial Relations Act, the commission shall mandatorily hold the initial hearing within ten days from the date of the filing.

**Source:** Laws 1984, LB 832, § 4; Laws 1986, LB 809, § 6.

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

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

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

#### Cross References

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

The provision prohibiting a retroactive order means that the orders of the Court of Industrial Relations cannot apply to a period prior to that embraced within the dispute submitted to it. *Crete Education Assn. v. School Dist. of Crete*, 193 Neb. 245, 226 N.W.2d 752 (1975).

### **48-818 Commission; findings; order; powers; content; modification.**

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

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

#### **Cross References**

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

1. Commission of Industrial Relations, powers and duties
2. Establishing wage rates
3. Miscellaneous

#### **I. Commission of Industrial Relations, powers and duties**

A prevalence determination by the Commission of Industrial Relations is a subjective determination, and the standard inherent in the word "prevalent" will be one of general practice, occurrence, or acceptance. *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist.* No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

A valid prevalence analysis by the Commission of Industrial Relations does not require as a prerequisite a complete identity of provisions in the array. *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist.* No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

When discussing the Commission of Industrial Relations' authority under this section, the Nebraska Supreme Court has acknowledged that a prevalent wage rate to be determined by the commission must almost invariably be determined after consideration of a combination of factors. *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist.* No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

In industrial disputes involving governmental services, the Commission of Industrial Relations is empowered to establish rates of pay and conditions of employment comparable to those prevalent for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions. Employers selected for the comparative array must be demonstrated to be similar. The Commission is required to take into consideration the overall compensation received by the employees, including all fringe benefits, but dollar-for-dollar costing out of each benefit is not required. The Commission's findings and order may establish or alter the scale of wages, including establishing wage-step progression schedules. *Lincoln Firefighters Assn. Local 644 v. City of Lincoln*, 253 Neb. 837, 572 N.W.2d 369 (1998).

The Commission of Industrial Relations is without the power to declare that interest shall be due on its orders from the date of their entry since the power is not specifically conferred by statute, and such a construction is not necessary to accomplish the plain purpose of the act. *IBEW Local 763 v. Omaha P.P. Dist.*, 209 Neb. 335, 307 N.W.2d 795 (1981).

The Commission of Industrial Relations does not have authority to alter the terms of an existing agreement. *Transport Workers of America v. Transit Authority of City of Omaha*, 205 Neb. 26, 286 N.W.2d 102 (1979).

The Commission of Industrial Relations has no jurisdiction to hear breach of contract cases. Such cases must be heard in a court of competent jurisdiction. The Commission of Industrial Relations also lacks jurisdiction to grant declaratory or equitable relief, both of which are judicial functions and may not be exercised by an administrative agency. *Transport Workers of America v. Transit Authority of City of Omaha*, 205 Neb. 26, 286 N.W.2d 102 (1979); *State Coll. Ed. Assoc. & Chadron State Coll. v. Bd. of Trustees*, 205 Neb. 107, 286 N.W.2d 433 (1979).

The Commission of Industrial Relations cannot in a section 48-818 case obtain evidence on its own motion unless the moving party has first made a prima facie case of noncomparability with prevalent conditions. *General Driver and Helpers Union v. City of West Point*, 204 Neb. 238, 281 N.W.2d 772 (1979).

The Commission of Industrial Relations' authority is limited to the provisions of this section which, at the time, provide that Commission of Industrial Relations' findings and orders may only establish or alter the scale of wages, hours of labor, or condition of employment. *University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 277 N.W.2d 529 (1979).

While Court of Industrial Relations may not order a school district to enter into a contract, it has the power to settle a dispute. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

## 2. Establishing wage rates

Employees have no vested right to placement on the top step of a new pay plan based upon 1 year of employment, and the employer does not act arbitrarily or capriciously in placing the employees on the new pay plan. *Nebraska Pub. Emp. v. City of Omaha*, 247 Neb. 468, 528 N.W.2d 297 (1995).

In a case to establish or alter the scale of wages under this section, the burden is on the moving party to demonstrate that existing wages are not comparable to the prevalent wage rate. *Douglas Cty. Health Dept. Emp. Assn. v. Douglas Cty.*, 229 Neb. 301, 427 N.W.2d 28 (1988).

Where large number of job classifications exist and established lines of progression and relationships are present, key job classifications may be utilized to establish wages, provided reasonable requirements of prevalence and relevance are met. *IBEW Local 1536 v. City of Fremont*, 216 Neb. 357, 345 N.W.2d 291 (1984).

With regard to comparability, the Commission of Industrial Relations will enter an order either adjusting condition of employment or find subject city's condition to be lesser or greater than prevalent and adjust overall compensation accordingly. *IBEW Local 1536 v. City of Fremont*, 216 Neb. 357, 345 N.W.2d 291 (1984).

The Commission of Industrial Relations is required to consider every possible array which is sufficiently representative so as to determine whether the wage paid or benefits given are comparable. The Commission of Industrial Relations' determination of an array consisting of Nebraska counties excluding outstate counties fully complied with the statutory standard. *Lincoln Co. Sheriff's Emp. Assn. v. Co. of Lincoln*, 216 Neb. 274, 343 N.W.2d 735 (1984).

Absent evidence to show dissimilarities of work performed, or working conditions, where there are local comparisons which can or should be made, the Commission of Industrial Relations cannot disregard them and create an array which is not reflec-

tive of the local labor market. The use of the "key job" classification system in situations involving a large number of employee classifications is approved. *AFSCME Local No. 2088 v. County of Douglas*, 208 Neb. 511, 304 N.W.2d 368 (1981).

Determinations made as to the acceptance and rejection of proposed "comparables" were within the expertise of the commission, were made after consideration and comparison of the evidence, and were arrived at by methods in accord with the requirements of this section, and are affirmed. *Fraternal Order of Police v. County of Adams*, 205 Neb. 682, 289 N.W.2d 535 (1980).

Prevalent wage rates for firemen must be determined by comparison with wages paid for comparable services in similar labor markets, determined upon the factors in this section, and adjusted for economic dissimilarities shown to exist with the compared markets. *Lincoln Fire Fighters Assn. v. City of Lincoln*, 198 Neb. 174, 252 N.W.2d 607 (1977).

In establishing wages, the Court of Industrial Relations must consider overall compensation, including fringe benefits, and it may compare with wages in similar labor markets. *Omaha Assn. of Firefighters v. City of Omaha*, 194 Neb. 436, 231 N.W.2d 710 (1975).

In selecting school districts for purpose of comparison, the ultimate question is whether those selected are sufficiently similar to the subject district and in establishing wage rates the entire situation, including fringe benefits, should be considered. *Crete Education Assn. v. School Dist. of Crete*, 193 Neb. 245, 226 N.W.2d 752 (1975).

## 3. Miscellaneous

Act establishing Court of Industrial Relations does not violate any constitutional provision and the standards for its guidance are adequate. *Orleans Education Assn. v. School Dist. of Orleans*, 193 Neb. 675, 229 N.W.2d 172 (1975).

This section lists the factors that the Court of Industrial Relations should consider in establishing wage scales, hours of labor, and conditions of employment. *International Brotherhood of Electrical Workers v. City of Hastings*, 179 Neb. 455, 138 N.W.2d 822 (1965).

## 48-819 Commission; orders; effect; contempt.

Orders, temporary or final, entered by the Commission of Industrial Relations shall be binding on all parties involved therein and shall be deemed to be of the same force and effect as like orders entered by a district court and shall be enforceable in appropriate proceedings in the courts of this state. Failure on the part of any person to obey any order, decree or judgment of the Commission of Industrial Relations, either temporary or final, shall constitute a contempt of such tribunal in all cases where a similar failure to obey a similar order, decree or judgment of a district court would constitute a contempt of such tribunal, and upon application to the appropriate district court of the state shall be dealt with as would a similar contempt of the said district court.

**Source:** Laws 1947, c. 178, § 19, p. 593.

Once an order is entered by the Commission of Industrial Relations, the rights of the parties are established, but a suit to enforce those rights must be brought in the district court; and, while an order of the commission, once sued upon, may bear prejudgment interest, the commission is not authorized to order payment of interest as part of its order. *IBEW Local 763 v. Omaha P.P. Dist.*, 209 Neb. 335, 307 N.W.2d 795 (1981).

The Commission of Industrial Relations cannot enforce its own order, it must resort to the appropriate district court.

*University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 277 N.W.2d 529 (1979).

To pass scrutiny of Constitution of the United States, Nebraska Court of Industrial Relations, in case within its jurisdiction, must be deemed to have sufficient power to fully vindicate, preserve, and protect a federal constitutional right. *Teamsters Pub. Emp. U. Loc. 594 v. City of West Point*, 338 F.Supp. 927 (D. Neb. 1972).

### 48-819.01 Commission; power to make findings and enter orders; when.

Whenever it is alleged that a party to an industrial dispute has engaged in an act which is in violation of any of the provisions of the Industrial Relations Act,

or which interferes with, restrains, or coerces employees in the exercise of the rights provided in such act, the commission shall have the power and authority to make such findings and to enter such temporary or permanent orders as the commission may find necessary to provide adequate remedies to the injured party or parties, to effectuate the public policy enunciated in section 48-802, and to resolve the dispute.

**Source:** Laws 1979, LB 444, § 8; Laws 1986, LB 809, § 7.

The Commission on Industrial Relations' issuance of cease and desist orders is the equivalent of the commission ordering a party to cease and desist violating provisions of the Industrial Relations Act. Such orders are appropriate and adequate remedies under this section and subsection (2) of section 48-825. Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002, 265 Neb. 8, 654 N.W.2d 166 (2002).

Under the facts presented in this case, the order of the Commission on Industrial Relations to post notices regarding

the employer's violation of the Industrial Relations Act was not an appropriate and adequate remedy under this section and subsection (2) of section 48-825. Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002, 265 Neb. 8, 654 N.W.2d 166 (2002).

The Commission of Industrial Relations has the authority to allow interest on an award. IAFF Local 831 v. City of No. Platte, 215 Neb. 89, 337 N.W.2d 716 (1983).

**48-820 Repealed. Laws 1969, c. 407, § 8.**

**48-821 Public service; interference; coercion; violation; penalty.**

It shall be unlawful for any person:

(1) To hinder, delay, limit or suspend the continuity or efficiency of any governmental service or any governmental service in a proprietary capacity, or the service of any public utility, by lockout, strike, slowdown, or other work stoppage;

(2) To coerce, instigate, induce, conspire with, intimidate or encourage any person to participate in any lockout, strike, slowdown or other work stoppage, which would hinder, delay, limit or suspend the continuity or efficiency of any governmental service or governmental service in a proprietary capacity, or the service of any public utility; or

(3) To aid or assist any such lockout, strike, slowdown, or other work stoppage by giving direction or guidance in the conduct of any such lockout, strike, slowdown or other work stoppage or by providing funds for the conduct or direction thereof, or for the payment of strike, unemployment or other benefits to those participating therein.

Any person who willfully violates any of the provisions of this section shall be guilty of a Class I misdemeanor.

**Source:** Laws 1947, c. 178, § 21, p. 594; Laws 1977, LB 40, § 298.

**48-822 Employees; no requirement to work without consent.**

No provision of the Industrial Relations Act shall be construed to require an employee to work without his or her consent, or to make illegal the quitting of his or her job or withdrawal from his or her place of employment unless done in concert or by agreement with others.

**Source:** Laws 1947, c. 178, § 22, p. 594; Laws 1986, LB 809, § 8.

**48-823 Act; liberal construction; commission; powers.**

The Industrial Relations Act and all grants of power, authority, and jurisdiction made in such act to the commission shall be liberally construed to effectuate the public policy enunciated in section 48-802. All incidental powers

necessary to carry into effect the Industrial Relations Act are hereby granted to and conferred upon the commission.

**Source:** Laws 1947, c. 178, § 23, p. 594; Laws 1986, LB 809, § 9.

Supervisory or managerial personnel may not enter into a bargaining unit with rank and file employees and may not retain the same bargaining agent. Nebraska Assn. of Pub. Emp. v. Nebraska Game & Parks Commission, 197 Neb. 178, 247 N.W.2d 449 (1976).

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

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

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

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

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

(c) Encourage or discourage membership in any employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment;

(d) Discharge or discriminate against an employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under the Industrial Relations Act or because the employee has formed, joined, or chosen to be represented by any employee organization;

(e) Refuse to negotiate collectively with representatives of collective-bargaining agents as required by the Industrial Relations Act;

(f) Deny the rights accompanying certification or recognition granted by the Industrial Relations Act; and

(g) Refuse to participate in good faith in any impasse procedures for employees as set forth in the Industrial Relations Act.

(3) It is a prohibited practice for any employee, employee organization, or bargaining unit or for any representative or collective-bargaining agent to:

(a) Interfere with, restrain, coerce, or harass any employee with respect to any of the employee's rights granted by the Industrial Relations Act;

(b) Interfere with, restrain, or coerce an employer with respect to rights granted by the Industrial Relations Act or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances;

(c) Refuse to bargain collectively with an employer as required by the Industrial Relations Act; and

(d) Refuse to participate in good faith in any impasse procedures for employees as set forth in the Industrial Relations Act.

(4) The expressing of any view, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, is not evidence of any unfair labor practice under any of the provisions of the Industrial Relations Act if such expression contains no threat of reprisal or force or promise of benefit.

**Source:** Laws 1995, LB 382, § 1.

In an appeal from a Commission of Industrial Relations order regarding prohibited practices stated in this section, an appellate court will affirm a factual finding of the commission, if, considering the whole record, a trier of fact could reasonably conclude that the finding is supported by a preponderance of the competent evidence. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

The “deliberate and reckless untruth” standard of the National Labor Relations Act is not the appropriate method to analyze the speech of public service employees under the Industrial Relations Act. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

An analysis of a violation under this section ends if the county commissioners had no knowledge of any discharged employee’s union organizing activities. *Nebraska Public Employees Local Union 251 v. Otoe Cty.*, 257 Neb. 50, 595 N.W.2d 237 (1999).

In an appeal from an order of the Commission of Industrial Relations regarding prohibited practices under this section, concerning a factual finding, the court will affirm that finding if, considering the whole record, a trier of fact could reasonably conclude that the finding is supported by a preponderance of the competent evidence. The court will consider that fact that the commission, sitting as the trier of fact, saw and heard the witnesses and observed their demeanor while testifying and will give weight to the commission’s judgment as to credibility. *Nebraska Public Employees Local Union 251 v. Otoe Cty.*, 257 Neb. 50, 595 N.W.2d 237 (1999).

The reasoning of *Wright Line*, 251 N.L.R.B. 1083 (1980), enforced 662 F.2d 899 (1st Cir. 1981), is adopted as the means for analyzing alleged prohibited practices under this section. *Nebraska Public Employees Local Union 251 v. Otoe Cty.*, 257 Neb. 50, 595 N.W.2d 237 (1999).

### **48-825 Labor negotiations; prohibited practices; complaints; procedure.**

(1) A proceeding against a party alleging a violation of section 48-824 is commenced by filing a complaint with the commission within one hundred eighty days after the alleged violation thereby causing a copy of the complaint to be served upon the accused party. The accused party has ten days within which to file a written answer to the complaint. If the commission determines that the complaint has no basis in fact, the commission may dismiss the complaint. If the complaint has a basis in fact, the commission shall set a time for hearing. The parties may be represented by counsel, summon witnesses, and request the commission to subpoena witnesses on the requester’s behalf.

(2) The commission shall file its findings of fact and conclusions of law. If the commission finds that the party accused has committed a prohibited practice, the commission, within thirty days after its decision, shall order an appropriate remedy. Any party may petition the district court for injunctive relief pursuant to the rules of civil procedure.

(3) Any party aggrieved by any decision or order of the commission may, within thirty days after the date such decision or order is filed, appeal to the Court of Appeals.

(4) Any order or decision of the commission may be modified, reversed, or set aside by the appellate court on one or more of the following grounds and no other:

- (a) If the commission acts without or in excess of its powers;
- (b) If the order was procured by fraud or is contrary to law;
- (c) If the facts found by the commission do not support the order; and
- (d) If the order is not supported by a preponderance of the competent evidence on the record considered as a whole.

**Source:** Laws 1995, LB 382, § 2.

In an appellate court’s review of orders and decisions of the Commission of Industrial Relations involving an industrial dispute over wages and conditions of employment, the appellate court’s standard of review is as follows: Any order or decision of the commission may be modified, reversed, or set aside by the appellate court on one or more of the following grounds and no other: (1) If the commission acts without or in excess of its powers, (2) if the order was procured by fraud or is contrary to law, (3) if the facts found by the commission do not support the order, and (4) if the order is not supported by a preponderance of the competent evidence on the record considered as a whole. *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011*, 269 Neb. 956, 698 N.W.2d 45 (2005).

If the Commission of Industrial Relations finds that an accused party has committed a prohibited practice under subsection (2) of this section, it has the authority to order an appropriate remedy, and such authority is to be liberally construed to effectuate the public policy enunciated in section 48-802. *Operating Engrs. Local 571 v. City of Plattsmouth*, 265 Neb. 817, 660 N.W.2d 480 (2003).

The Commission on Industrial Relations’ issuance of cease and desist orders is the equivalent of the commission ordering a party to cease and desist violating provisions of the Industrial Relations Act. Such orders are appropriate and adequate remedies under subsection (2) of this section and section 48-819.01. *Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002*, 265 Neb. 8, 654 N.W.2d 166 (2002).

Under the facts presented in this case, the order of the Commission on Industrial Relations to post notices regarding the employer's violation of the Industrial Relations Act was not an appropriate and adequate remedy under subsection (2) of this section and section 48-819.01. *Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002*, 265 Neb. 8, 654 N.W.2d 166 (2002).

**48-826 Repealed. Laws 1969, c. 407, § 8.**

**48-827 Repealed. Laws 1969, c. 407, § 8.**

**48-828 Repealed. Laws 1969, c. 407, § 8.**

**48-829 Repealed. Laws 1969, c. 407, § 8.**

**48-830 Repealed. Laws 1969, c. 407, § 8.**

**48-831 Repealed. Laws 1969, c. 407, § 8.**

**48-832 Repealed. Laws 1969, c. 407, § 8.**

**48-833 Repealed. Laws 1969, c. 407, § 8.**

**48-834 Repealed. Laws 1969, c. 407, § 8.**

**48-835 Repealed. Laws 1969, c. 407, § 8.**

**48-836 Repealed. Laws 1969, c. 407, § 8.**

**48-837 Public employees; employee organization; bargaining.**

Public employees shall have the right to form, join, and participate in or to refrain from forming, joining, or participating in any employee organization of their own choosing. Public employees shall have the right to be represented by employee organizations to negotiate collectively with their public employers in the determination of their terms and conditions of employment and the administration of grievances arising thereunder.

**Source:** Laws 1969, c. 407, § 7, p. 1410; Laws 1986, LB 258, § 7; Laws 1986, LB 1250, § 4; Laws 1987, LB 661, § 29.

Under the provisions of Nebraska law, employees have not only a right to organize and be represented by a union but likewise have a right not to be organized and represented. *Sheldon Station Employees Assn. v. Nebraska P.P.D.*, 202 Neb. 391, 275 N.W.2d 816 (1979).

A basic consideration in bargaining unit determination is whether a community of interest exists among the employees sufficient to warrant their inclusion in a single unit. *American Assn. of University Professors v. Board of Regents*, 198 Neb. 243, 253 N.W.2d 1 (1977).

It is unlawful for the employer of a public employee to exert pressure upon him to refrain from joining a recognized bargain-

ing unit. *Local Union No. 647 v. City of Grand Island*, 196 Neb. 693, 244 N.W.2d 515 (1976).

A uniquely personal termination of employment does not violate any rights under this section. *Nebraska Dept. of Roads Employees Assn. v. Department of Roads*, 189 Neb. 754, 205 N.W.2d 110 (1973).

School teachers are public employees within terms of this act. *Sidney Education Assn. v. School Dist. of Sidney*, 189 Neb. 540, 203 N.W.2d 762 (1973).

A labor organization may invoke the jurisdiction of the Court of Industrial Relations in behalf of its affected members. *Mid-Plains Education Assn. v. Mid-Plains Nebraska Tech. College*, 189 Neb. 37, 199 N.W.2d 747 (1972).

**48-838 Collective bargaining; questions of representation; elections; non-member employee duty to reimburse; when.**

(1) The commission shall determine questions of representation for purposes of collective bargaining for and on behalf of employees and shall make rules and regulations for the conduct of elections to determine the exclusive collective-bargaining agent for employees, except that in no event shall a contract between an employer and an exclusive collective-bargaining agent act as a bar for more than three years to any other party seeking to represent employees, nor shall any contract bar for more than three years a petition by employees

seeking an election to revoke the authority of an agent to represent them. Except as provided in the State Employees Collective Bargaining Act, the commission shall certify the exclusive collective-bargaining agent for employees affected by the Industrial Relations Act following an election by secret ballot, which election shall be conducted according to rules and regulations established by the commission.

(2) The election shall be conducted by one member of the commission who shall be designated to act in such capacity by the presiding officer of the commission, or the commission may appoint the clerk of the district court of the county in which the principal office of the employer is located to conduct the election in accordance with the rules and regulations established by the commission. Except as provided in the State Employees Collective Bargaining Act, the commission shall also determine the appropriate unit for bargaining and for voting in the election, and in making such determination, the commission shall consider established bargaining units and established policies of the employer. It shall be presumed, in the case of governmental subdivisions such as municipalities, counties, power districts, or utility districts with no previous history of collective bargaining, that units of employees of less than departmental size shall not be appropriate.

(3) Except as provided in the State Employees Collective Bargaining Act, the commission shall not order an election until it has determined that at least thirty percent of the employees in an appropriate unit have requested in writing that the commission hold such an election. Such request in writing by an employee may be in any form in which an employee specifically either requests an election or authorizes the employee organization to represent him or her in bargaining, or otherwise evidences a desire that an election be conducted. Such request of an employee shall not become a matter of public record. No election shall be ordered in one unit more than once a year.

(4) Except as provided in the State Employees Collective Bargaining Act, the commission shall only certify an exclusive collective-bargaining agent if a majority of the employees voting in the election vote for the agent. A certified exclusive collective-bargaining agent shall represent all employees in the appropriate unit with respect to wages, hours, and conditions of employment, except that such right of exclusive recognition shall not preclude any employee, regardless of whether or not he or she is a member of a labor organization, from bringing matters to the attention of his or her superior or other appropriate officials.

Any employee may choose his or her own representative in any grievance or legal action regardless of whether or not an exclusive collective-bargaining agent has been certified. If an employee who is not a member of the labor organization chooses to have legal representation from the labor organization in any grievance or legal action, such employee shall reimburse the labor organization for his or her pro rata share of the actual legal fees and court costs incurred by the labor organization in representing the employee in such grievance or legal action.

The certification of an exclusive collective-bargaining agent shall not preclude any employer from consulting with lawful religious, social, fraternal, or other similar associations on general matters affecting employees so long as such contracts do not assume the character of formal negotiations in regard to

wages, hours, and conditions of employment. Such consultations shall not alter any collective-bargaining agreement which may be in effect.

**Source:** Laws 1972, LB 1228, § 4; Laws 1974, LB 819, § 10; Laws 1986, LB 809, § 10; Laws 1987, LB 661, § 30; Laws 2002, LB 29, § 1; Laws 2007, LB472, § 7.

**Cross References**

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

Before the restrictions prescribed by this section against undue fragmentation in the public employment area can be overcome, there must be strong evidence justifying the need and propriety of any additional division of a bargaining unit. *Sheldon Station Employees Assn. v. Nebraska P.P.D.*, 202 Neb. 391, 275 N.W.2d 816 (1979).

The considerations set forth in this section, in regard to collective bargaining units of employees, are not exclusive and the Commission of Industrial Relations may consider additional relevant factors in determining what bargaining unit of employees is appropriate. *American Fed. of S., C. & M. Emp. v. Counties of Douglas & Lancaster*, 201 Neb. 295, 267 N.W.2d 736 (1978).

Since the policy of the statute is opposition to undue fragmentation of bargaining units, the statute is not limited in applicabil-

ity only to those governmental subdivisions enumerated. *American Fed. of S., C. & M. Emp. v. State*, 200 Neb. 171, 263 N.W.2d 643 (1978).

House officers of the University Medical Center have a community of interest separate from graduate students and assistants sufficient to warrant a separate bargaining unit of house officers only. *House Officers Assn. v. University of Nebraska Medical Center*, 198 Neb. 697, 255 N.W.2d 258 (1977).

In determining appropriate bargaining units for public employees, the provisions of this section shall be considered and other relevant factors may be considered. *American Assn. of University Professors v. Board of Regents*, 198 Neb. 243, 253 N.W.2d 1 (1977).

**48-839 Repealed. Laws 1986, LB 809, § 11.**

**48-840 Repealed. Laws 1987, LB 782, § 4.**

**48-841 Repealed. Laws 1987, LB 782, § 4.**

**48-842 State employees; jurisdiction of commission; restricted.**

The jurisdiction of the Commission of Industrial Relations to establish salary or base salary levels or other terms of compensation for state employees shall not be invoked before the end of the 1987 regular session of the Legislature and if so invoked shall only be effective beginning with fiscal year 1987-88 and each fiscal year thereafter. The Legislature may, during the 1987 regular session, prohibit by law any order of the Commission of Industrial Relations relating to state employees for fiscal year 1987-88 if it finds such order will be inconsistent with any legislation passed during the 1987 regular session dealing with collective bargaining by state employees. The Legislature hereby finds and declares that the State Employees Collective Bargaining Act is inconsistent with an order relating to state employees for fiscal year 1987-88 and therefore such orders shall be prohibited.

**Source:** Laws 1986, LB 1250, § 3; Laws 1987, LB 661, § 31.

**Cross References**

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

**ARTICLE 9  
SECONDARY BOYCOTT**

**Cross References**

**Constitutional provisions:**

Labor organizations, see Article XV, sections 13 to 15, Constitution of Nebraska.

**Section**

- 48-901. Public policy.
- 48-902. Terms, defined.
- 48-903. Secondary boycott; unlawful.

## Section

- 48-904. Employees' right of self-organization.
- 48-905. Secondary boycott; injury to business, property, or person; damages.
- 48-906. Secondary boycott; temporary injunction; grounds.
- 48-907. Remedies; cumulative.
- 48-908. Remedies; venue; process.
- 48-909. Labor organization; suits against; designation.
- 48-910. Sections; violations; penalty.
- 48-911. Right to strike; right to work; freedom of speech.
- 48-912. Sections; construction.

**48-901 Public policy.**

The public policy of the state as to employment relations in the furtherance of which sections 48-901 to 48-912 are passed is declared to be as follows:

(1) It recognizes that there are three major interests involved, namely: That of the public, the employee, and the employer. These three interests are to a considerable extent interrelated. It is the policy of the state to protect and promote each of these interests with due regard to the situation and to the rights of the others.

(2) Industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services are promotive of all of these interests. They are largely dependent upon the maintenance of fair, friendly and mutually satisfactory employment relations and the availability of suitable machinery for the peaceful adjustment of whatever controversies may arise. It is recognized that certain employers, including farmers and farmer cooperatives, in addition to their general employer problems, face special problems arising from perishable commodities and seasonal production which require adequate consideration. It is also recognized that whatever may be the rights of disputants with respect to each other in any controversy regarding employment relations, they should not be permitted, in the conduct of their controversy, to intrude directly into the primary rights of third parties to earn a livelihood, transact business and engage in the ordinary affairs of life by any lawful means and free from molestation, interference, restraint or coercion.

(3) Negotiation of terms and conditions of work should result from voluntary agreement between employer and employee. For the purpose of such negotiation an employee has the right, if he desires, to associate with others in organizing and bargaining collectively through representatives of his own choosing, without intimidation or coercion from any source.

(4) It is the policy of the state, in order to preserve and promote the interests of the public, the employee, and the employer alike, to establish standards of fair conduct in employment relations and to provide a convenient and expeditious method through the courts by which these interests may have their respective rights and obligations adjudicated. While limiting individual and group rights of aggression and defense, the state substitutes processes of justice for the more primitive methods of trial by combat.

**Source:** Laws 1959, c. 231, § 1, p. 806.

**48-902 Terms, defined.**

As used in sections 48-901 to 48-912, unless the context otherwise requires:

(1) Labor organization shall mean any organization, association, or group of any kind, or any agency or employee representation committee or plan,

whether incorporated or unincorporated, which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(2) Labor dispute shall mean any controversy between an employer and the majority of his or her employees concerning the right or process or details of collective bargaining or the designation of an employee representative. Any organization with which either the employer or such majority is affiliated may be considered a party to the labor dispute;

(3) Employer shall mean a person who engages the services of an employee, and includes any person acting on behalf of an employer within the scope of his or her authority, express or implied, but shall not include the state or any political subdivision thereof, or any labor organization or anyone acting in behalf of such organization other than when it is acting as an employer in fact;

(4) Person shall include one or more individuals, partnerships, limited liability companies, associations, corporations, legal representatives, trustees, or receivers; and

(5) Secondary boycott shall mean combining or conspiring to cause or threaten to cause injury to one with whom no labor dispute exists, whether by (a) withholding patronage, labor, or other beneficial business intercourse, or by intentionally and unreasonably hindering or delaying the same, (b) picketing, (c) refusing to handle, install, use, or work on particular materials, equipment, or supplies, (d) hindering or preventing, by threats, intimidation, force, coercion or sabotage, the obtaining, use, or disposition of materials, equipment, or services, or (e) by any other unlawful means, in order to bring him or her against his or her will into a concerted plan to coerce or inflict damage upon another.

**Source:** Laws 1959, c. 231, § 2, p. 808; Laws 1993, LB 121, § 295.

#### **48-903 Secondary boycott; unlawful.**

It shall be unlawful for any person to engage in a secondary boycott as herein defined, notwithstanding the provisions of any contract to the contrary; *Provided*, that nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft.

**Source:** Laws 1959, c. 231, § 3, p. 809.

#### **48-904 Employees' right of self-organization.**

Employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall also have the right to refrain from any or all of such activities.

**Source:** Laws 1959, c. 231, § 4, p. 809.

#### **48-905 Secondary boycott; injury to business, property, or person; damages.**

Any person injured in his business, property or person by reason of any unlawful act as defined in section 48-903, may sue therefor in the district courts of this state, and shall recover the damages sustained by him, trebled, his reasonable attorneys' fees and the cost of the litigation.

**Source:** Laws 1959, c. 231, § 5, p. 809.

**48-906 Secondary boycott; temporary injunction; grounds.**

Any person injured or threatened with injury in his business, property or person by reason of any commission or threat of an unlawful act as provided in section 48-903 may, if the remedy provided by section 48-905 be inadequate, obtain injunctive relief, including temporary relief pending trial upon showing of an emergency, in the district courts of this state in accordance with the statutes, rules and practices applicable in other civil cases.

**Source:** Laws 1959, c. 231, § 6, p. 809.

**48-907 Remedies; cumulative.**

The remedies herein provided are cumulative and shall be in addition to any other remedies, civil or criminal, now or hereafter provided by law.

**Source:** Laws 1959, c. 231, § 7, p. 809.

**48-908 Remedies; venue; process.**

An action under sections 48-901 to 48-912 may be brought in the district court of the county where the cause of action or some part thereof arose, or in the county where the defendant labor organization, or some one of the defendant labor organizations, maintains an office, or in which its agents are engaged in acting for or representing employees or in the county where the plaintiff resides and summons may be served upon the defendant labor organization or some one of the defendant labor organizations.

**Source:** Laws 1959, c. 231, § 8, p. 809.

**Cross References**

For other provisions for actions against labor organizations, see sections 25-313 and 25-530.08.

**48-909 Labor organization; suits against; designation.**

In any action brought under sections 48-901 to 48-912, any labor organization may be sued in its own name and without identification of any of the persons who are its members.

**Source:** Laws 1959, c. 231, § 9, p. 810; Laws 1983, LB 447, § 73.

**Cross References**

For other provisions for actions against labor organizations, see sections 25-313 and 25-530.08.

**48-910 Sections; violations; penalty.**

Any individual, association, or corporation that shall violate any of the provisions of sections 48-901 to 48-912 shall be guilty of a Class II misdemeanor.

**Source:** Laws 1959, c. 231, § 10, p. 810; Laws 1977, LB 40, § 299.

**48-911 Right to strike; right to work; freedom of speech.**

Except as otherwise specifically provided, nothing contained in sections 48-901 to 48-912 shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in sections 48-901 to 48-912 be so construed as to invade unlawfully the right to freedom of speech.

**Source:** Laws 1959, c. 231, § 11, p. 810.

**48-912 Sections; construction.**

It is the intention of the Legislature that sections 48-901 to 48-912 shall operate according to their terms to the full extent permitted by the Constitutions of the State of Nebraska and of the United States of America. In the event any section or part of sections 48-901 to 48-912, or the application thereof to any person or situation shall be held unconstitutional, sections 48-901 to 48-912 shall nevertheless continue in full effect with respect to all parts and applications thereof not so held to be unconstitutional.

**Source:** Laws 1959, c. 231, § 12, p. 810.

**ARTICLE 10****AGE DISCRIMINATION**

## Section

- 48-1001. Act, how cited; discrimination in employment because of age; policy; declaration of purpose.
- 48-1002. Terms, defined.
- 48-1003. Limitation on prohibitions; practices not prevented or precluded.
- 48-1004. Unlawful employment practices; enumerated.
- 48-1005. Violations; penalty.
- 48-1006. Repealed. Laws 2007, LB 265, § 40.
- 48-1007. Equal Opportunity Commission; enforcement; powers.
- 48-1008. Alleged violation; aggrieved person; complaint; investigation; civil action, when; filing, effect; written change; limitation on action; respondent; file written response; commission; powers.
- 48-1009. Court; jurisdiction; relief.
- 48-1010. Suits against governmental bodies; authorized.

**48-1001 Act, how cited; discrimination in employment because of age; policy; declaration of purpose.**

(1) Sections 48-1001 to 48-1010 shall be known and may be cited as the Age Discrimination in Employment Act.

(2)(a) The Legislature hereby finds that the practice of discriminating in employment against properly qualified persons because of their age is contrary to American principles of liberty and equality of opportunity, is incompatible with the Constitution, deprives the state of the fullest utilization of its capacities for production, and endangers the general welfare.

(b) Hiring bias against workers forty years or more of age deprives the state of its most important resource of experienced employees, adds to the number of persons receiving public assistance, and deprives older people of the dignity and status of self-support.

(c) The right to employment otherwise lawful without discrimination because of age, where the reasonable demands of the position do not require such an age distinction, is hereby recognized as and declared to be a right of all the people of the state which shall be protected as provided in the act.

(d) It is hereby declared to be the policy of the state to protect the right recognized and declared in subdivision (2)(c) of this section and to eliminate all such discrimination to the fullest extent permitted. The Age Discrimination in Employment Act shall be construed to effectuate such policy.

**Source:** Laws 1963, c. 281, § 1, p. 838; Laws 1972, LB 1357, § 1; Laws 2007, LB265, § 13.

## AGE DISCRIMINATION

§ 48-1003

In an age discrimination suit brought under the Act Prohibiting Unjust Discrimination in Employment Because of Age, the jury is not to be instructed on the elements which constitute a submissible case. Although the ultimate burden of persuasion by a preponderance of the evidence in an age discrimination action at all times remains with plaintiff, the method of proof is for plaintiff to prove a prima facie case; if plaintiff succeeds in proving a prima facie case, defendant has the burden of articulating some legitimate, nondiscriminatory reason for its action. Should defendant succeed in so doing, plaintiff must establish by a preponderance of the evidence that the legitimate reasons offered by defendant were not its true reasons, but a pretext for discrimination. *Humphrey v. Nebraska Public Power Dist.*, 243 Neb. 872, 503 N.W.2d 211 (1993).

Persons seeking relief under this section must allege a violation by an employer of 25 or more persons. *Steier v. Crosier Fathers of Hastings*, 242 Neb. 16, 492 N.W.2d 870 (1992).

The federal practice for cases arising under the federal Age Discrimination in Employment Act of 1967, 29 U.S.C. sec. 621 et seq. (1982), may be instructive as to cases arising under the subject act. *Allen v. AT&T Technologies*, 228 Neb. 503, 423 N.W.2d 424 (1988).

The state, through its Legislature, has acted to prohibit unjust discrimination in employment because of age. *Midwest Employers Council, Inc. v. City of Omaha*, 177 Neb. 877, 131 N.W.2d 609 (1964).

### 48-1002 Terms, defined.

For purposes of the Age Discrimination in Employment Act:

(1) Person includes one or more individuals, partnerships, limited liability companies, associations, labor organizations, corporations, business trusts, legal representatives, or any organized group of persons;

(2) Employer means any person having in his or her employ twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year and includes the State of Nebraska, governmental agencies, and political subdivisions, regardless of the number of employees, any person acting for or in the interest of an employer, directly or indirectly, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act, but such term does not include (a) the United States, (b) a corporation wholly owned by the government of the United States, or (c) an Indian tribe;

(3) Labor organization means any organization of employees which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment, or for other mutual aid or protection in connection with employment;

(4) Employee means an individual employed by any employer; and

(5) Employment agency means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person, but does not include an agency of the United States, except that such term does include the United States Employment Service and the system of state and local employment services receiving federal assistance.

**Source:** Laws 1963, c. 281, § 2, p. 839; Laws 1972, LB 1357, § 2; Laws 1973, LB 265, § 1; Laws 1977, LB 162, § 20; Laws 1983, LB 424, § 1; Laws 1983, LB 626, § 73; Laws 1993, LB 121, § 296; Laws 2007, LB265, § 14.

#### Cross References

**Nebraska Investment Finance Authority Act**, see section 58-201.

For the purpose of defining an employer under Nebraska's age discrimination act, two distinct entities may be considered a single employer if the two businesses have (1) interrelated operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control. *Billingsley v. BFM Liquor Mgmt.*, 264 Neb. 56, 645 N.W.2d 791 (2002).

Persons seeking relief under alleged violation of rights set out in section 48-1001 must be persons within the definitions set out in this section. *Steier v. Crosier Fathers of Hastings*, 242 Neb. 16, 492 N.W.2d 870 (1992).

### 48-1003 Limitation on prohibitions; practices not prevented or precluded.

(1) The prohibitions of the Age Discrimination in Employment Act shall be limited to the employment of individuals who are forty years or more of age.

(2) Nothing contained in the act shall be construed as making it unlawful for an employer, employment agency, or labor organization (a) to take action otherwise prohibited under the act when age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or when the differentiation is based on reasonable factors other than age, such as physical conditions; or (b) to discharge or otherwise discipline an employee for good cause.

**Source:** Laws 1963, c. 281, § 3, p. 839; Laws 1972, LB 1357, § 3; Laws 1979, LB 161, § 2; Laws 1983, LB 424, § 2; Laws 2007, LB265, § 15.

**48-1004 Unlawful employment practices; enumerated.**

(1) It shall be an unlawful employment practice for an employer:

(a) To refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to the employee's terms, conditions, or privileges of employment, otherwise lawful, because of such individual's age, when the reasonable demands of the position do not require such an age distinction; or

(b) To willfully utilize in the hiring or recruitment of individuals for employment otherwise lawful, any employment agency, placement service, training school or center, labor organization, or any other source which so discriminates against individuals because of their age.

(2) It shall be an unlawful employment practice for any labor organization to so discriminate against any individual or to limit, segregate, or classify its membership in any way which would deprive or tend to deprive an individual of otherwise lawful employment opportunities, or would limit such employment opportunities or otherwise adversely affect his or her status as an employee or would affect adversely his or her wages, hours, or employment.

(3) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of such individual's age or to classify or refer for employment any individual on the basis of his or her age.

(4) It shall be an unlawful employment practice for any employer, employment agency, or labor organization to discharge, expel, or otherwise discriminate against any person because he or she opposed any unlawful employment practice specified in the Age Discrimination in Employment Act or has filed a charge or suit, testified, participated, or assisted in any proceeding under the act.

**Source:** Laws 1963, c. 281, § 4, p. 840; Laws 1972, LB 1357, § 4; Laws 1977, LB 162, § 21; Laws 2007, LB265, § 16.

Once an age discrimination case has been fully tried on the merits, the focus is on the ultimate question of whether the employer intentionally discriminated against the employee and not on the adequacy of a party's showing at any particular stage of the trial. Although an employer's proffered reason for discharging an employee may not be truthful, that in and of itself does not prove a pretext; the pretext must be shown to be a pretext for discrimination. *Synacek v. Omaha Cold Storage*, 247 Neb. 244, 526 N.W.2d 91 (1995).

After the plaintiff proves a prima facie case of age discrimination in a suit brought under the disparate impact theory, the employer must show the employment practice is related to job performance or justified by job necessity. Although intent is irrelevant in a disparate impact theory, the plaintiff may then

rebut the defendant's reason of business necessity by showing that an alternative practice lacking a discriminatory effect would satisfy the employer's legitimate interests. *Allen v. AT&T Technologies*, 228 Neb. 503, 423 N.W.2d 424 (1988).

Although the ultimate burden of persuasion by a preponderance of the evidence at all times remains with the plaintiff, the method of proof is for the plaintiff to prove a prima facie case; if the plaintiff succeeds in so doing, the defendant has the burden of articulating some legitimate, nondiscriminatory reason for its action. Should the defendant succeed in so doing, the plaintiff must establish by a preponderance of the evidence that the legitimate reasons offered by the defendant were a pretext for discrimination. *Allen v. AT&T Technologies*, 228 Neb. 503, 423 N.W.2d 424 (1988).

Following the lead of federal courts, a plaintiff may show pretext in an age discrimination case brought under the disparate treatment theory by showing either that the employment decision was motivated by a discriminatory reason or by showing the employer's stated reason is not worthy of credence. *Allen v. AT&T Technologies*, 228 Neb. 503, 423 N.W.2d 424 (1988).

Following the lead of the federal courts, a plaintiff may establish a prima facie case of age discrimination by virtue of disparate treatment by showing that (1) she or he was in the protected age category, (2) she or he met the applicable qualifications, (3) despite those qualifications she or he was not promoted, and (4) other employees of similar qualifications, who were not members of a protected group, were promoted at

the time plaintiff's request for a promotion was denied. *Allen v. AT&T Technologies*, 228 Neb. 503, 423 N.W.2d 424 (1988).

In order to prove a prima facie case of retaliation, a plaintiff must show she or he was not promoted following protected activities of which the employer was aware. *Allen v. AT&T Technologies*, 228 Neb. 503, 423 N.W.2d 424 (1988).

To prove a prima facie case of disparate impact in an age discrimination suit under the federal Age Discrimination in Employment Act of 1967, 29 U.S.C. sec. 621 et seq. (1982), the plaintiff must show (1) an outwardly neutral employment practice, and (2) a significantly adverse or disproportionate impact on the protected age group produced by the facially neutral employment practice. *Allen v. AT&T Technologies*, 228 Neb. 503, 423 N.W.2d 424 (1988).

#### **48-1005 Violations; penalty.**

Any person who violates any provision of the Age Discrimination in Employment Act or who forcibly resists, opposes, impedes, intimidates, or interferes with the Equal Opportunity Commission or any of its duly authorized representatives while engaged in its, his, or her duties under the act shall be guilty of a Class III misdemeanor. No person shall be imprisoned under this section except for a second or subsequent conviction.

**Source:** Laws 1963, c. 281, § 5, p. 840; Laws 1972, LB 1357, § 8; Laws 1977, LB 40, § 300; Laws 2007, LB265, § 17.

#### **48-1006 Repealed. Laws 2007, LB 265, § 40.**

#### **48-1007 Equal Opportunity Commission; enforcement; powers.**

The Age Discrimination in Employment Act shall be administered by the Equal Opportunity Commission as established by section 48-1116. The commission shall have the power (1) to make delegations, to appoint such agents and employees and to pay for technical assistance, including legal assistance, on a fee-for-service basis, as it deems necessary to assist it in the performance of its functions under the act, (2) to cooperate with other federal, state, and local agencies and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of the act, (3) to make investigations, to issue or cause to be served interrogatories, and to require keeping of records necessary or appropriate for the administration of the act, and (4) to bring civil action in its name in any court of competent jurisdiction against any person deemed to be violating the act to compel compliance with the act or to enjoin any such person from continuing any practice that is deemed to be in violation of the act. The commission may seek judicial enforcement through the office of the Attorney General to require the answering of interrogatories and to gain access to evidence or records relevant to the charge under investigation.

**Source:** Laws 1972, LB 1357, § 5; Laws 1977, LB 162, § 22; Laws 2007, LB265, § 18.

#### **48-1008 Alleged violation; aggrieved person; complaint; investigation; civil action, when; filing, effect; written charge; limitation on action; respondent; file written response; commission; powers.**

(1) Any person aggrieved by a suspected violation of the Age Discrimination in Employment Act shall file with the Equal Opportunity Commission a formal complaint in such manner and form prescribed by the commission. The commission shall make an investigation and may initiate an action to enforce

the rights of such employee under the provisions of the act. If the commission does not initiate an action within sixty days after receipt of a complaint, the person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of the act. Filing of an action by either the commission or the person aggrieved shall be a bar to the filing of the action by the other.

(2) A written charge alleging violation of the Age Discrimination in Employment Act shall be filed within three hundred days after the occurrence of the alleged unlawful employment practice, and notice of the charge, including a statement of the date, place, and circumstances of the alleged unlawful employment practice, shall be served upon the person against whom such charge is made within ten days thereafter.

(3) A respondent shall file with the commission a written response to the written charge of violation within thirty days after service upon the respondent. Failure to file a written response within thirty days, except for good cause shown, shall result in a mandatory reasonable cause finding against the respondent by the commission. Failure by any complainant to cooperate with the commission, its investigators, or its staff, except for good cause shown, shall result in dismissal of the complaint by the commission.

(4) In connection with any investigation of a charge filed under this section, the commission or its authorized agents may, at any time after a charge is filed, issue or cause to be served interrogatories and shall have at all reasonable times access to, for the purposes of examination, and the right to copy any evidence or records of any person being investigated or proceeded against that relate to unlawful employment practices covered by the act and are relevant to the charge under investigation. The commission may seek preparation of and judicial enforcement of any legal process or interrogatories through the office of the Attorney General.

**Source:** Laws 1972, LB 1357, § 6; Laws 1977, LB 162, § 23; Laws 1983, LB 424, § 3; Laws 2007, LB265, § 19.

The thirty-day period herein is a condition precedent to the ripening of the cause of action of an aggrieved employee claiming age discrimination in employment. Equal Opportunity Commission v. Weyerhaeuser Co., 198 Neb. 104, 251 N.W.2d 730 (1977).

#### **48-1009 Court; jurisdiction; relief.**

In any action brought to enforce the Age Discrimination in Employment Act, the court shall have jurisdiction to grant such legal or equitable relief as the court deems appropriate to effectuate the purposes of the act, including judgments compelling employment, reinstatement, or promotion, or enforcing liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation.

**Source:** Laws 1972, LB 1357, § 7; Laws 2007, LB265, § 20.

The proper procedure under this section is for the trial court to submit the damages issue to the jury, if one is empaneled, and reserve ruling on a plaintiff's requested equitable relief until after the jury renders a verdict. A trial court should then enter an order on the jury verdict and reserve entering judgment until after the court has considered any requests for equitable relief. Billingsley v. BFM Liquor Mgmt., Inc., 259 Neb. 992, 613 N.W.2d 478 (2000). Age discrimination cases that seek mandatory injunctions as well as damages are equitable in nature. A jury empaneled in an equity case is advisory only. Synacek v. Omaha Cold Storage, 247 Neb. 244, 526 N.W.2d 91 (1995).

#### **48-1010 Suits against governmental bodies; authorized.**

The state, governmental agencies, and political subdivisions may be sued upon claims arising under the Age Discrimination in Employment Act in the same manner as provided by such act for suits against other employers.

**Source:** Laws 1983, LB 424, § 4; Laws 2007, LB265, § 21.

## ARTICLE 11

### NEBRASKA FAIR EMPLOYMENT PRACTICE ACT

#### Cross References

**Age discrimination**, see section 48-1001 et seq.

**Sex-based wage discrimination**, see section 48-1219 et seq.

#### Section

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#### 48-1101 Purpose.

It is the policy of this state to foster the employment of all employable persons in the state on the basis of merit regardless of their race, color, religion, sex, disability, or national origin and to safeguard their right to obtain and hold employment without discrimination because of their race, color, religion, sex, disability, or national origin. Denying equal opportunity for

employment because of race, color, religion, sex, disability, or national origin is contrary to the principles of freedom and is a burden on the objectives of the public policy of this state. The policy of this state does not require any person to employ an applicant for employment because of his or her race, color, religion, sex, disability, or national origin, and the policy of this state does not require any employer, employment agency, labor organization, or joint labor-management committee to grant preferential treatment to any individual or to any group because of race, color, religion, sex, disability, or national origin.

It is the public policy of this state that all people in Nebraska, both with and without disabilities, shall have the right and opportunity to enjoy the benefits of living, working, and recreating within this state. It is the intent of the Legislature that state and local governments, Nebraska businesses, Nebraska labor organizations, and Nebraskans with disabilities understand their rights and responsibilities under the law regarding employment discrimination and the prevention of discrimination on the basis of disability.

**Source:** Laws 1965, c. 276, § 1, p. 782; Laws 1973, LB 266, § 1; Laws 1993, LB 360, § 2.

A prima facie case of discrimination may be proved by showing (1) that the complainant is a member of a protected class within the meaning of the Nebraska Fair Employment Practice Act; (2) that the complainant is qualified for the position of employment sought; (3) that the complainant applied for and was rejected or discharged from that position; and (4) that after the complainant was rejected or discharged, the job remained open. *IBP, Inc. v. Sands*, 252 Neb. 573, 563 N.W.2d 353 (1997).

In a discrimination suit brought under the provisions of the Nebraska Fair Employment Practice Act, the evidence presented on the issue of discrimination against a disabled person shall be as follows: (1) The complainant has the burden of proving a prima facie case of discrimination; (2) if the complainant succeeds in proving that prima facie case, the burden shifts to the respondent to articulate some legitimate, nondiscriminatory reason for the employee's rejection or discharge from employment; and (3) should the respondent carry the burden, the complainant must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the respondent were not its true reasons, but were a pretext for discrimination. *IBP, Inc. v. Sands*, 252 Neb. 573, 563 N.W.2d 353 (1997).

Persons seeking relief under this section must allege a violation by an employer of 15 or more persons. *Steier v. Crosier Fathers of Hastings*, 242 Neb. 16, 492 N.W.2d 870 (1992).

A female is a member of a protected class. *Lincoln County Sheriff's Office v. Horne*, 228 Neb. 473, 423 N.W.2d 412 (1988).

"Disability" designates a protected class regarding employment in Nebraska. *Father Flanagan's Boys' Home v. Goerke*, 224 Neb. 731, 401 N.W.2d 461 (1987).

The purpose of the Fair Employment Practice Act is to establish a policy by the state to foster the employment of employable persons; the state policy does not require an employer to grant preferential treatment to any individual or group because of race, color, religion, sex, disability, or national origin. *Nebraska P.P. Dist. v. Lacy*, 215 Neb. 462, 339 N.W.2d 286 (1983).

These sections do not mandate the employment of firemen with visual defects which would affect their ability to engage in that occupation. *McCrea v. Cunningham*, 202 Neb. 638, 277 N.W.2d 52 (1979).

One hundred eighty day statute of limitations under Fair Employment Practices Act may not be applied in federal civil rights action. *Chambers v. Omaha Public School Dist.*, 536 F.2d 222 (8th Cir. 1976).

Petition for civil rights relief alleging employment discrimination dismissed where requisite prior exhaustion of administrative remedies disregarded. *Thorson v. City of Omaha*, 445 F.Supp. 268 (D. Neb. 1978).

Under facts in this case, corporation did not violate Civil Rights Act by transferring employee to lower paying job when he refused to work on his Sabbath day. *Dixon v. Omaha P.P. Dist.*, 385 F.Supp. 1382 (D. Neb. 1974).

#### **48-1102 Terms, defined.**

For purposes of the Nebraska Fair Employment Practice Act, unless the context otherwise requires:

(1) Person shall include one or more individuals, labor unions, partnerships, limited liability companies, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers;

(2) Employer shall mean a person engaged in an industry who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, any agent of such a person, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act regardless of the number of employees and shall include the State of Nebraska, governmental agencies, and

political subdivisions, but such term shall not include (a) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe or (b) a bona fide private membership club, other than a labor organization, which is exempt from taxation under section 501(c) of the Internal Revenue Code;

(3) Labor organization shall mean any organization which exists wholly or in part for one or more of the following purposes: Collective bargaining; dealing with employers concerning grievances, terms, or conditions of employment; or mutual aid or protection in relation to employment;

(4) Employment agency shall mean any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and shall include an agent of such a person but shall not include an agency of the United States, except that such term shall include the United States Employment Service and the system of state and local employment services receiving federal assistance;

(5) Covered entity shall mean an employer, an employment agency, a labor organization, or a joint labor-management committee;

(6) Privileges of employment shall mean terms and conditions of any employer-employee relationship, opportunities for advancement of employees, and plant conveniences;

(7) Employee shall mean an individual employed by an employer;

(8) Commission shall mean the Equal Opportunity Commission;

(9) Disability shall mean (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (b) a record of such an impairment, or (c) being regarded as having such an impairment. Disability shall not include homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender-identity disorders not resulting in physical impairments, other sexual behavior disorders, problem gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs;

(10)(a) Qualified individual with a disability shall mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job;

(b) Qualified individual with a disability shall not include any employee or applicant who is currently engaged in the illegal use of drugs when the covered entity acts on the basis of such use; and

(c) Nothing in this subdivision shall be construed to exclude as a qualified individual with a disability an individual who:

(i) Has successfully completed a supervised drug rehabilitation program or otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;

(ii) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) Is erroneously regarded as engaging in such use but is not engaging in such use;

(11) Reasonable accommodation shall include making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job-restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training manuals, or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. Reasonable accommodation shall not include accommodations which the covered entity can demonstrate require significant difficulty or expense thereby posing an undue hardship upon the covered entity. Factors to be considered in determining whether an accommodation would pose an undue hardship shall include:

(a) The nature and the cost of the accommodation needed under the Nebraska Fair Employment Practice Act;

(b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(c) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, and the number, type, and location of its facilities; and

(d) The type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity;

(12) Marital status shall mean the status of a person whether married or single;

(13) Because of sex or on the basis of sex shall include, but not be limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions;

(14) Harass because of sex shall include making unwelcome sexual advances, requesting sexual favors, and engaging in other verbal or physical conduct of a sexual nature if (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment;

(15) Unlawful under federal law or the laws of this state shall mean acting contrary to or in defiance of the law or disobeying or disregarding the law;

(16) Drug shall mean a controlled substance as defined in section 28-401; and

(17) Illegal use of drugs shall mean the use of drugs, the possession or distribution of which is unlawful under the Uniform Controlled Substances Act, but shall not include the use of a drug taken under supervision by a licensed health care professional or any other use authorized by the Uniform Controlled Substances Act or other provisions of state law.

**Source:** Laws 1965, c. 276, § 2, p. 783; Laws 1967, c. 306, § 1, p. 829; Laws 1969, c. 120, § 21, p. 551; Laws 1973, LB 265, § 2; Laws

1973, LB 266, § 2; Laws 1977, LB 161, § 1; Laws 1979, LB 67, § 1; Laws 1983, LB 626, § 74; Laws 1984, LB 14A, § 1; Laws 1985, LB 324, § 1; Laws 1986, LB 1108, § 1; Laws 1989, LB 176, § 1; Laws 1993, LB 121, § 297; Laws 1993, LB 124, § 1; Laws 1993, LB 360, § 3; Laws 2004, LB 1083, § 98.

#### Cross References

**Nebraska Investment Finance Authority Act**, see section 58-201.

**Uniform Controlled Substances Act**, see section 28-401.01.

The payroll method, in which an employee is counted on a given day if he or she was on the payroll on that day, should be used to determine whether an entity has the requisite number of employees to qualify as an employer as defined in subsection (2) of this section. *Bluff's Vision Clinic v. Krzyzanowski*, 251 Neb. 116, 555 N.W.2d 556 (1996).

Persons seeking relief under alleged violation of rights set out in section 48-1101 must be persons within the definitions set out in this section. *Steier v. Crosier Fathers of Hastings*, 242 Neb. 16, 492 N.W.2d 870 (1992).

Epilepsy is included within the definition of "disability," but only if the epilepsy is unrelated to the person's ability to engage

in a particular occupation. *Father Flanagan's Boys' Home v. Goerke*, 224 Neb. 731, 401 N.W.2d 461 (1987).

These sections do not mandate the employment of firemen with visual defects which would affect their ability to engage in that occupation. *McCrea v. Cunningham*, 202 Neb. 638, 277 N.W.2d 52 (1979).

For purposes of subsection (2) of this section, to determine whether a person is an "employer", a "payroll method" shall be used, whereby a week is counted if an employer has 15 employees on the payroll for that week, regardless of whether or not each employee worked each day of the week in question. *Bluff's Vision Clinic v. Krzyzanowski*, 4 Neb. App. 380, 543 N.W.2d 761 (1996).

#### 48-1103 Exceptions to act.

The Nebraska Fair Employment Practice Act shall not apply to:

- (1) A religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities; or
- (2) The employment of any individual (a) by his or her parent, grandparent, spouse, child, or grandchild or (b) in the domestic service of any person.

**Source:** Laws 1965, c. 276, § 3, p. 784; Laws 1993, LB 360, § 7.

#### 48-1104 Unlawful employment practice for an employer.

It shall be an unlawful employment practice for an employer:

- (1) To fail or refuse to hire, to discharge, or to harass any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, disability, marital status, or national origin; or
- (2) To limit, advertise, solicit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee, because of such individual's race, color, religion, sex, disability, marital status, or national origin.

**Source:** Laws 1965, c. 276, § 4, p. 785; Laws 1973, LB 266, § 3; Laws 1977, LB 161, § 2; Laws 1993, LB 124, § 2.

The key inquiry in a discrimination case is whether the individual's condition inhibits his or her ability to perform his or her job safely and efficiently. *IBP, Inc. v. Sands*, 252 Neb. 573, 563 N.W.2d 353 (1997).

Volunteers are not employees and may not bring suit for damages under the Nebraska Fair Employment Practice Act. *City of Fort Calhoun v. Collins*, 243 Neb. 528, 500 N.W.2d 822 (1993).

The procedure to be followed in presenting evidence relevant to a question about discrimination against a disabled person is:

(1) The complainant has the burden of proving a prima facie case of discrimination; (2) the respondent then must articulate some legitimate, nondiscriminatory reason for the rejection or firing; and (3) the complainant must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the respondent were not its true reasons, but were a pretext for discrimination. *Father Flanagan's Boys' Home v. Goerke*, 224 Neb. 731, 401 N.W.2d 461 (1987).

A mere showing that one was not interviewed or hired for a position is insufficient to establish a violation of the Fair Em-

ployment Practice Act because in order to recover for a violation, complainant must prove by a preponderance of the evidence that complainant was refused hire on the basis of sex. Where there is no charge of a universal discriminatory practice, complainant must establish, by a preponderance of the evidence, an act done intentionally to discriminate. *Nebraska P.P. Dist. v. Lacy*, 215 Neb. 462, 339 N.W.2d 286 (1983).

A regulated interstate carrier, subject to superior federal law, had a valid defense to state statutes regarding employment discrimination based upon disability. *Ranger Division v. Bayne*, 214 Neb. 251, 333 N.W.2d 891 (1983).

It is not a violation of this section to refuse to hire a woman to the position of a police patrolman when in each instance, there were better qualified male applicants available for the position, even if the male applicants with the higher test scores were added to the list after the score of the female applicant had

placed her at the top of the list. *Snygg v. City of Scottsbluff Police Dept.*, 201 Neb. 16, 266 N.W.2d 76 (1978).

A classification based on pregnancy is not one based on sex. *Richards v. Omaha Public Schools*, 194 Neb. 463, 232 N.W.2d 29 (1975).

This section does not provide a private cause of action to a person claiming to be aggrieved by an employer's unlawful employment practice. Sections 48-1116 to 48-1120 do provide a comprehensive administrative remedy from which an appeal may be taken to state district court. *Miller v. Union Pacific R. Co.*, 539 F.Supp. 134 (D. Neb. 1982).

An award of punitive damages is not required for a violation of this section unless necessary to fully protect any federal constitutional right involved. *Gilliam v. City of Omaha*, 331 F.Supp. 4 (D. Neb. 1971).

#### **48-1105 Unlawful employment practice for employment agency.**

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, disability, marital status, or national origin, or to classify or refer for employment any individual on the basis of race, color, religion, sex, disability, marital status, or national origin.

**Source:** Laws 1965, c. 276, § 5, p. 785; Laws 1973, LB 266, § 4; Laws 1977, LB 161, § 3.

#### **48-1106 Unlawful employment practice for labor organization.**

It shall be an unlawful employment practice for a labor organization:

(1) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of race, color, religion, sex, disability, marital status, or national origin;

(2) To limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect such individual's status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, disability, marital status, or national origin; or

(3) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

**Source:** Laws 1965, c. 276, § 6, p. 785; Laws 1973, LB 266, § 5; Laws 1977, LB 161, § 4.

#### **48-1107 Unlawful employment practice controlling apprenticeship or training programs.**

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of race, color, religion, sex, disability, marital status, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

**Source:** Laws 1965, c. 276, § 7, p. 786; Laws 1973, LB 266, § 6; Laws 1977, LB 161, § 5.

**48-1107.01 Unlawful employment practice for covered entity.**

It shall be an unlawful employment practice for a covered entity to discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

**Source:** Laws 1993, LB 360, § 5.

**48-1107.02 Qualified individual with a disability; discrimination, defined.**

When referring to a qualified individual with a disability, discrimination shall include:

(1) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or employee;

(2) Participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified individual with a disability to discrimination in the application or employment process, including a relationship with an employment agency, a labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs;

(3) Utilizing standards, criteria, or methods of administration (a) that have the effect of discrimination on the basis of disability or (b) that perpetuate the discrimination against others who are subject to common administrative control;

(4) Excluding or otherwise denying equal jobs or benefits to a qualified individual with a disability because of the known disability of an individual with whom the qualified individual with a disability is known to have a relationship or association;

(5) Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity;

(6) Denying employment opportunities to a job applicant or employee who is otherwise a qualified individual with a disability if the denial is based upon the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(7) Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity;

(8) Failing to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure rather than reflecting the impaired sensory, manual, or speaking skills of the employee

or applicant except when such skills are the factors that the test purports to measure;

(9) Conducting a medical examination or making inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of the disability, except that:

(a) A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions;

(b) A test to determine the illegal use of drugs shall not be considered a medical examination; and

(c) A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition an offer of employment on the results of the examination if:

(i) All entering employees are subjected to such an examination regardless of disability;

(ii) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that (A) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, (B) first-aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment, (C) government officials investigating compliance with the Nebraska Fair Employment Practice Act shall be provided relevant information on request, and (D) information shall be made available in accordance with the Nebraska Workers' Compensation Act; and

(iii) The results of the examination are used only in a manner not inconsistent with the Nebraska Fair Employment Practice Act; and

(10) Requiring a medical examination or making inquiries of an employee as to whether the employee is an individual with a disability or as to the nature or severity of the disability, unless the examination or inquiry is shown to be job-related and consistent with business necessity. A test to determine the illegal use of drugs shall not be considered a medical examination. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the worksite and may make inquiries into the ability of an employee to perform job-related functions if the information obtained regarding the medical condition or history of the employee is subject to the requirements in subdivisions (9)(c)(ii) and (iii) of this section.

**Source:** Laws 1993, LB 360, § 6.

**Cross References**

Nebraska Workers' Compensation Act, see section 48-1,110.

**48-1108 Lawful employment practices.**

Notwithstanding any other provision of the Nebraska Fair Employment Practice Act:

(1) It shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership

or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program on the basis of religion, sex, disability, marital status, or national origin in those certain instances when religion, sex, disability, marital status, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

(2) It shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society or if the curriculum of such school, college, university, or other educational institution of learning is directed toward the propagation of a particular religion.

**Source:** Laws 1965, c. 276, § 8, p. 786; Laws 1973, LB 266, § 7; Laws 1977, LB 161, § 6; Laws 1993, LB 360, § 8.

A classification based on sex is lawful if it is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise. Richards v. Omaha Public Schools, 194 Neb. 463, 232 N.W.2d 29 (1975).

#### **48-1108.01 Lawful employment practices for covered entity.**

It shall not be an unlawful employment practice for a covered entity to:

- (1) Prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;
- (2) Require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;
- (3) Require employees to comply with any federal regulations concerning the use of alcohol or the illegal use of drugs which are applicable to the position of the employee or to the industry involved; or
- (4) Hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.

**Source:** Laws 1993, LB 360, § 4.

#### **48-1109 Member of Communist Party or subversive organization; treatment.**

For purposes of the Nebraska Fair Employment Practice Act, the phrase unlawful employment practice shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

**Source:** Laws 1965, c. 276, § 9, p. 786; Laws 1993, LB 360, § 9.

#### **48-1110 National security employment; exception.**

Notwithstanding any other provision of the Nebraska Fair Employment Practice Act, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if:

(1) The occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive Order of the President; and

(2) Such individual has not fulfilled or has ceased to fulfill that requirement.

**Source:** Laws 1965, c. 276, § 10, p. 787; Laws 1993, LB 360, § 10.

**48-1111 Different standards of compensation, conditions, or privileges of employment; lawful employment practices; effect of pregnancy and related medical conditions.**

(1) Except as otherwise provided in the Nebraska Fair Employment Practice Act, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system or a system which measures earnings by quantity or quality of production or to employees who work in different locations, if such differences are not the result of an intention to discriminate because of race, color, religion, sex, disability, marital status, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test if such test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, disability, marital status, or national origin.

It shall not be an unlawful employment practice for a covered entity to deny privileges of employment to an individual with a disability when the qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability:

(a) Have been shown to be job-related and consistent with business necessity and such performance cannot be accomplished by reasonable accommodation, as required by the Nebraska Fair Employment Practice Act and the federal Americans with Disabilities Act of 1990; or

(b) Include a requirement that an individual shall not pose a direct threat, involving a significant risk to the health or safety of other individuals in the workplace, that cannot be eliminated by reasonable accommodation.

It shall not be an unlawful employment practice to refuse employment based on a policy of not employing both husband and wife if such policy is equally applied to both sexes.

(2) Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of employee benefits, as other persons not so affected but similar in their ability

or inability to work, and nothing in this section shall be interpreted to provide otherwise.

This section shall not require an employer to provide employee benefits for abortion except when medical complications have arisen from an abortion.

Nothing in this section shall preclude an employer from providing employee benefits for abortion under fringe benefit programs or otherwise affect bargaining agreements in regard to abortion.

**Source:** Laws 1965, c. 276, § 11, p. 787; Laws 1973, LB 266, § 8; Laws 1977, LB 161, § 7; Laws 1984, LB 14A, § 2; Laws 1993, LB 360, § 11.

A regulated interstate carrier, subject to superior federal law, had a valid defense to state statutes regarding employment discrimination based upon disability. *Ranger Division v. Bayne*, 214 Neb. 251, 333 N.W.2d 891 (1983).

#### **48-1112 Indians; preferential treatment.**

Nothing in the Nebraska Fair Employment Practice Act shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he or she is an Indian living on or near a reservation.

**Source:** Laws 1965, c. 276, § 12, p. 788; Laws 1993, LB 360, § 12.

#### **48-1113 Preferential treatment; when not required.**

Nothing in the Nebraska Fair Employment Practice Act shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to the act to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, disability, marital status, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, disability, marital status, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, disability, marital status, or national origin in any community, section, or other area, or in the available work force in any community, section, or other area.

**Source:** Laws 1965, c. 276, § 13, p. 788; Laws 1973, LB 266, § 9; Laws 1977, LB 161, § 8; Laws 1993, LB 360, § 13.

#### **48-1114 Opposition to unlawful practice; participation in investigation; discrimination prohibited.**

It shall be an unlawful employment practice for an employer to discriminate against any of his or her employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he or she (1) has opposed any practice made an unlawful employment practice by the Nebraska Fair Employment Practice Act, (2) has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the act, or (3) has opposed any practice or

refused to carry out any action unlawful under federal law or the laws of this state.

**Source:** Laws 1965, c. 276, § 14, p. 788; Laws 1985, LB 324, § 2; Laws 1986, LB 1108, § 2; Laws 1993, LB 360, § 14.

The unlawful practice, the opposition to which is protected by subsection (3) of this section, is that of the employer and not that of fellow employees. *Wolfe v. Becton Dickinson & Co.*, 266 Neb. 53, 662 N.W.2d 599 (2003).

**48-1115 Notice of employment; preference or discrimination; race, color, religion, sex, disability, marital status, national origin; unlawful; exception.**

It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, disability, marital status, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex, disability, marital status, or national origin when religion, sex, disability, marital status, or national origin is a bona fide occupational qualification for employment.

**Source:** Laws 1965, c. 276, § 15, p. 789; Laws 1973, LB 266, § 10; Laws 1977, LB 161, § 9.

**48-1116 Equal Opportunity Commission; members; appointment; term; quorum; compensation; executive director; representation.**

There is hereby established an Equal Opportunity Commission to consist of seven members to be appointed by the Governor. Terms of members shall be three years. As the terms of the members expire, the Governor shall appoint or reappoint the members of the commission for terms of three years to succeed the members whose terms expire. The commission shall elect one member to serve as chairperson of the commission.

Four members of the commission shall constitute a quorum for the purpose of conducting the business thereof. Any action of the commission shall require at least four votes. A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission.

Members of the commission shall receive fifty dollars per day for their services and shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties as provided in sections 81-1174 to 81-1177. Reimbursement shall be for not more than two regular meetings per month and not more than three training sessions for any one fiscal year. Any member of the commission may be removed by the Governor for inefficiency, neglect of duty, misconduct, or malfeasance in office after being given a written statement of the charges and an opportunity to be heard thereon.

The commission shall establish and maintain its principal office in the city of Lincoln and such other offices within the state as it may deem necessary. The commission may meet and function at any place within the state. The commission shall appoint an executive director who shall be directly responsible to the commission. The executive director may appoint such assistants, clerks, agents, and other employees as such executive director may deem necessary, fix their

compensation within the limitations provided by law, and prescribe duties of such employees. The executive director may appoint additional staff as the commission deems necessary.

The Attorney General shall represent and appear for the commission in all actions and proceedings involving any question under the Nebraska Fair Employment Practice Act, the Nebraska Fair Housing Act, or section 20-123, 20-124, or 20-132 and shall aid in any investigation or hearing had under either act or any of such sections. The commission shall have an official seal which shall be judicially noticed.

**Source:** Laws 1965, c. 276, § 16, p. 789; Laws 1969, c. 120, § 22, p. 552; Laws 1977, LB 161, § 10; Laws 1981, LB 204, § 84; Laws 1989, LB 175, § 1; Laws 1991, LB 825, § 49.

Cross References

Nebraska Fair Housing Act, see section 20-301.

**48-1117 Commission; powers; duties; enumerated.**

The commission shall have the following powers and duties:

(1) To receive, investigate, and pass upon charges of unlawful employment practices anywhere in the state;

(2) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, and take the testimony of any person under oath and, in connection therewith, to require the production for examination of any books and papers relevant to any allegation of unlawful employment practice pending before the commission. The commission may make rules as to the issuance of subpoenas, subject to the approval by a constitutional majority of the elected members of the Legislature;

(3) To cooperate with the federal government and with local agencies to effectuate the purposes of the Nebraska Fair Employment Practice Act, including the sharing of information possessed by the commission on a case that has also been filed with the federal government or local agencies if both the employer and complainant have been notified of the filing;

(4) To attempt to eliminate unfair employment practices by means of conference, mediation, conciliation, arbitration, and persuasion;

(5) To require that every employer, employment agency, and labor organization subject to the act shall (a) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (b) preserve such records for such periods, and (c) make such reports therefrom, as the commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of the act or the regulations or orders thereunder. The commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to the act which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of the act, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and to furnish to the commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-

management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may either apply to the commission for an exemption from the application of such regulation or order or bring a civil action in the district court for the district where such records are kept. If the commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the commission or the court, as the case may be, may grant appropriate relief;

(6) To report, not less than once every two years, to the Clerk of the Legislature and the Governor, on the hearings it has conducted and the decisions it has rendered, the other work performed by it to carry out the purposes of the act, and to make recommendations for such further legislation concerning abuses and discrimination because of race, color, religion, sex, disability, marital status, or national origin, as may be desirable. Each member of the Legislature shall receive a copy of the report required by this subdivision by making a request for it to the chairperson of the commission;

(7) To adopt and promulgate rules and regulations necessary to carry out the duties prescribed in the act; and

(8) To examine and review the policies and procedures of the commission, its investigators, and staff and deliver to the Legislature by January 1, 1994, a report detailing specific proposals designed to expedite the complaint, investigation, and hearing process of the commission. Such report shall include, but not be limited to, an examination of the:

- (a) Intake procedures and guidelines of the commission;
- (b) Mediation, conciliation, arbitration, and informal conferences designed to settle cases;
- (c) Investigation and supervisory procedures which duplicate similar current procedures or which are burdensome to a prompt investigation of a complaint;
- (d) Handling of reports and investigations of the commission to develop adequate clerical staff;
- (e) Feasibility of revising and developing standard final investigative formats for employment, housing, and harassment cases; and
- (f) Proper role and function of the commission in the hearing process.

The review and examination of such policies and procedures in subdivision (8) of this section shall include information from the executive director, commission members, investigators, supervisory personnel, clerical staff, and the public.

**Source:** Laws 1965, c. 276, § 17, p. 790; Laws 1973, LB 266, § 11; Laws 1977, LB 161, § 11; Laws 1979, LB 322, § 18; Laws 1981, LB 545, § 11; Laws 1984, LB 14A, § 3; Laws 1993, LB 124, § 3; Laws 1993, LB 360, § 15.

**48-1118 Unlawful practice; charge; time for filing; prescreening procedure and determination; investigation; confidential informal actions; procedure; violation; penalty; interrogatories.**

(1) Whenever it is charged in writing under oath or affirmation by or on behalf of a person or persons claiming to be aggrieved and such charge sets

forth the facts upon which it is based that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the commission staff shall furnish such employer, employment agency, or labor organization with a copy of such charge within ten days, including a statement of the date, place, and circumstances of the alleged unlawful employment practice. Prior to initiating any investigation, the commission staff shall screen a charge pursuant to an established, clearly defined prescreening procedure to determine subject matter jurisdiction to handle such charge. Any charge without sufficient subject matter jurisdiction shall not be investigated and notice of such prescreening determination shall be promptly conveyed by the executive director to the person claiming to be aggrieved. When a charge is determined to be within the subject matter jurisdiction of the commission, the commission staff shall make an investigation of such charge, but such charge shall not be made public by the commission. If the executive director determines after such investigation that there is not reasonable cause to believe that the charge is true, the executive director shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of his or her action. If the executive director determines after such investigation that there is reasonable cause to believe that the charge is true, the commission shall endeavor to eliminate any such alleged unlawful employment practice and settle any claim by informal methods of conference, conciliation, persuasion, mediation, or arbitration. The settlement efforts shall be scheduled and completed within thirty days of the probable cause finding. Nothing said or done during and as a part of such endeavors may be made public by the commission without the written consent of the parties or used as evidence in a subsequent proceeding. Any officer or employee of the commission who makes public in any manner whatever any information in violation of this subsection shall be guilty of a Class III misdemeanor except as provided in subdivision (3) of section 48-1117.

(2) A written charge of violation of the Nebraska Fair Employment Practice Act shall be filed within three hundred days after the occurrence of the alleged unlawful employment practice and notice of the charge, including a statement of the date, place, and circumstances of the alleged unlawful employment practice, shall be served upon the person against whom such charge is made within ten days thereafter.

(3) A respondent shall be required to file with the commission a written response to the written charge of violation within thirty days after service upon the respondent. Failure to file a written response within thirty days, except for good cause shown, shall result in a mandatory reasonable cause finding against the respondent by the executive director. Failure by any complainant to cooperate with the commission, its investigators, or staff, except for good cause shown, shall result in dismissal of the complaint by the executive director.

(4) In connection with any investigation of a charge filed under this section, the commission or its authorized agents may, at any time after a charge is filed, issue or cause to be served interrogatories and shall have at all reasonable times access to, for the purposes of examination, and the right to copy any evidence or records of any person being investigated or proceeded against that relate to unlawful employment practices covered by the act and are relevant to the charge under investigation. The commission may seek preparation of and

judicial enforcement of any legal process or interrogatories through the office of the Attorney General.

**Source:** Laws 1965, c. 276, § 18, p. 792; Laws 1973, LB 265, § 3; Laws 1977, LB 40, § 301; Laws 1977, LB 161, § 12; Laws 1979, LB 4, § 4; Laws 1989, LB 175, § 2; Laws 1993, LB 124, § 4.

Generally, when a private individual brings a discrimination action against an employer covered by the Nebraska Fair Employment Practice Act, the Nebraska Equal Opportunity Commission is not a proper party to any subsequent appeal. *Zalkins Peerless Co. v. Nebraska Equal Opp. Comm.*, 217 Neb. 289, 348 N.W.2d 846 (1984).

One hundred eighty day statute of limitations under Fair Employment Practices Act may not be applied in federal civil rights action. *Chambers v. Omaha Public School Dist.*, 536 F.2d 222 (8th Cir. 1976).

**48-1119 Unlawful practice; complaint; notice; hearing; witnesses; evidence; findings; civil action authorized; order.**

(1) In case of failure to eliminate any unlawful employment practice by informal methods of conference, conciliation, persuasion, mediation, or arbitration, the commission may order a public hearing. If such hearing is ordered, the commission shall cause to be issued and served a written notice, together with a copy of the complaint, requiring the person, employer, labor organization, or employment agency named in the complaint, hereinafter referred to as respondent, to answer such charges at a hearing before the commission at a time and place which shall be specified in such notice. Such hearing shall be within the county where the alleged unlawful employment practice occurred. The complainant shall be a party to the proceeding, and in the discretion of the commission any other person whose testimony has a bearing on the matter may be allowed to intervene therein. Both the complainant and the respondent, in addition to the commission, may introduce witnesses at the hearing. The respondent may file a verified answer to the allegations of the complaint and may appear at such hearing in person and with or without counsel. Testimony or other evidence may be introduced by either party. All evidence shall be under oath and a record thereof shall be made and preserved. Such proceedings shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the State of Nebraska, and shall be of public record.

(2) No person shall be excused from testifying or from producing any book, document, paper, or account in any investigation, or inquiry by, or hearing before the commission when ordered to do so, upon the ground that the testimony or evidence, book, document, paper, or account required of such person may tend to incriminate such person in or subject such person to penalty or forfeiture; but no person shall be prosecuted, punished, or subjected to any forfeiture or penalty for or on account of any act, transaction, matter, or thing concerning which such person shall have been compelled under oath to testify or produce documentary evidence, except that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by such person in his or her testimony. Such immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. Nothing in this subsection shall be construed as precluding any person from claiming any right or privilege available to such person under the fifth amendment to the Constitution of the United States.

(3) After the conclusion of the hearing, the commission shall, within ten days of the receipt of the transcript or the receipt of the recommendations from the

hearing officer, make and file its findings of fact and conclusions of law and make and enter an appropriate order. The hearing officer need not refer to the page and line numbers of the transcript when making his or her recommendation to the commission. Such findings of fact and conclusions of law shall be in sufficient detail to enable a court on appeal to determine the controverted questions presented by the proceedings and whether proper weight was given to the evidence. If the commission determines that the respondent has intentionally engaged in or is intentionally engaging in any unlawful employment practice, it shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice and order such other affirmative action as may be appropriate which may include, but shall not be limited to, reinstatement or hiring of employees, with or without backpay. Backpay liability shall not accrue from a date more than two years prior to the filing of the charge with the commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable.

(4) A complainant who has suffered physical, emotional, or financial harm as a result of a violation of section 48-1104 or 48-1114 may, at any stage of the proceedings prior to dismissal, file an action directly in the district court of the county where such alleged violation occurred. If the complainant files a district court action on the charge, the complainant shall provide written notice of such filing to the commission, and such notification shall immediately terminate all proceedings before the commission. The district court shall docket and try such case as any other civil action, and any successful complainant shall be entitled to appropriate relief, including temporary or permanent injunctive relief, general and special damages, reasonable attorney's fees, and costs.

(5) No order of the commission shall require the admission or reinstatement of an individual as a member of a labor organization or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him or her of any backpay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, disability, marital status, or national origin or in violation of section 48-1114. If the commission finds that a respondent has not engaged in any unfair employment practice, it shall within thirty days state its findings of fact and conclusions of law. A copy of any order shall be served upon the person against whom it runs or his or her attorney and notice thereof shall be given to the other parties to the proceedings or their attorneys. Such order shall take effect twenty days after service thereof unless otherwise provided and shall continue in force either for a period which may be designated therein or until changed or revoked by the commission.

(6) Except as provided in subsection (4) of this section, until a transcript of the record of the proceedings is filed in the district court as provided in section 48-1120, the commission may, at any time upon reasonable notice and in such a manner it shall deem proper, modify or set aside, in whole or in part, any finding or order made by it.

**Source:** Laws 1965, c. 276, § 19, p. 793; Laws 1973, LB 266, § 12; Laws 1977, LB 161, § 13; Laws 1993, LB 124, § 5; Laws 2003, LB 701, § 2.

Under subsection (3) of this section, in order to show a prima facie case of discrimination, the plaintiff must show that the discrimination was intentional. *Lincoln County Sheriff's Office v. Horne*, 228 Neb. 473, 423 N.W.2d 412 (1988).

Backpay awards under the Nebraska Fair Employment Practice Act must be reduced by earnings or amounts earnable with reasonable diligence by the person or persons discriminated against. Once an unlawfully discharged employee produces evidence in support of his claim for backpay, contending that he was unable to find comparable work, the employer has the burden of showing that the discharged employee did not exercise reasonable diligence in mitigating his damages. *Airport Inn v. Nebraska Equal Opp. Comm.*, 217 Neb. 852, 353 N.W.2d 727 (1984).

Prejudgment interest is not generally allowed on backpay awards under the Nebraska Fair Employment Practice Act. *Airport Inn v. Nebraska Equal Opp. Comm.*, 217 Neb. 852, 353 N.W.2d 727 (1984).

Unemployment compensation benefits should be deducted from a backpay award under the Nebraska Fair Employment

Practice Act. *Airport Inn v. Nebraska Equal Opp. Comm.*, 217 Neb. 852, 353 N.W.2d 727 (1984).

Generally, when a private individual brings a discrimination action against an employer covered by the Nebraska Fair Employment Practice Act, the Nebraska Equal Opportunity Commission is not a proper party to any subsequent appeal. *Zalkins Peerless Co. v. Nebraska Equal Opp. Comm.*, 217 Neb. 289, 348 N.W.2d 846 (1984).

To sustain a charge of discrimination where there is no charge of a universal discriminatory practice or system, complainant, in the record, must establish that the employer intentionally engaged in acts which discriminated against complainant in violation of the statutory prohibitions. *Duffy v. Physicians Mut. Ins. Co.*, 191 Neb. 233, 214 N.W.2d 471 (1974).

An award of punitive damages by the commission is not required for a statutory violation, but if it would be required to fully vindicate a federal constitutional right when before a federal court, it would be required before the commission or a state court. *Gilliam v. City of Omaha*, 331 F.Supp. 4 (D. Neb. 1971).

**48-1120 Appeal; procedure; attorney's fees; failure to appeal; effect.**

(1) Any party to a proceeding before the commission aggrieved by such decision and order and directly affected thereby may appeal the decision and order, and the appeal shall be in accordance with the Administrative Procedure Act.

(2) In any action or proceeding under the Nebraska Fair Employment Practice Act wherein an appeal is lodged in the district court, the court, in its discretion, may allow the prevailing party reasonable attorney's fees as part of the costs.

(3) If a respondent does not appeal an order, the commission may obtain a decree of the court for the enforcement of such order upon showing that respondent is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

**Source:** Laws 1965, c. 276, § 20, p. 795; Laws 1977, LB 161, § 14; Laws 1988, LB 352, § 90.

**Cross References**

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

- 1. Standard of review
- 2. Attorney's fees
- 3. Miscellaneous

**1. Standard of review**

On appeal to the district court from an order of the Nebraska Equal Opportunity Commission, the review is by trial de novo upon the record. On further appeal to the Supreme Court, the district court's findings will not be disturbed if they are supported by substantial evidence. *Hinzman v. Richman Gordman*, 219 Neb. 875, 367 N.W.2d 131 (1985).

On appeal of review by the district court of an order of the Nebraska Equal Opportunity Commission, the Supreme Court will not disturb the district court's findings if they are supported by substantial evidence. *Zalkins Peerless Co. v. Nebraska Equal Opp. Comm.*, 217 Neb. 289, 348 N.W.2d 846 (1984).

On appeal to the district court from an order of the Nebraska Equal Opportunity Commission, the review is by trial de novo upon the record. *Zalkins Peerless Co. v. Nebraska Equal Opp. Comm.*, 217 Neb. 289, 348 N.W.2d 846 (1984).

The standard of review to be applied in review by the district court and the Supreme Court of an order entered by the Nebraska Equal Opportunity Commission is whether the findings of the commission in support of such order are unreason-

able or arbitrary or not supported by a preponderance of the evidence. The court shall affirm if the finding is supported by substantial evidence on the record. *Nebraska P.P. Dist. v. Lacy*, 215 Neb. 462, 339 N.W.2d 286 (1983).

On appeal to district court from an order of the Equal Opportunity Commission, review is de novo upon the record to determine whether the order was based upon substantial evidence. *Farmer v. Richman Gordman Stores, Inc.*, 203 Neb. 222, 278 N.W.2d 332 (1979).

Upon an appeal to the district court from an order of the Equal Opportunity Commission, the district court review is de novo on the record. *Snygg v. City of Scottsbluff Police Dept.*, 201 Neb. 16, 266 N.W.2d 76 (1978).

**2. Attorney's fees**

The plain meaning of subsection (6) of this section is to permit an award of attorney fees only where they were necessarily incurred in determining an issue over which the district court had jurisdiction. *Nebraska Dept. of Correctional Servs. v. Carroll*, 222 Neb. 307, 383 N.W.2d 740 (1986).

While awarding of attorney fees under this section is discretionary with the district court, absent special circumstances, the failure to award such fees is an abuse of discretion. *Williams v. Goodyear Tire & Rubber Co.*, 219 Neb. 748, 366 N.W.2d 132 (1985).

Unless there are special circumstances a prevailing plaintiff, under the Nebraska Fair Employment Practice Act, should be awarded a reasonable attorney fee for all stages of the proceedings. In any action or proceeding under the Nebraska Fair Employment Practice Act, the district court, in its discretion, may allow the prevailing party a reasonable attorney fee. *Airport Inn v. Nebraska Equal Opp. Comm.*, 217 Neb. 852, 353 N.W.2d 727 (1984).

This section does not provide for an attorney fee for services provided in appeals taken from the district court. *Northern States Beef v. Stennis*, 2 Neb. App. 340, 509 N.W.2d 656 (1993).

### 3. Miscellaneous

This section requires the filing of a petition and a certified copy of the transcript of proceedings before the Nebraska Equal Opportunity Commission within 30 days from the date of the NEOC's final order in order to confer jurisdiction on the district

court. *Transcon Lines, Inc., v. O'Neal*, 230 Neb. 31, 429 N.W.2d 718 (1988).

There has been no entry of the order of the Nebraska Equal Opportunity Commission until the date that written evidence of that order has been prepared, authoritatively signed, and placed of record in the public files of such commission. *Lincoln Co. Sheriff's Office v. Horne*, 221 Neb. 867, 381 N.W.2d 159 (1986).

Substantial compliance with this section will be adequate to meet the requirements thereof. Held facts of this case constituted substantial compliance. *Ranger Division v. Bayne*, 214 Neb. 251, 333 N.W.2d 891 (1983).

Appeal in proceedings under this act are governed by specific provision herein for manner and scope of appeal, rather than the appeal provisions of the Administrative Procedure Act, sections 84-901 to 84-919. *Duffy v. Physicians Mut. Ins. Co.*, 191 Neb. 233, 214 N.W.2d 471 (1974).

Since award of back pay by commission would be equivalent to similar award in federal court and appeal is provided for, state administrative remedy is adequate. *Gilliam v. City of Omaha*, 331 F.Supp. 4 (D. Neb. 1971).

#### **48-1120.01 Action in district court; deadline; notice by commission.**

The deadline for filing an action directly in the district court is ninety days after the complainant receives notice of the last action the commission will take on the complaint or charge. When entering the last action on the complaint or charge, the commission shall issue written notice of such ninety-day deadline to the complainant by certified mail, return receipt requested. The last action on the complaint or charge includes the issuance of the final order after hearing, the determination of reasonable cause or no reasonable cause, and any other administrative action which ends the commission's involvement with the complaint or charge.

**Source:** Laws 2003, LB 701, § 1.

#### **48-1121 Posting excerpts of law.**

Every employer, employment agency, and labor organization subject to the Nebraska Fair Employment Practice Act shall post in a conspicuous place or places on his, her, or its premises a notice to be prepared or approved by the commission which shall set forth excerpts of the act and such other relevant information which the commission deems necessary to explain the act.

**Source:** Laws 1965, c. 276, § 21, p. 796; Laws 1993, LB 360, § 16.

#### **48-1122 Contracts with state and political subdivisions; requirements.**

Every contract to which the state or any of its political subdivisions is a party shall contain a provision requiring the contractor and his subcontractors not to discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to his hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

**Source:** Laws 1965, c. 276, § 22, p. 797; Laws 1973, LB 266, § 13.

#### **48-1123 Violations; penalty.**

Any person, employer, labor organization, or employment agency who or which willfully resists, prevents, impedes, or interferes with the commission or any of its members or representatives in the performance of duty under the Nebraska Fair Employment Practice Act or willfully violates an order of the

commission shall be guilty of a Class III misdemeanor. Procedure for the review of the order shall not be deemed to be such willful conduct.

**Source:** Laws 1965, c. 276, § 23, p. 797; Laws 1977, LB 40, § 302; Laws 1993, LB 360, § 17.

#### 48-1124 Construction of act.

Nothing contained in the Nebraska Fair Employment Practice Act shall be deemed to repeal any of the provisions of the civil rights law, any other law of this state, or any municipal ordinance relating to discrimination because of race, creed, color, religion, sex, disability, or national origin.

**Source:** Laws 1965, c. 276, § 24, p. 797; Laws 1973, LB 266, § 14; Laws 1993, LB 360, § 18.

#### 48-1125 Act, how cited.

Sections 48-1101 to 48-1125 shall be known and may be cited as the Nebraska Fair Employment Practice Act.

**Source:** Laws 1965, c. 276, § 26, p. 797; Laws 1993, LB 360, § 19; Laws 2003, LB 701, § 3.

#### 48-1126 State and governmental agencies; suits against.

The state and governmental agencies created by the state may be sued upon claims arising under the Nebraska Fair Employment Practice Act in the same manner as provided by such law for suits against other employers.

**Source:** Laws 1979, LB 67, § 2; Laws 1983, LB 447, § 74.

#### Cross References

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

## ARTICLE 12

### WAGES

#### (a) MINIMUM WAGES

Section	
48-1201.	Policy.
48-1202.	Terms, defined.
48-1203.	Wages; minimum rate.
48-1203.01.	Training wage; rate; limitations.
48-1204.	Repealed. Laws 1987, LB 474, § 3.
48-1205.	Sections; posting.
48-1206.	Commissioner of Labor; subpoena records and witnesses; violations; penalty; civil actions.
48-1207.	Bargaining collectively; sections not applicable.
48-1208.	Other laws; applicability of sections.
48-1209.	Act, how cited.
48-1209.01.	Police; firefighters; cities having a population of more than 10,000 inhabitants; minimum salaries.

#### (b) SEX DISCRIMINATION

48-1210.	Repealed. Laws 1969, c. 389, § 10.
48-1211.	Repealed. Laws 1969, c. 389, § 10.
48-1212.	Repealed. Laws 1969, c. 389, § 10.
48-1213.	Repealed. Laws 1969, c. 389, § 10.
48-1214.	Repealed. Laws 1969, c. 389, § 10.

Section	
48-1215.	Repealed. Laws 1969, c. 389, § 10.
48-1216.	Repealed. Laws 1969, c. 389, § 10.
48-1217.	Repealed. Laws 1969, c. 389, § 10.
48-1218.	Repealed. Laws 1969, c. 389, § 10.
48-1219.	Discriminatory wage practices based on sex; policy.
48-1220.	Terms, defined.
48-1221.	Prohibited acts.
48-1222.	Equal Opportunity Commission; powers.
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48-1224.	Limitation of action.
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	(c) WAGE PAYMENT AND COLLECTION
48-1228.	Act, how cited.
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48-1230.	Employer; regular paydays; altered; notice; deduct, withhold, or divert portion of wages; when; itemized statement; duty of employer to furnish; unpaid wages; when due.
48-1230.01.	Employer; unpaid wages constituting commissions; duties.
48-1231.	Employee; claim for wages; suit; judgment; costs and attorney's fees; failure to furnish itemized statement; penalty.
48-1232.	Employee; claim; judgment; additional recovery from employer; when.

## (a) MINIMUM WAGES

**48-1201 Policy.**

It is declared to be the policy of this state (1) to establish a minimum wage for all workers at levels consistent with their health, efficiency and general well-being, and (2) to safeguard existing minimum wage compensation standards which are adequate to maintain the health, efficiency and general well-being of workers against the unfair competition of wage and hours standards which do not provide adequate standards of living.

**Source:** Laws 1967, c. 285, § 1, p. 773.

**48-1202 Terms, defined.**

For purposes of the Wage and Hour Act, unless the context otherwise requires:

- (1) Employ shall include to permit to work;
- (2) Employer shall include any individual, partnership, limited liability company, association, corporation, business trust, legal representative, or organized group of persons employing four or more employees at any one time except for seasonal employment of not more than twenty weeks in any calendar year, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States, the state, or any political subdivision thereof;
- (3) Employee shall include any individual employed by any employer but shall not include:
  - (a) Any individual employed in agriculture;
  - (b) Any individual employed as a baby-sitter in or about a private home;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or as a superintendent or supervisor;

(d) Any individual employed by the United States or by the state or any political subdivision thereof;

(e) Any individual engaged in the activities of an educational, charitable, religious, or nonprofit organization when the employer-employee relationship does not in fact exist or when the services rendered to such organization are on a voluntary basis;

(f) Apprentices and learners otherwise provided by law;

(g) Veterans in training under supervision of the United States Department of Veterans Affairs;

(h) A child in the employment of his or her parent or a parent in the employment of his or her child; or

(i) Any person who, directly or indirectly, is receiving any form of federal, state, county, or local aid or welfare and who is physically or mentally disabled and employed in a program of rehabilitation, who shall receive a wage at a level consistent with his or her health, efficiency, and general well-being;

(4) Occupational classification shall mean a classification established by the Dictionary of Occupational Titles prepared by the United States Department of Labor; and

(5) Wages shall mean all remuneration for personal services, including commissions and bonuses and the cash value of all remunerations in any medium other than cash.

**Source:** Laws 1967, c. 285, § 2, p. 773; Laws 1969, c. 408, § 1, p. 1411; Laws 1973, LB 343, § 1; Laws 1991, LB 2, § 8; Laws 1991, LB 297, § 1; Laws 1993, LB 121, § 298.

**48-1203 Wages; minimum rate.**

(1) Except as otherwise provided in this section and section 48-1203.01, every employer shall pay to each of his or her employees a minimum wage of:

(a) Five dollars and fifteen cents per hour through July 23, 2007;

(b) Five dollars and eighty-five cents per hour on and after July 24, 2007, through July 23, 2008;

(c) Six dollars and fifty-five cents per hour on and after July 24, 2008, through July 23, 2009; and

(d) Seven dollars and twenty-five cents per hour on and after July 24, 2009.

(2) For persons compensated by way of gratuities such as waitresses, waiters, hotel bellhops, porters, and shoeshine persons, the employer shall pay wages at the minimum rate of two dollars and thirteen cents per hour, plus all gratuities given to them for services rendered. The sum of wages and gratuities received by each person compensated by way of gratuities shall equal or exceed the minimum wage rate provided in subsection (1) of this section. In determining whether or not the individual is compensated by way of gratuities, the burden of proof shall be upon the employer.

(3) Any employer employing student-learners as part of a bona fide vocational training program shall pay such student-learners' wages at a rate of at least

seventy-five percent of the minimum wage rate which would otherwise be applicable.

**Source:** Laws 1967, c. 285, § 3, p. 775; Laws 1969, c. 408, § 2, p. 1413; Laws 1973, LB 343, § 2; Laws 1987, LB 474, § 1; Laws 1989, LB 412, § 1; Laws 1991, LB 297, § 2; Laws 1997, LB 569, § 1; Laws 2007, LB265, § 22.

**48-1203.01 Training wage; rate; limitations.**

An employer may pay a new employee who is younger than twenty years of age and is not a seasonal or migrant worker a training wage of at least seventy-five percent of the federal minimum wage for ninety days from the date the new employee was hired. An employer may pay such new employee the training wage rate for an additional ninety-day period while the new employee is participating in on-the-job training which (1) requires technical, personal, or other skills which are necessary for his or her employment and (2) is approved by the Commissioner of Labor. No more than one-fourth of the total hours paid by the employer shall be at the training wage rate.

An employer shall not pay the training wage rate if the hours of any other employee are reduced or if any other employee is laid off and the hours or position to be filled by the new employee is substantially similar to the hours or position of such other employee. An employer shall not dismiss or reduce the hours of any employee with the intention of replacing such employee or his or her hours with a new employee receiving the training wage rate.

**Source:** Laws 1991, LB 297, § 3; Laws 1997, LB 569, § 2; Laws 2007, LB265, § 23.

**48-1204 Repealed. Laws 1987, LB 474, § 3.**

**48-1205 Sections; posting.**

Every employer subject to the provisions of sections 48-1201 to 48-1209 shall keep a summary of sections 48-1201 to 48-1209, furnished by the Commissioner of Labor without charge, posted in a conspicuous place on or about the premises wherein any person subject to the provisions of sections 48-1201 to 48-1209 is employed.

**Source:** Laws 1967, c. 285, § 5, p. 775.

**48-1206 Commissioner of Labor; subpoena records and witnesses; violations; penalty; civil actions.**

(1) The Commissioner of Labor shall have the authority to subpoena records and witnesses related to the enforcement of section 48-1203 and this section. The commissioner or his or her agent may inspect all related records and gather testimony on any matter relative to the enforcement of the Wage and Hour Act.

(2) Any employer who violates any of the provisions of section 48-1203 shall be guilty of a Class IV misdemeanor.

(3) It shall be the duty of the county attorney for the county in which any violation of the Wage and Hour Act occurs to prosecute the same in the district court in the county where the offense occurred.

(4) Any employer who violates any provision of section 48-1203 shall be liable to the employees affected in the amount of their unpaid minimum wages, as the case may be.

(5) Action to recover unpaid minimum wages as provided in subsection (4) of this section may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself, herself, or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in which any action is brought under this subsection shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorney's fees to be paid by the defendant. In any proceedings brought pursuant to this subsection, the employee shall not be required to pay any filing fee or other court costs necessarily incurred in such proceedings.

**Source:** Laws 1967, c. 285, § 6, p. 775; Laws 1973, LB 343, § 4; Laws 1977, LB 40, § 303; Laws 1987, LB 474, § 2.

**48-1207 Bargaining collectively; sections not applicable.**

Nothing in sections 48-1201 to 48-1209 shall be deemed to interfere with, impede or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of sections 48-1201 to 48-1209.

**Source:** Laws 1967, c. 285, § 7, p. 776.

**48-1208 Other laws; applicability of sections.**

Any standards relating to minimum wage, maximum hours, or other working conditions in effect on October 23, 1967, by or under any other law of this state, which are more favorable to employees than those applicable to such employees under the provisions of sections 48-1201 to 48-1209, shall not be deemed to be amended, rescinded, or otherwise affected by sections 48-1201 to 48-1209 but shall continue in full force and effect.

**Source:** Laws 1967, c. 285, § 8, p. 776.

**48-1209 Act, how cited.**

Sections 48-1201 to 48-1209 shall be known and may be cited as the Wage and Hour Act.

**Source:** Laws 1967, c. 285, § 9, p. 776; Laws 1991, LB 297, § 4.

**48-1209.01 Police; firefighters; cities having a population of more than 10,000 inhabitants; minimum salaries.**

The officers and members of the police and paid fire departments of cities of the metropolitan and primary classes and of cities of the first class having a population of more than ten thousand inhabitants shall each receive a salary of not less than three hundred fifty dollars per month. The city council may, by ordinance, at any time, change, fix or revise the salaries of the officers or members of the police and fire departments of such cities, but in no instance

shall the minimum salary of any officer or member be less than three hundred fifty dollars per month.

**Source:** Laws 1965, c. 78, § 1, p. 313; Laws 1979, LB 80, § 63; R.S.1943, (1983), § 19-1824.

(b) SEX DISCRIMINATION

**48-1210 Repealed. Laws 1969, c. 389, § 10.**

**48-1211 Repealed. Laws 1969, c. 389, § 10.**

**48-1212 Repealed. Laws 1969, c. 389, § 10.**

**48-1213 Repealed. Laws 1969, c. 389, § 10.**

**48-1214 Repealed. Laws 1969, c. 389, § 10.**

**48-1215 Repealed. Laws 1969, c. 389, § 10.**

**48-1216 Repealed. Laws 1969, c. 389, § 10.**

**48-1217 Repealed. Laws 1969, c. 389, § 10.**

**48-1218 Repealed. Laws 1969, c. 389, § 10.**

**48-1219 Discriminatory wage practices based on sex; policy.**

(1) The practice of discriminating on the basis of sex by paying wages to employees of one sex at a lesser rate than the rate paid to employees of the opposite sex for comparable work on jobs which have comparable requirements:

- (a) Unjustly discriminates against the person receiving the lesser rate;
- (b) Leads to low worker morale, high turnover, and frequent labor unrest;
- (c) Discourages workers paid at the lesser wage rates from training for higher level jobs;
- (d) Curtails employment opportunities, decreases workers' mobility, and increases labor costs;
- (e) Impairs purchasing power and threatens the maintenance of an adequate standard of living by such workers and their families;
- (f) Prevents optimum utilization of the state's available labor resources; and
- (g) Threatens the well-being of citizens of this state, and adversely affects the general welfare.

(2) It is therefor declared to be the policy of this state through exercise of its police power to correct and, as rapidly as possible, to eliminate discriminatory wage practices based on sex.

**Source:** Laws 1969, c. 389, § 1, p. 1365.

**48-1220 Terms, defined.**

As used in sections 48-1219 to 48-1227.01, unless the context otherwise requires:

(1) Employee shall mean any individual employed by an employer, including individuals employed by the state or any of its political subdivisions including public bodies;

(2) Employer shall mean any person engaged in an industry who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, any agent of such person, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act, and includes the State of Nebraska, its governmental agencies, and political subdivisions, regardless of the number of employees, but such term shall not include the United States, a corporation wholly owned by the government of the United States, or an Indian tribe;

(3) Wage rate shall mean all compensation for employment including payment in kind and amounts paid by employers for employee benefits as defined by the commission in regulations issued under sections 48-1219 to 48-1227;

(4) Employ shall include to suffer or permit to work;

(5) Commission shall mean the Equal Opportunity Commission; and

(6) Person shall include one or more individuals, partnerships, limited liability companies, corporations, legal representatives, trustees, trustees in bankruptcy, or voluntary associations.

**Source:** Laws 1969, c. 389, § 2, p. 1366; Laws 1983, LB 424, § 5; Laws 1983, LB 626, § 75; Laws 1993, LB 121, § 299; Laws 2005, LB 10, § 1.

**Cross References**

Nebraska Investment Finance Authority Act, see section 58-201.

**48-1221 Prohibited acts.**

(1) No employer shall discriminate between employees in the same establishment on the basis of sex, by paying wages to any employee in such establishment at a wage rate less than the rate at which the employer pays any employee of the opposite sex in such establishment for equal work on jobs which require equal skill, effort and responsibility under similar working conditions. Wage differentials are not within this prohibition where such payments are made pursuant to: (a) An established seniority system; (b) a merit increase system; or (c) a system which measures earning by quantity or quality of production or any factor other than sex.

(2) An employer who is paying a wage differential in violation of the provisions of sections 48-1219 to 48-1227 shall not, in order to comply with it, reduce the wage rates of any employee.

(3) No person shall cause or attempt to cause an employer to discriminate against any employee in violation of the provisions of sections 48-1219 to 48-1227.

(4) No employer may discharge or discriminate against any employee by reason of any action taken by such employee to invoke or assist in any manner the enforcement of the provisions of sections 48-1219 to 48-1227.

**Source:** Laws 1969, c. 389, § 3, p. 1366.

**48-1222 Equal Opportunity Commission; powers.**

(1) The commission shall have the power and the duty to carry out the provisions of sections 48-1219 to 48-1227.

(2) For this purpose, the commission shall have the power to enter the place of employment of any employer to inspect and copy payrolls and other employment records, to compare character of work and operations on which persons employed by him are engaged, to question such person, and to obtain such other information as is reasonably necessary to the administration and enforcement of the provisions of sections 48-1219 to 48-1227.

(3) The commission shall have power to examine witnesses under oath, and to require by subpoena the attendance and testimony of witnesses and the production of any documentary evidence relating to the subject matter of any investigation undertaken pursuant to this section. Witnesses summoned by the commission shall be paid the same fees as are allowed witnesses attending the district court. In the event of the failure of a person to attend, testify or produce documents under or in response to a subpoena, the district court for the county in which the appearance is requested on application of the commission may issue an order requiring such person to appear before the commission, or to produce documentary evidence, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(4) The commission is authorized to endeavor to eliminate pay practices unlawful under the provisions of sections 48-1219 to 48-1227, by informal methods of conference, conciliation and persuasion, and to supervise the payment of wages owing to any employee under the provisions of sections 48-1219 to 48-1227.

(5) The commission shall have power to issue such regulations, not inconsistent with the purpose of sections 48-1219 to 48-1227, as it deems necessary or appropriate to carry out its provisions.

**Source:** Laws 1969, c. 389, § 4, p. 1367.

**Cross References**

For witness fees in district court, see section 33-139.

**48-1223 Violation of sections; damages; attorney's fees; agreements, effect; action; order of court.**

(1) Any employer who violates the provisions of section 48-1221 shall be liable to the employee or employees affected in the amount of their unpaid wages, and, in instances of willful violation, in employee suits under subsection (2) of this section up to an additional equal amount as liquidated damages.

(2) Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. The court in such action shall, in cases of violation in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

(3) No agreement by any such employee to work for less than the wage to which such employee is entitled under the provisions of sections 48-1219 to 48-1227 shall be a bar to any such action or to a voluntary wage restitution of the full amount due under the provisions of sections 48-1219 to 48-1227.

(4) At the written request of any employee claiming to have been paid less than the wage to which he may be entitled under the provisions of sections

48-1219 to 48-1227, the commission may bring any legal action necessary on behalf of the employee to collect such claim for unpaid wages. The commission shall not be required to pay the filing fee, or other costs, in connection with such action. The commission shall have power to join various claims against the employer in one cause of action.

(5) In proceedings under the provisions of this section, the court may order other affirmative action as appropriate, including reinstatement of employees discharged in violation of the provisions of sections 48-1219 to 48-1227.

(6) The commission shall have power to petition any court of competent jurisdiction to restrain violations of section 48-1221 and for such affirmative relief as the court may deem appropriate, including restoration of unpaid wages and reinstatement of employees, consistent with the purpose of sections 48-1219 to 48-1227.

**Source:** Laws 1969, c. 389, § 5, p. 1368.

#### **48-1224 Limitation of action.**

Court action under the provisions of sections 48-1219 to 48-1227 may be commenced no later than four years after the cause of action accrues.

**Source:** Laws 1969, c. 389, § 6, p. 1369.

#### **48-1225 Records; employer keep and maintain; contents.**

Every employer subject to the provisions of sections 48-1219 to 48-1227 shall make, keep, and maintain such records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed by him, and shall preserve such records for such periods of time, and shall make such reports therefrom as the commission shall prescribe.

**Source:** Laws 1969, c. 389, § 7, p. 1369.

#### **48-1226 Copy or abstract of sections; post; furnish employers.**

Every person subject to the provisions of sections 48-1219 to 48-1227 shall keep an abstract or copy of sections 48-1219 to 48-1227 posted in a conspicuous place in or about the premises wherein any employee is employed. Employers shall be furnished copies of abstracts of sections 48-1219 to 48-1227 by the state on request without charge.

**Source:** Laws 1969, c. 389, § 8, p. 1369.

#### **48-1227 Violations; penalty.**

(1) Any person who violates any provision of sections 48-1219 to 48-1227, or who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, the commission, or any other person, or has instituted, or caused to be instituted any proceeding under or related to sections 48-1219 to 48-1227, or has testified or is about to testify in any such proceeding, shall be guilty of a Class III misdemeanor.

(2) Any employer who violates the provisions of sections 48-1219 to 48-1227 by failing to keep the records required hereunder, or to furnish such records to the commission upon request, or who falsifies such records, or who hinders, delays, or otherwise interferes with the commission in the performance of its

duties in the enforcement of the provisions of sections 48-1219 to 48-1227, or refuses official entry into any place of employment which it is authorized by the provisions of sections 48-1219 to 48-1227 to inspect, shall be guilty of a Class V misdemeanor.

**Source:** Laws 1969, c. 389, § 9, p. 1369; Laws 1977, LB 40, § 304.

**48-1227.01 Suits against governmental bodies; authorized.**

The state, governmental agencies, and political subdivisions may be sued upon claims arising under sections 48-1219 to 48-1227 in the same manner as provided by such sections for suits against other employers.

**Source:** Laws 1983, LB 424, § 6.

(c) WAGE PAYMENT AND COLLECTION

**48-1228 Act, how cited.**

Sections 48-1228 to 48-1232 shall be known and may be cited as the Nebraska Wage Payment and Collection Act.

**Source:** Laws 1977, LB 220A, § 1; Laws 2007, LB255, § 1.

The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).

Nebraska Wage Payment and Collection Act does not apply to severance payment which becomes due upon termination of employment. *Babb v. United Food & Commercial Workers Local 271*, 233 Neb. 826, 448 N.W.2d 168 (1989).

If an employer and employee agree upon a bonus to be paid upon certain conditions and the conditions are fulfilled, the bonus is wages under the Nebraska Wage Payment and Collection Act. *Knutson v. Snyder Industries, Inc.*, 231 Neb. 374, 436 N.W.2d 496 (1989).

The Nebraska Wage Payment and Collection Act applies only to actions to recover wages due an employee for labor or services performed for an employer. *Heimbouch v. Victorio Ins. Serv., Inc.*, 220 Neb. 279, 369 N.W.2d 620 (1985).

**48-1229 Terms, defined.**

For purposes of the Nebraska Wage Payment and Collection Act, unless the context otherwise requires:

(1) Employer means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof, within or without the state, employing any person within the state as an employee;

(2) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods or services of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This subdivision is not intended to be a codification of the common law and shall be considered complete as written;

(3) Fringe benefits includes sick and vacation leave plans, disability income protection plans, retirement, pension, or profit-sharing plans, health and acci-

dent benefit plans, and any other employee benefit plans or benefit programs regardless of whether the employee participates in such plans or programs; and

(4) Wages means compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission, or other basis. Paid leave, other than earned but unused vacation leave, provided as a fringe benefit by the employer shall not be included in the wages due and payable at the time of separation, unless the employer and the employee or the employer and the collective-bargaining representative have specifically agreed otherwise. Unless the employer and employee have specifically agreed otherwise through a contract effective at the commencement of employment or at least ninety days prior to separation, whichever is later, wages includes commissions on all orders delivered and all orders on file with the employer at the time of separation of employment less any orders returned or canceled at the time suit is filed.

**Source:** Laws 1977, LB 220A, § 2; Laws 1988, LB 1130, § 1; Laws 1989, LB 238, § 1; Laws 1991, LB 311, § 1; Laws 1993, LB 121, § 300; Laws 1999, LB 753, § 1; Laws 2007, LB255, § 2.

1. Vacation and sick leave
2. Consideration as wages
3. Miscellaneous

#### 1. Vacation and sick leave

The Nebraska Wage Payment and Collection Act does not prohibit an employer from providing a sick leave benefit which may be used only in the event of illness or injury and which has no monetary value upon termination of employment if it is not so used. *Loves v. World Ins. Co.*, 277 Neb. 359, 773 N.W.2d 348 (2009).

The Nebraska Wage Payment and Collection Act does not prohibit an employer from providing a sick leave benefit which may be used only in the event of illness or injury and which has no monetary value upon termination of employment if it is not so used. *Loves v. World Ins. Co.*, 276 Neb. 936, 758 N.W.2d 640 (2008).

Under the plain language of subsection (4) of this section, unused sick leave is not a part of wages payable to a separating employee unless there is a specific agreement otherwise. *Loves v. World Ins. Co.*, 276 Neb. 936, 758 N.W.2d 640 (2008).

Accrued vacation time, which is part of an employment agreement, is due and payable as wages upon termination of employment. *Roseland v. Strategic Staff Mgmt.*, 272 Neb. 434, 722 N.W.2d 499 (2006).

#### 2. Consideration as wages

Pursuant to subsection (3) of this section, deferred compensation constitutes wages under the Nebraska Wage Payment and Collection Act. *Sindelar v. Canada Transport, Inc.*, 246 Neb. 559, 520 N.W.2d 203 (1994).

Where an employment contract provides for the sharing of possible financial losses, sums collected under such a provision are not "benefits" which could be considered "wages" under subsection (3) of this section. *Brown v. Clayton Brokerage Co.*, 238 Neb. 646, 472 N.W.2d 381 (1991).

Where an employment agreement provides for sharing of possible financial losses, sums collected under such a provision are not "benefits" which could be considered "wages" under subsection (3) of this section. *Waite v. A. S. Battiatto Co.*, 238 Neb. 151, 469 N.W.2d 766 (1991).

An employee's share of the profits of his employer under a profit-sharing plan can be wages within the meaning of subsection (3) of this section. *Suess v. Lee Sapp Leasing*, 229 Neb. 755, 428 N.W.2d 899 (1988).

Overtime wages can be claimed under the Nebraska Wage Payment and Collection Act only if those overtime wages were previously agreed to by the employer and the employee. Nonetheless, even in the absence of a previous agreement concerning overtime compensation, compensation for overtime can be claimed under the federal Fair Labor Standards Act for hours worked in excess of 40 during a given week. *Freeman v. Central States Health & Life Co.*, 2 Neb. App. 803, 515 N.W.2d 131 (1994).

#### 3. Miscellaneous

The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).

Statutory definitions applied to facts to reach conclusion that route salesman is an employee within the meaning of the Nebraska Wage Payment and Collection Act. *Rudolf v. Tombstone Pizza Corp.*, 214 Neb. 276, 333 N.W.2d 673 (1983).

District court erred in finding that plaintiffs were not employees under the definition provided by this section. *Tracy v. Tracy*, 7 Neb. App. 143, 581 N.W.2d 96 (1998).

**48-1230 Employer; regular paydays; altered; notice; deduct, withhold, or divert portion of wages; when; itemized statement; duty of employer to furnish; unpaid wages; when due.**

(1) Except as otherwise provided in this section, each employer shall pay all wages due its employees on regular days designated by the employer or agreed

upon by the employer and employee. Thirty days' written notice shall be given to an employee before regular paydays are altered by an employer. An employer may deduct, withhold, or divert a portion of an employee's wages only when the employer is required to or may do so by state or federal law or by order of a court of competent jurisdiction or the employer has written agreement with the employee to deduct, withhold, or divert.

(2) Within ten working days after a written request is made by an employee, an employer shall furnish such employee with an itemized statement listing the wages earned and the deductions made from the employee's wages under subsection (1) of this section for each pay period that earnings and deductions were made. The statement may be in print or electronic format.

(3) Except as otherwise provided in section 48-1230.01:

(a) Whenever an employer, other than a political subdivision, separates an employee from the payroll, the unpaid wages shall become due on the next regular payday or within two weeks of the date of termination, whichever is sooner; and

(b) Whenever a political subdivision separates an employee from the payroll, the unpaid wages shall become due within two weeks of the next regularly scheduled meeting of the governing body of the political subdivision if such employee is separated from the payroll at least one week prior to such meeting, or if an employee of a political subdivision is separated from the payroll less than one week prior to the next regularly scheduled meeting of the governing body of the political subdivision, the unpaid wages shall be due within two weeks of the following regularly scheduled meeting of the governing body of the political subdivision.

**Source:** Laws 1977, LB 220A, § 3; Laws 1988, LB 1130, § 2; Laws 2007, LB255, § 3; Laws 2010, LB884, § 2.

The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).

Application of the Wage Payment and Collection Act does not affect the need to satisfy the requisites of pursuing a claim against a city of the metropolitan class. *Thompson v. City of Omaha*, 235 Neb. 346, 455 N.W.2d 538 (1990).

**48-1230.01 Employer; unpaid wages constituting commissions; duties.**

Whenever an employer separates an employee from the payroll, the unpaid wages constituting commissions shall become due on the next regular payday following the employer's receipt of payment for the goods or services from the customer from which the commission was generated. The employer shall provide an employee with a periodic accounting of outstanding commissions until all commissions have been paid or the orders have been returned or canceled by the customer.

**Source:** Laws 2007, LB255, § 4.

**48-1231 Employee; claim for wages; suit; judgment; costs and attorney's fees; failure to furnish itemized statement; penalty.**

(1) An employee having a claim for wages which are not paid within thirty days of the regular payday designated or agreed upon may institute suit for such unpaid wages in the proper court. If an employee establishes a claim and secures judgment on the claim, such employee shall be entitled to recover (a) the full amount of the judgment and all costs of such suit and (b) if such employee has employed an attorney in the case, an amount for attorney's fees

assessed by the court, which fees shall not be less than twenty-five percent of the unpaid wages. If the cause is taken to an appellate court and the plaintiff recovers a judgment, the appellate court shall tax as costs in the action, to be paid to the plaintiff, an additional amount for attorney's fees in such appellate court, which fees shall not be less than twenty-five percent of the unpaid wages. If the employee fails to recover a judgment in excess of the amount that may have been tendered within thirty days of the regular payday by an employer, such employee shall not recover the attorney's fees provided by this section. If the court finds that no reasonable dispute existed as to the fact that wages were owed or as to the amount of such wages, the court may order the employee to pay the employer's attorney's fees and costs of the action as assessed by the court.

(2) An employer who fails to furnish an itemized statement requested by an employee under subsection (2) of section 48-1230 shall be guilty of an infraction as defined in section 29-431 and shall be subject to a fine pursuant to section 29-436.

**Source:** Laws 1977, LB 220A, § 4; Laws 1991, LB 311, § 2; Laws 2010, LB884, § 3.

A party has no viable claim to a wage that has not yet been received. *Law Offices of Ronald J. Palagi v. Howard*, 275 Neb. 334, 747 N.W.2d 1 (2008).

In a wage claim brought under section 15-841 against a city of the primary class, there is nothing in the plain language of this section that requires an employee to plead a specific cause of action for attorney fees or to file a separate proceeding for attorney fees in order to receive an award of attorney fees under the Nebraska Wage Payment and Collection Act. *Rauscher v. City of Lincoln*, 269 Neb. 267, 691 N.W.2d 844 (2005).

The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would

warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).

Employers will not be awarded attorney fees under the Nebraska Wage Payment and Collection Act if the employer has not tendered an amount to the employee within 30 days of the employee's regular payday. *Brockley v. Lozier Corp.*, 241 Neb. 449, 488 N.W.2d 556 (1992).

Unpaid wages means wages which are not paid within 30 days of the regular payday designated or agreed upon. *Polly v. Ray D. Hilderman & Co.*, 225 Neb. 662, 407 N.W.2d 751 (1987).

#### **48-1232 Employee; claim; judgment; additional recovery from employer; when.**

If an employee establishes a claim and secures judgment on such claim under subsection (1) of section 48-1231: (1) An amount equal to the judgment may be recovered from the employer; or (2) if the nonpayment of wages is found to be willful, an amount equal to two times the amount of unpaid wages shall be recovered from the employer. Any amount recovered pursuant to subdivision (1) or (2) of this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1977, LB 220A, § 5; Laws 1989, LB 238, § 2; Laws 1990, LB 1178, § 1; Laws 2007, LB255, § 5; Laws 2010, LB884, § 4.

It is in the court's discretion whether to order an employer to pay to the common schools fund an amount equal to the judgment. There was a reasonable dispute concerning whether payment for unused vacation leave was due to the employees. *Roseland v. Strategic Staff Mgmt.*, 272 Neb. 434, 722 N.W.2d 499 (2006).

The amount of penalty ordered to be paid to a fund to be distributed to the common schools of the state is a matter left to the discretion of the trial court, subject to the limitations prescribed by statute. *Kinney v. H.P. Smith Ford*, 266 Neb. 591, 667 N.W.2d 529 (2003).

The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).

It is discretionary with the court whether to order the employer to pay to the common school fund an amount equal to the judgment. This section should not be invoked where there is a reasonable dispute as to the fact that wages are owed or as to the amount of the wages. *Morris v. Rochester Midland Corp.*, 259 Neb. 870, 612 N.W.2d 921 (2000).

It is discretionary with the court whether to order the employer to pay to the common school fund an amount equal to the judgment. *Suess v. Lee Sapp Leasing*, 229 Neb. 755, 428 N.W.2d 899 (1988).

The award of an attorney fee of not less than twenty-five percent of the unpaid wages is mandatory under this act. *Barbour v. Jenson Commercial Distributing Co.*, 212 Neb. 512, 323 N.W.2d 824 (1982).

## ARTICLE 13

## EQUAL OPPORTUNITY FOR DISPLACED HOMEMAKERS

## Section

- 48-1301. Repealed. Laws 2009, LB 549, § 53.  
 48-1302. Repealed. Laws 2009, LB 549, § 53.  
 48-1303. Repealed. Laws 2009, LB 549, § 53.  
 48-1304. Repealed. Laws 2009, LB 549, § 53.  
 48-1305. Repealed. Laws 2009, LB 549, § 53.  
 48-1306. Repealed. Laws 2009, LB 549, § 53.  
 48-1307. Repealed. Laws 1981, LB 545, § 52.  
 48-1308. Repealed. Laws 1980, LB 663, § 2.  
 48-1309. Repealed. Laws 2009, LB 549, § 53.

**48-1301 Repealed. Laws 2009, LB 549, § 53.**

**48-1302 Repealed. Laws 2009, LB 549, § 53.**

**48-1303 Repealed. Laws 2009, LB 549, § 53.**

**48-1304 Repealed. Laws 2009, LB 549, § 53.**

**48-1305 Repealed. Laws 2009, LB 549, § 53.**

**48-1306 Repealed. Laws 2009, LB 549, § 53.**

**48-1307 Repealed. Laws 1981, LB 545, § 52.**

**48-1308 Repealed. Laws 1980, LB 663, § 2.**

**48-1309 Repealed. Laws 2009, LB 549, § 53.**

## ARTICLE 14

## DEFERRED COMPENSATION

## Section

- 48-1401. Political subdivisions; exception; deferred compensation plan; provisions; investment.

**48-1401 Political subdivisions; exception; deferred compensation plan; provisions; investment.**

(1) Any county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, may enter into an agreement to defer a portion of any individual's compensation derived from such county, municipality, or other political subdivision, instrumentality, or agency to a future period in time pursuant to section 457 of the Internal Revenue Code. Such deferred compensation plan shall be voluntary and shall be available to all regular employees and elected officials.

(2) The compensation to be deferred may never exceed the total compensation to be received by the individual from the employer or exceed the limits established by the Internal Revenue Code for such a plan.

(3) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall be held in trust for the

exclusive benefit of participants and their beneficiaries by the county, municipality, or other political subdivision, instrumentality, or agency until such time as payments are made under the terms of the deferred compensation plan.

(4) The county, municipality, or other political subdivision, instrumentality, or agency shall designate its treasurer or an equivalent official, including the State Treasurer, to be the custodian of the funds and securities of the deferred compensation plan.

(5) The county, municipality, or other political subdivision, instrumentality, or agency may invest the compensation to be deferred under an agreement in or with: (a) Annuities; (b) mutual funds; (c) banks; (d) savings and loan associations; (e) trust companies qualified to act as fiduciaries in this state; (f) an organization established for the purpose of administering public employee deferred compensation retirement plans and authorized to do business in the State of Nebraska; or (g) investment advisers as defined in the federal Investment Advisers Act of 1940.

(6) The deferred compensation program shall exist and serve in addition to, and shall not be a part of, any existing retirement or pension system provided for state, county, municipal, or other political subdivision, instrumentality, or agency employees, or any other benefit program.

(7) Any compensation deferred under such a deferred compensation plan shall continue to be included as regular compensation for the purpose of computing the retirement, pension, or social security contributions made or benefits earned by any employee.

(8) Any sum so deferred shall not be included in the computation of any federal or state taxes withheld on behalf of any such individual.

(9) The state, county, municipality, or other political subdivision, instrumentality, or agency shall not be responsible for any investment results entered into by the individual in the deferred compensation agreement.

(10) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.

(11) Nothing contained in this section shall in any way limit, restrict, alter, amend, invalidate, or nullify any deferred compensation plan previously instituted by any county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, and any such plan is hereby authorized and approved.

(12) If a county has not established a deferred compensation plan pursuant to this section, each individual may require that the county enter into an agreement with the individual to defer a portion of such individual's compensation and place it under the management and supervision of the state deferred compensation plan created pursuant to sections 84-1504 to 84-1506. If such an agreement is made, the county shall designate the State Treasurer as custodian of such deferred compensation funds and such deferred compensation funds shall become a part of the trust administered by the Public Employees Retirement Board pursuant to sections 84-1504 to 84-1506.

(13) For purposes of this section, individual means (a) any person designated by the county, municipality, or other political subdivision, instrumentality, or

agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, as a permanent part-time or full-time employee of the county, municipality, or other political subdivision, instrumentality, or agency and (b) a person under contract providing services to the county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, and who has entered into a contract with such county, municipality, political subdivision, instrumentality, or agency to have compensation deferred prior to August 28, 1999.

**Source:** Laws 1977, LB 328, § 1; Laws 1997, LB 623, § 11; Laws 1999, LB 703, § 8.

## ARTICLE 15

### SHELTERED WORKSHOPS

#### Section

- 48-1501. Sheltered workshop, defined.
- 48-1502. Sheltered workshop; negotiate contracts; conditions.
- 48-1503. Governmental subdivisions; direct negotiation for products and services; considerations; procedures; contract requirements.
- 48-1504. Conduct prohibited.
- 48-1505. Violations; penalty.
- 48-1506. Home rule charter cities; direct negotiation for products and services.

#### **48-1501 Sheltered workshop, defined.**

As used in sections 48-1501 to 48-1506, unless the context otherwise requires, sheltered workshop shall mean a facility in Nebraska operated by a public agency or a private nonprofit corporation organized for the primary purpose of employment of and service to physically or mentally disabled clients in a program of rehabilitation. Such facility shall be certified as a sheltered workshop, a work activity center, or an equivalent by an independent accrediting agency and comply with the Fair Labor Standards Amendments of 1966, Public Law No. 89-601, 80 Stat. 830, as a sheltered workshop or a work activity center.

**Source:** Laws 1984, LB 540, § 1; Laws 1997, LB 238, § 5.

#### **48-1502 Sheltered workshop; negotiate contracts; conditions.**

To negotiate contracts pursuant to sections 48-1501 to 48-1506, a sheltered workshop shall:

- (1) Employ a minimum of ten physically or mentally disabled clients;
- (2) Provide disabled clients with a wage at a level consistent with their health, efficiency, and general well-being as required by Chapter 48, article 12;
- (3) Provide a controlled work environment and a program designed to enable the disabled client enrolled in the program to progress toward normal living and develop, as far as possible, his or her capacity, performance, and relationship with other persons; and
- (4) Provide a work experience sufficiently diverse to accommodate the needs of each disabled client enrolled in the program.

**Source:** Laws 1984, LB 540, § 2; Laws 1997, LB 238, § 6.

**48-1503 Governmental subdivisions; direct negotiation for products and services; considerations; procedures; contract requirements.**

Whenever the State of Nebraska, any department or any agency thereof, or any county, municipality, school district, township, or other governmental subdivision is required to advertise for bids pursuant to any statutes of the State of Nebraska, it may directly negotiate and contract for products and services with a sheltered workshop. Direct negotiation for products and services, notwithstanding the procedures for public lettings pursuant to sections 73-101 to 73-106, may be conducted if the department, agency, or subdivision gives consideration to the following elements:

- (1) Whether the product or service contracted for is supplied by the sheltered workshop at a fair market price;
- (2) Whether the product or service meets the specifications of the department, agency, or subdivision;
- (3) The ability, capacity, and skill of the sheltered workshop to perform the contract required;
- (4) The character, integrity, reputation, judgment, experience, and efficiency of the sheltered workshop;
- (5) Whether the sheltered workshop can perform the contract within the time specified;
- (6) The quality of performance of previous contracts;
- (7) The previous and existing compliance by the sheltered workshop with laws relating to the contract;
- (8) The life-cost of the product or service in relation to the purchase price and specific use of the item; and
- (9) The performance of the product or service, taking into consideration any commonly accepted tests and standards of product usability and user requirements.

An agency, subdivision, or city under home rule charter shall furnish prior public notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by any sheltered workshop interested in contracting for such work.

Any contract negotiated pursuant to this section shall be in writing and shall be made available to the public by the purchasing party upon request. Such a contract shall include the purchase price, the quantity of product or service purchased, and the time period for which the product or service will be provided.

**Source:** Laws 1984, LB 540, § 3.

**48-1504 Conduct prohibited.**

No person shall engage in, aid, or abet any person in any conduct, fraudulent activity, or misrepresentation of the facts in violation of sections 48-1501 to 48-1503.

**Source:** Laws 1984, LB 540, § 4.

**48-1505 Violations; penalty.**

A person violating any provision of sections 48-1501 to 48-1504 shall be guilty of a Class IV misdemeanor. In the case of a continuing violation, each day shall constitute a separate offense.

**Source:** Laws 1984, LB 540, § 13.

**48-1506 Home rule charter cities; direct negotiation for products and services.**

Notwithstanding the provisions for public lettings required by a city home rule charter adopted pursuant to Article XI of the Constitution, the governing body of any such city may negotiate directly with a sheltered workshop pursuant to section 48-1503.

**Source:** Laws 1984, LB 540, § 5.

**ARTICLE 16**

**NEBRASKA WORKFORCE INVESTMENT ACT**

(a) NEBRASKA JOB TRAINING ACT

Section

- 48-1601. Repealed. Laws 2001, LB 193, § 15.
- 48-1602. Repealed. Laws 2001, LB 193, § 15.
- 48-1603. Repealed. Laws 2001, LB 193, § 15.
- 48-1604. Repealed. Laws 2001, LB 193, § 15.
- 48-1605. Repealed. Laws 2001, LB 193, § 15.
- 48-1606. Repealed. Laws 2001, LB 193, § 15.
- 48-1607. Repealed. Laws 2001, LB 193, § 15.
- 48-1608. Repealed. Laws 2001, LB 193, § 15.
- 48-1609. Repealed. Laws 2001, LB 193, § 15.
- 48-1610. Repealed. Laws 2001, LB 193, § 15.
- 48-1611. Repealed. Laws 2001, LB 193, § 15.
- 48-1612. Repealed. Laws 2001, LB 193, § 15.
- 48-1613. Repealed. Laws 2001, LB 193, § 15.
- 48-1614. Repealed. Laws 2001, LB 193, § 15.
- 48-1615. Repealed. Laws 2001, LB 193, § 15.

(b) NEBRASKA WORKFORCE INVESTMENT ACT

- 48-1616. Act, how cited.
- 48-1617. Purpose of act.
- 48-1618. Terms, defined.
- 48-1619. One-stop career center; program and activity requirements; affiliate career centers.
- 48-1620. Local workforce investment boards; members; duties.
- 48-1621. Local boards; youth council; duties.
- 48-1622. One-stop career centers; core services; requirements.
- 48-1623. Nebraska Workforce Investment Board; members.
- 48-1624. State board; duties.
- 48-1625. State board; state plan; duties.
- 48-1626. Commissioner; powers.
- 48-1627. Appeals; procedure.

(a) NEBRASKA JOB TRAINING ACT

**48-1601 Repealed. Laws 2001, LB 193, § 15.**

**48-1602 Repealed. Laws 2001, LB 193, § 15.**

**48-1603 Repealed. Laws 2001, LB 193, § 15.**

**48-1604 Repealed. Laws 2001, LB 193, § 15.**

**48-1605 Repealed. Laws 2001, LB 193, § 15.**

**48-1606 Repealed. Laws 2001, LB 193, § 15.**

**48-1607 Repealed. Laws 2001, LB 193, § 15.**

**48-1608 Repealed. Laws 2001, LB 193, § 15.**

**48-1609 Repealed. Laws 2001, LB 193, § 15.**

**48-1610 Repealed. Laws 2001, LB 193, § 15.**

**48-1611 Repealed. Laws 2001, LB 193, § 15.**

**48-1612 Repealed. Laws 2001, LB 193, § 15.**

**48-1613 Repealed. Laws 2001, LB 193, § 15.**

**48-1614 Repealed. Laws 2001, LB 193, § 15.**

**48-1615 Repealed. Laws 2001, LB 193, § 15.**

(b) NEBRASKA WORKFORCE INVESTMENT ACT

**48-1616 Act, how cited.**

Sections 48-1616 to 48-1627 shall be known and may be cited as the Nebraska Workforce Investment Act.

**Source:** Laws 2001, LB 193, § 1.

**48-1617 Purpose of act.**

(1) The purpose of the Nebraska Workforce Investment Act is to provide workforce investment activities through statewide and local workforce investment systems that will improve the quality of the workforce and enhance the productivity and competitiveness of Nebraska through its workforce.

(2) The Legislature recognizes the following principles:

(a) Nebraskans must upgrade their skills to succeed in today's workplace;

(b) In business, workforce skills are the key competitive advantage;

(c) Workforce skills will be Nebraska's primary job-creating incentive for business;

(d) Efficiency and accountability mandate the consolidation of program services and the elimination of unwarranted duplication;

(e) Streamlined state and local partnerships must focus on outcomes, not process;

(f) Locally designed, customer-focused, market-driven service delivery which offers a single point of entry for all services is vital; and

(g) Job training services must be developed in concert with the input and needs of existing employers and businesses, and must consider anticipated demand for targeted job opportunities.

In recognition of these principles, the Nebraska Workforce Investment Act will coordinate state and local activities to increase employment, retention, occupational skills, and earnings in the workforce. The act will enhance the productivity and competitiveness of state business and industry and encourage

continuous improvement in worker preparation beginning with youth in middle school through adulthood.

(3) Nebraska's workforce development plan must implicate a comprehensive, consumer-driven, employment and career development system that meets the needs of all members of the workforce, including those entering the workforce for the first time, those in employment transition, and those currently employed but seeking to enhance their skills for continued career advancement.

**Source:** Laws 2001, LB 193, § 2.

**48-1618 Terms, defined.**

For purposes of the Nebraska Workforce Investment Act, unless the context otherwise requires:

(1) Chief elected official means the chief elected executive officer of a unit of general local government in a local area, and in a case in which a local area includes more than one unit of general local government, the individuals designated under the local area plan or the agreement described in section 117(c)(1)(B) of the federal Workforce Investment Act, 29 U.S.C. 2832(c)(1)(B);

(2) Commissioner means the Commissioner of Labor;

(3) Core services means services described in section 134(d)(2) of the federal Workforce Investment Act, 29 U.S.C. 2864(d)(2), available to individuals who are adults or dislocated workers through the one-stop delivery system;

(4) Federal Workforce Investment Act means the Workforce Investment Act of 1998, 29 U.S.C. 2801 et seq., as the act existed on March 2, 2001;

(5) Intensive services means services described in section 134(d)(3) of the federal Workforce Investment Act, 29 U.S.C. 2864(d)(3), available to adults and dislocated workers respectively through the one-stop delivery system who are unemployed and are unable to obtain employment through core services and who have been determined by a one-stop operator to be in need of more intensive services in order to obtain employment or who are employed but who are determined by a one-stop operator to be in need of such intensive services in order to obtain or retain employment that allows for self-sufficiency;

(6) Local area means a local area designated by the Governor and described in the state plan pursuant to section 116 of the federal Workforce Investment Act, 29 U.S.C. 2831;

(7) Local board means a local workforce investment board established pursuant to section 48-1620;

(8) One-stop career center means a physical location that provides access to all one-stop services and partners, is certified by the local area, and includes an onsite resource area that meets the minimum criteria as established by the local area plan;

(9) One-stop partner means an entity described in section 121(b)(1) of the federal Workforce Investment Act, 29 U.S.C. 2841(b)(1), that is participating with the approval of the local board and chief elected official, in the operation of a one-stop delivery system;

(10) State board means the Nebraska Workforce Investment Board established pursuant to section 48-1623; and

(11) Youth council means a council established under section 117(h) of the federal Workforce Investment Act, 29 U.S.C. 2832(h).

**Source:** Laws 2001, LB 193, § 3.

**48-1619 One-stop career center; program and activity requirements; affiliate career centers.**

(1) At least one comprehensive one-stop career center shall be established in each local area of the state. State agencies providing services at a comprehensive one-stop career center include the Department of Labor, Department of Health and Human Services, Department of Economic Development, State Department of Education, and community colleges in the area where the one-stop career center is located. The following minimum level of programs and activities shall be available at a comprehensive one-stop career center:

(a) Adult, youth, and dislocated workers employment and training programs provided under Title I of the federal Workforce Investment Act;

(b) Programs authorized under the Wagner-Peyser Act, 29 U.S.C. 49 et seq., as the act existed on March 2, 2001;

(c) Adult education and literacy activities authorized under Title II of the federal Workforce Investment Act;

(d) Programs authorized under Title I of the Rehabilitation Act of 1973, 29 U.S.C. 720 et seq., as the act existed on March 2, 2001;

(e) Welfare to work programs authorized under section 403(a)(5) of the Social Security Act, 42 U.S.C. 603(a)(5), as the section existed on March 2, 2001;

(f) Older American community service programs authorized under Title V of the Older Americans Act of 1965, 42 U.S.C. 3056 et seq., as the act existed on March 2, 2001;

(g) Postsecondary education activities authorized under the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. 2301 et seq., as the act existed on March 2, 2001. Preference shall be given to the applications of one-stop career centers which have submitted and obtained approval of a business plan to the local board;

(h) Trade adjustment assistance for workers authorized under Title II of the Trade Act of 1974, 19 U.S.C. 2271 et seq., as the act existed on March 2, 2001;

(i) Job counseling and training and placement services for veterans authorized under Chapter 41 of Title 38 of the United States Code, as such chapter existed on March 2, 2001;

(j) Employment and training activities carried out under the Community Services Block Grant Act, 42 U.S.C. 9901 et seq., as the act existed on March 2, 2001;

(k) Employment and training activities carried out by the federal Department of Housing and Urban Development; and

(l) Unemployment benefit and reemployment services authorized under the Employment Security Law.

(2) In addition to the mandatory programs in subsection (1) of this section, a local board is encouraged to include participation by the Department of Correctional Services, youth programs authorized under section 129 of the federal Workforce Investment Act, 29 U.S.C. 2854, the Nebraska Workers'

Compensation Court, public and private postsecondary educational institutions, and secondary education activities authorized under the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. 2301 et seq., as the act existed on March 2, 2001.

(3) A local board may establish one or more affiliate career centers which offer one or more of the program services described in subsection (1) of this section and can provide a direct link to the comprehensive one-stop career center through technology.

(4) Comprehensive one-stop career centers shall utilize a common intake and common application system for persons applying for services or training offered at the one-stop career center.

**Source:** Laws 2001, LB 193, § 4.

**Cross References**

**Employment Security Law**, see section 48-601.

**48-1620 Local workforce investment boards; members; duties.**

(1) In each local area of the state a local workforce investment board shall be established and certified by the Governor. The local board shall set policy for the portion of the statewide workforce investment system within the local area. The chief elected official in a local area shall appoint the members of the local board for such area in accordance with the criteria established under subsection (2) of this section.

(2) The Governor, in consultation with the state board, shall establish criteria for use by chief elected officials in the local areas for appointment of members of the local boards in such local areas. Such criteria shall require, at a minimum, that the membership of each local board:

(a) Shall include:

(i) Representatives of business in the local area who:

(A) Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority;

(B) Represent businesses with employment opportunities that reflect the employment opportunities of the local area; and

(C) Are appointed from among individuals nominated by local business organizations and business trade associations;

(ii) Representatives of local educational entities, including representatives of local educational agencies, local kindergarten through grade twelve school boards, career preparation education providers, entities providing adult education and literacy activities, and postsecondary educational institutions, including representatives of community colleges, where such entities exist, selected from among individuals to be nominated by regional or local educational agencies, institutions, or organizations representing such local educational entities;

(iii) Representatives of labor organizations, for a local area in which employees are represented by labor organizations, nominated by local labor federations, or for a local area in which no employees are represented by such organizations, nominated by other representatives of employees;

(iv) Representatives of community-based organizations, including organizations representing individuals with disabilities and veterans, for a local area in which such organizations are present;

(v) Representatives of economic development agencies, including private sector economic development entities; and

(vi) Representatives of each of the required one-stop career center partners. The required partners are those described in subsection (1) of section 48-1619; and

(b) May include such other individuals or representatives of entities as the chief elected official in the local area determines appropriate.

(3) Members of the local board that represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities.

(4) A majority of the members of the local board shall be representatives described in subdivision (2)(a)(i) of this section. The local board shall elect a chairperson for the local board from among the representatives described in such subdivision.

(5) To transact business at all meetings of the local board, a quorum of members must be present. A quorum of a local workforce investment board shall be a majority of its appointed members.

(6) A local board in partnership with the chief elected official shall develop and submit to the Governor and the state board a proposed comprehensive five-year local plan in accordance with section 118 of the federal Workforce Investment Act, 29 U.S.C. 2833.

(7) The local plan is subject to approval by the Governor.

**Source:** Laws 2001, LB 193, § 5.

**48-1621 Local boards; youth council; duties.**

(1) There shall be established, as a subcommittee within each local board, a youth council appointed by the local board, in cooperation with the chief elected official for the local area.

(2) The membership of each youth council shall include:

(a) Members of the local board with special interest or expertise in youth policy;

(b) Representatives of youth service agencies, including juvenile justice and local law enforcement agencies;

(c) Representatives of local public housing authorities;

(d) Parents of youth, including, but not limited to, parents of eligible youth seeking assistance under the Nebraska Workforce Investment Act;

(e) Individuals, including former participants, and representatives of organizations, that have experience relating to youth activities;

(f) Representatives of the Job Corps, as appropriate; and

(g) Representatives of local kindergarten through grade twelve school boards, community colleges, and such other individuals as the chairperson of the local board, in cooperation with the chief elected official, determines to be appropriate.

(3) Members of the youth council who are not members of the local board shall be voting members of the youth council and nonvoting members of the local board.

(4) The duties of the youth council include:

(a) Developing the portions of the local plan relating to eligible youth, as determined by the chairperson of the local board;

(b) Subject to the approval of the local board and consistent with section 123 of the federal Workforce Investment Act, 29 U.S.C. 2843:

(i) Recommending eligible providers of youth programs authorized under section 129 of the federal Workforce Investment Act, 29 U.S.C. 2854, to be awarded grants or contracts on a competitive basis by the local board to carry out the youth programs; and

(ii) Conducting oversight with respect to the eligible providers of youth activities in the local area;

(c) Coordinating youth activities authorized under section 129 of the federal Workforce Investment Act, 29 U.S.C. 2854, in the local area;

(d) The coordination of career preparation programs; and

(e) Other duties determined to be appropriate by the chairperson of the local board.

**Source:** Laws 2001, LB 193, § 6.

**48-1622 One-stop career centers; core services; requirements.**

(1) As a part of the core services required by section 134(d)(2)(E)(i) of the federal Workforce Investment Act, 29 U.S.C. 2864(d)(2)(E)(i), one-stop career centers shall provide current listings of job opportunities.

(2) Funds allocated to a local area for adults and dislocated workers pursuant to the federal Workforce Investment Act shall be used to provide intensive services to adults and dislocated workers, respectively:

(a) Who are unemployed and are unable to obtain employment through core services provided in section 134(d)(2) of the federal Workforce Investment Act, 29 U.S.C. 2864(d)(2), and have been determined by a one-stop career center partner to be in need of more intensive services in order to obtain employment; or

(b) Who are employed but who are determined by a one-stop career center operator to be in need of intensive services in order to obtain or retain employment that allows for self-sufficiency.

(3) Intensive services shall be provided through the one-stop delivery system:

(a) Directly through one-stop career center operators identified pursuant to section 121(d) of the federal Workforce Investment Act, 29 U.S.C. 2841(d); or

(b) Through contracts with service providers, which may include contracts with public, private for-profit, and private nonprofit service providers, approved by the local board.

(4) Intensive services may include the following:

(a) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include:

(i) Diagnostic testing and use of other assessment tools; and

(ii) Indepth interviewing and evaluation to identify employment barriers and appropriate employment goals;

(b) Development of an individual employment plan, to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve the employment goals;

(c) Group counseling;

(d) Individual counseling and career planning;

(e) Case management for participants seeking training services; and

(f) Short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for employment or training.

(5) Except as provided in section 134(d)(4)(G)(ii) of the federal Workforce Investment Act, 29 U.S.C. 2864(d)(4)(G)(ii), training services provided in accordance with section 134 of the federal act, 29 U.S.C. 2864, shall be provided through the use of individual training accounts and shall be provided to eligible individuals through the one-stop delivery system.

**Source:** Laws 2001, LB 193, § 7.

**48-1623 Nebraska Workforce Investment Board; members.**

(1) The Nebraska Workforce Investment Board is established to assist in the development of a state plan to carry out the functions described in the federal Workforce Investment Act.

(2) The state board shall include:

(a) The Governor;

(b) Two members of the Legislature selected by and serving at the pleasure of the Speaker of the Legislature; and

(c) Members appointed by the Governor who serve at the pleasure of the Governor who are:

(i) Representatives of business in the state who:

(A) Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority, including members of local boards described in subdivision (2)(a)(i) of section 48-1620;

(B) Represent businesses with employment opportunities that reflect the employment opportunities of the state; and

(C) Are appointed from among individuals nominated by state business organizations and business trade associations;

(ii) Chief elected officials representing both cities and counties;

(iii) Representatives of labor organizations who have been nominated by state labor federations;

(iv) Representatives of individuals and organizations that have experience with respect to youth programs authorized under section 129 of the federal Workforce Investment Act, 29 U.S.C. 2854;

(v) Representatives of individuals and organizations that have experience and expertise in the delivery of workforce investment activities, including chief

executive officers of community colleges and community-based organizations within the state;

(vi)(A) The officials from each of the lead state agencies with responsibility for the programs and activities that are described in section 48-1619 and carried out by one-stop partners; and

(B) In any case in which no lead state agency official has responsibility for such a program, service, or activity, a representative in the state with expertise relating to such program, service, or activity; and

(vii) Such other representatives and state agency officials as the Governor may designate.

(3) The two members of the Legislature serving on the state board shall be nonvoting, ex officio members. All other members shall be voting members. The Governor may designate a representative to participate on his or her behalf in state board committee and general meetings. Such representative shall be entitled to vote on matters brought before the board and shall be considered a member of the board for purposes of determining if a quorum is present.

(4) Members of the board that represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities. The members of the board shall represent diverse regions of the state, including urban, rural, and suburban areas.

(5) A majority of the voting members of the state board shall be private sector representatives described in subdivision (2)(c)(i) of this section. The Governor shall select a chairperson and a vice-chairperson for the state board from among the representatives described in such subdivision.

(6) To transact business at all meetings of the state board, a quorum of voting members must be present. A majority of the voting members shall constitute a quorum of the Nebraska Workforce Investment Board.

**Source:** Laws 2001, LB 193, § 8; Laws 2003, LB 194, § 1; Laws 2008, LB210, § 1.

**48-1624 State board; duties.**

The state board shall advise the Governor in:

(1) The development of the state plan;

(2) The development and continuous improvement of a statewide system of services that are funded under the federal Workforce Investment Act carried out through a one-stop delivery system described in section 134(c) of the federal act, 29 U.S.C. 2864(c), that receives funds under the statewide workforce investment system, including:

(a) The development of linkages in order to assure coordination and non-duplication among the programs and activities described in section 48-1619; and

(b) The review of local plans;

(3) Commenting at least once annually on the measures taken pursuant to section 113(b)(14) of the federal Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. 2323(b), as such section existed on March 2, 2001. Such comments shall be included in the annual report provided for in subsection (2) of section 48-1625;

(4) The designation of local areas as required in section 116 of the federal Workforce Investment Act, 29 U.S.C. 2831;

(5) The development of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas as permitted under sections 128(b)(3)(B) and 133(b)(3)(B) of the federal Workforce Investment Act, 29 U.S.C. 2853(b)(3)(B) and 29 U.S.C. 2863(b)(3)(B);

(6) The development and continuous improvement of comprehensive state performance measures, including state adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the state as required under section 136(b) of the federal Workforce Investment Act, 29 U.S.C. 2871(b);

(7) The preparation of the annual report to the Secretary of Labor described in section 136(d) of the federal Workforce Investment Act, 29 U.S.C. 2871(d);

(8) The development of the statewide employment statistics system described in section 15(e) of the federal Wagner-Peyser Act, 29 U.S.C. 49 et seq., as the section existed on March 2, 2001; and

(9) The development of an application for an incentive grant under section 503 of the federal Workforce Investment Act, 20 U.S.C. 9273.

**Source:** Laws 2001, LB 193, § 9.

**48-1625 State board; state plan; duties.**

(1) The state board shall submit to the Governor recommendations for changes in the state plan submitted to the Secretary of Labor outlining the five-year strategy for the statewide workforce investment system for the State of Nebraska in accordance with section 112 of the federal Workforce Investment Act, 29 U.S.C. 2822.

(2) The state board shall submit to the chairperson and members of the Business and Labor Committee of the Legislature, the chairperson of each of the standing committees of the Legislature, the Speaker of the Legislature, the Clerk of the Legislature, the Department of Health and Human Services, the Department of Economic Development, the State Department of Education, and the Department of Labor a copy of any recommendations for modification of the state plan and the annual report of the state board. The annual report of the state board shall include information on the number of individuals served, the state's average cost per individual receiving training or placement services, short-term and long-term performance measures of job placements, and training and skill levels of training participants. In order to promote better accountability, such reports shall contain measures of accomplishment of the performance measures set forth at 20 C.F.R. 666.100, as the regulation existed on March 2, 2001, and shall use consistent units of measure in order to provide comparability both within a single annual report and between different annual reports.

**Source:** Laws 2001, LB 193, § 10.

**48-1626 Commissioner; powers.**

The commissioner is designated as the Governor's Workforce Investment Act liaison and may:

(1) Monitor and review for the Governor organizations and agencies engaged in and facilities used for the administration or delivery of job training programs under Title I of the federal Workforce Investment Act; and

(2) Provide staff support and adopt such methods of administration as are necessary for the proper and efficient operation of the duties and functions provided in the federal Workforce Investment Act.

**Source:** Laws 2001, LB 193, § 11.

**48-1627 Appeals; procedure.**

(1) Except as otherwise provided in this section, or the federal Workforce Investment Act and the regulations adopted pursuant thereto, appeals brought pursuant to sections 116(a), 122(g), and 136(h)(2)(B) of the federal Workforce Investment Act, 29 U.S.C. 2831(a), 29 U.S.C. 2842(g), and 29 U.S.C. 2871(h)(2)(B), shall be conducted in accordance with the Administrative Procedure Act. The commissioner may conduct hearings on behalf of the Governor and make findings and recommendations to the Governor on the merits of the appeal.

(2) In the case of an appeal by an entity which was not granted designation as a local area, the state board shall review the findings and recommendations of the commissioner and advise the Governor as to whether the appeal should be granted or denied.

**Source:** Laws 2001, LB 193, § 12.

**Cross References**

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

**ARTICLE 17**

**FARM LABOR CONTRACTORS**

**Section**

- 48-1701. Act, how cited.
- 48-1702. Terms, defined.
- 48-1703. Act; exclusions.
- 48-1704. Farm labor contractor; license; form; contents.
- 48-1705. Applicant; proof of financial responsibility; payment of wage claims; procedure.
- 48-1706. Application fee.
- 48-1707. Farm Labor Contractors Fund; created; use; investment.
- 48-1708. Department; adopt rules and regulations.
- 48-1709. Notice; posting.
- 48-1710. Department; licensing duties; license; protest; term; renewal; fee.
- 48-1711. Farm labor contractor; duties.
- 48-1712. Farm labor contractor; applicant for license; prohibited acts.
- 48-1713. License; revocation, suspension, refuse renewal; when.
- 48-1714. Violations; prohibited acts; penalty.

**48-1701 Act, how cited.**

Sections 48-1701 to 48-1714 shall be known and may be cited as the Farm Labor Contractors Act.

**Source:** Laws 1987, LB 344, § 1.

**48-1702 Terms, defined.**

For purposes of the Farm Labor Contractors Act, unless the context otherwise requires:

- (1) Department means the Department of Labor;

(2) Farm labor contractor means any individual, partnership, limited liability company, corporation, or cooperative association, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who for any money or other valuable consideration paid or promised to be paid performs any farm labor contracting activity;

(3) Farm labor contracting activity means recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker;

(4) Non-English-speaking worker has the same meaning as non-English-speaking employee in section 48-2208; and

(5) Worker means a person who is employed or recruited by or who subcontracts with a farm labor contractor.

**Source:** Laws 1987, LB 344, § 2; Laws 1993, LB 121, § 301; Laws 2002, LB 931, § 1; Laws 2003, LB 418, § 9.

**48-1703 Act; exclusions.**

The following shall be excluded from the Farm Labor Contractors Act:

(1) Any individual who engages in a farm labor contracting activity on behalf of a farm, processing establishment, cannery, gin, packing shed, or nursery, which is owned and operated exclusively by such individual or a member of his or her immediate family, if such activities are performed only for such operation and exclusively by such individual or family member, but without regard to whether such individual has incorporated or otherwise organized for business purposes;

(2) Any common carrier which would be a farm labor contractor solely because it is engaged in transporting any migrant or seasonal agricultural worker. For purposes of this section, a common carrier is one which holds itself out to the general public to engage in transportation of passengers for hire, whether over regular or irregular routes, and which holds a valid certificate or authorization for such purposes from an appropriate local, state, or federal agency;

(3) Any labor organization as defined under applicable state law;

(4) Any nonprofit charitable organization or public or private nonprofit educational institution;

(5) Any custom combine, hay harvesting, sheep shearing, or custom poultry operations;

(6) Employees of exempt employers; and

(7) Any operation which has a workforce comprised of eighty percent or more individuals who are seventeen years of age or younger and which has obtained a certificate of exemption from the department. Any operator who meets the requirements of this subdivision shall be issued such certificate by the department. The department shall adopt and promulgate rules and regulations necessary to carry out this subdivision.

**Source:** Laws 1987, LB 344, § 3; Laws 1992, LB 452, § 1; Laws 2002, LB 931, § 2.

**48-1704 Farm labor contractor; license; form; contents.**

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

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

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

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

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

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

(a) The applicant's name and Nebraska address, all other temporary and permanent addresses the applicant uses or knows will be used in the future, and, if the applicant is an individual, the applicant's social security number;

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

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

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

**Source:** Laws 1987, LB 344, § 4; Laws 1993, LB 121, § 302; Laws 1994, LB 884, § 66; Laws 1997, LB 752, § 128.

**48-1705 Applicant; proof of financial responsibility; payment of wage claims; procedure.**

(1) Each applicant shall submit with the application and shall continually maintain proof of financial responsibility to ensure the prompt payment of wages of employees and other obligations that may arise under the Farm Labor Contractors Act. The proof shall be in the form of a corporate surety bond of a company licensed to do business in the State of Nebraska, a cash deposit, or a deposit the equivalent of cash. The department shall determine the amount of surety required, except that such amount shall not be less than five thousand dollars. In lieu of such surety, the farm labor contractor may establish a savings account at a financial institution in Nebraska in the name of the Commissioner of Labor as trustee for the employees of the farm labor contractor, and others as their interest may appear, and deliver the evidence of the account and the ability to withdraw funds to the department under terms approved by the department. No farm labor contractor license shall be issued to any applicant

who has an unsatisfied final judgment of a court or decision of an administrative agency which would be covered by the bond or deposit required by the act against himself or herself. All corporate surety bonds filed under this section shall be executed to cover liability for a period of one year, during which the bond cannot be canceled or otherwise terminated.

(2) The surety company or the department shall make prompt and periodic payments on the farm labor contractor's liability to the extent of the total sum of the bond or deposit. Payments shall be made in the following manner:

(a) Payment shall be made based upon priority of wage claims over advances made by the grower or producer of agricultural commodities;

(b) Payment in full of all sums due to each person who presents adequate proof of a claim; and

(c) If there are insufficient funds to pay in full, the person next entitled to payment shall be paid in part.

(3) All claims against the bond or deposit shall be unenforceable unless request for payment of a judgment or other form of adequate proof of liability or a notice of the claim has been sent by certified mail to the surety or the department within six months from the end of the year for which the bond or deposit has been made.

(4) If the department has not received notice of the claim within six months after a farm labor contractor is no longer required to provide and maintain a surety bond or deposit, the department shall terminate and surrender any bond or any deposit under control of the department to the person who is entitled thereto upon receiving appropriate proof of such entitlement.

(5) The surety bond or deposit shall be payable to the Commissioner of Labor and shall be conditioned upon:

(a) Payment in full of all sums due on wage claims of employees; and

(b) Payment by the farm labor contractor of all sums due to the grower or producer of agricultural commodities for advances made to or on behalf of the farm labor contractor.

**Source:** Laws 1987, LB 344, § 5.

#### **48-1706 Application fee.**

Each application shall be accompanied by a fee. The Commissioner of Labor shall establish the amount of the fee, which shall not exceed seven hundred fifty dollars, by rule and regulation. The fee shall be established with due regard for the costs of administering the Farm Labor Contractors Act. All fees so collected shall be deposited in the Farm Labor Contractors Fund.

**Source:** Laws 1987, LB 344, § 6; Laws 2002, LB 931, § 3.

#### **48-1707 Farm Labor Contractors Fund; created; use; investment.**

There is hereby created the Farm Labor Contractors Fund for purposes of enforcing the Farm Labor Contractors Act. Any money in such 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 1987, LB 344, § 7; Laws 1995, LB 7, § 50.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**48-1708 Department; adopt rules and regulations.**

The department shall adopt and promulgate rules and regulations reasonably necessary for the administration and enforcement of the Farm Labor Contractors Act.

**Source:** Laws 1987, LB 344, § 8.

**48-1709 Notice; posting.**

Every farm labor contractor covered by the Farm Labor Contractors Act shall post conspicuously upon the premises where employees working under the contractor are employed, in both English and Spanish, a notice specifying the contractor's compliance with the act and the name and Nebraska address of the surety on the bond or a notice that a deposit in lieu of the bond has been made with the department together with the address of the department.

**Source:** Laws 1987, LB 344, § 9.

**48-1710 Department; licensing duties; license; protest; term; renewal; fee.**

(1) The department shall conduct an investigation of each applicant's character, competence, and reliability and any other matters relating to the applicant's operations as a farm labor contractor.

(2) The department shall issue a license within fifteen days of receipt of the application if the department determines that the applicant is of satisfactory character, competence, and reliability.

(3) Any person may protest the issuance of a license to any applicant at any time by filing with the department a written statement detailing such person's reasons for protesting.

(4) The licensing year shall run from April 1 to the following March 31 and each license shall expire on March 31 following the date of its issuance unless sooner revoked by the department.

(5) A license shall be renewed annually upon payment in advance of the required fee, except that the Commissioner of Labor may require any person seeking renewal to file a new application and may conduct a new investigation of the applicant's character, competence, and reliability and any other matters relating to the applicant's operations as a farm labor contractor.

(6) On its own initiative or upon receipt of a complaint or notice that a farm labor contractor is in violation of the Farm Labor Contractors Act, the department shall conduct an investigation of such contractor.

**Source:** Laws 1987, LB 344, § 10; Laws 2002, LB 931, § 4.

**48-1711 Farm labor contractor; duties.**

A farm labor contractor shall:

(1) Carry his or her farm labor contractor license at all times and exhibit such license upon request to any person with whom the contractor intends to deal in his or her capacity as a farm labor contractor;

(2) File immediately at the United States post office serving the farm labor contractor's address as noted on the license a correct change of address and notify the department each time an address change is made;

(3) Pay or distribute promptly when due to the individuals entitled all money or other things of value entrusted to the farm labor contractor by any person for that purpose;

(4) Comply with the terms and provisions of all legal and valid agreements or contracts entered into by the farm labor contractor;

(5) Comply with all state laws, rules, and regulations relevant to the activity as a farm labor contractor;

(6) Furnish to each worker at the time of hiring, recruiting, soliciting, or supplying such worker, whichever occurs first, a written statement in both English and Spanish which contains a description of:

(a) The method of computing the rate of compensation and the rate of compensation;

(b) The terms and conditions of any bonus offered and the manner of determining when the bonus is earned;

(c) The terms and conditions of any loan made to the worker;

(d) The conditions of any housing and health and day care to be provided;

(e) The terms and conditions of employment, including the approximate length of season or period of employment and the approximate starting and ending dates;

(f) The terms and conditions under which the worker is furnished clothing or equipment;

(g) The name and address of the owner of all operations where the worker will be working; and

(h) The worker's rights and remedies in plain and simple language in a form specified by the department;

(7) Furnish to the worker each time the worker receives a compensation payment from the farm labor contractor a written statement itemizing the total payment, the amount and purpose of each deduction therefrom, the hours worked, and, if the work is done on a piece basis, the number of pieces completed; and

(8) Provide a bilingual employee who shall be available at the worksite for each shift a non-English-speaking worker is employed if the farm labor contractor has a workforce of ten or more non-English-speaking workers who speak the same non-English language. The bilingual employee shall be conversant in the non-English language spoken by such workers.

**Source:** Laws 1987, LB 344, § 11; Laws 2002, LB 931, § 5.

**48-1712 Farm labor contractor; applicant for license; prohibited acts.**

A farm labor contractor or an applicant for a farm labor contractor license shall not:

(1) Make any misrepresentation, false statement, or willful concealment in the application for a license or in his or her dealing with workers;

(2) Solicit or induce or cause to be solicited or induced the violation of an existing contract of employment;

- (3) Assist a person to act in violation of the Farm Labor Contractors Act; and
- (4) By any force, intimidation, or threat, including threat of deportation, induce any worker employed or in a subcontracting relationship to the farm labor contractor to give up any part of the compensation to which the worker is entitled under the contract of employment or under federal or state wage laws.

**Source:** Laws 1987, LB 344, § 12.

**48-1713 License; revocation, suspension, refuse renewal; when.**

The department may revoke, suspend, or refuse to renew a farm labor contractor license upon the department’s own motion or upon complaint by any individual if:

- (1) The licensee or his or her agent has violated or failed to comply with any provision of the Farm Labor Contractors Act;
- (2) The conditions under which the license was issued have changed or no longer exist; or
- (3) The licensee’s character, reliability, or competence makes him or her an unfit farm labor contractor.

**Source:** Laws 1987, LB 344, § 13.

**48-1714 Violations; prohibited acts; penalty.**

- (1) Any person violating section 48-1711 or 48-1712 shall be guilty of a Class II misdemeanor.
- (2) Any person who (a) intentionally defaces, alters, or changes a farm labor contractor license, (b) uses the license of another, (c) knowingly permits the use of another person’s license, or (d) acts as a farm labor contractor without a license shall be guilty of a Class II misdemeanor.

**Source:** Laws 1987, LB 344, § 14.

**ARTICLE 18**

**NEBRASKA AMUSEMENT RIDE ACT**

Section

- 48-1801. Act, how cited.
- 48-1802. Terms, defined.
- 48-1803. Commissioner; adopt rules and regulations; administer act.
- 48-1804. Amusement ride; permit required; inspection.
- 48-1804.01. Reverse bungee jumping rides; prohibited.
- 48-1805. Permit; issuance; conditions; fee; waiver of inspection.
- 48-1806. Liability insurance required.
- 48-1807. Amusement ride; inspection; suspend permit; when.
- 48-1808. Accident; report; suspend permit; inspection.
- 48-1809. Permit fees.
- 48-1810. Repealed. Laws 2007, LB 265, § 38.
- 48-1811. Commissioner; certify inspectors.
- 48-1812. Inspection fees.
- 48-1813. Owner; maintain records.
- 48-1814. Owner; provide schedule.
- 48-1815. Operator; requirements.
- 48-1816. Violation; penalty.
- 48-1817. Application for injunction.
- 48-1818. Act, how construed.
- 48-1819. Local safety standards; authorized.
- 48-1820. Operation of ride after certain date.

**48-1801 Act, how cited.**

Sections 48-1801 to 48-1820 shall be known and may be cited as the Nebraska Amusement Ride Act.

**Source:** Laws 1987, LB 226, § 1; Laws 1994, LB 608, § 1.

**48-1802 Terms, defined.**

For purposes of the Nebraska Amusement Ride Act, unless the context otherwise requires:

(1) Amusement ride shall mean any mechanical device that carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement, but such term shall not include (a) any single-passenger coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator or (b) nonmechanized playground equipment, including, but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, and physical fitness devices. Bungee jumping is specifically designated as an amusement ride for purposes of the act and shall mean the sport, activity, or other practice of jumping, diving, stepping out, dropping, or otherwise being released into the air while attached to a bungee cord, whereby the cord stretches, stops the fall, lengthens, and shortens allowing the person to bounce up and down, and is intended to finally bring the person to a stop at a point above a surface or the ground;

(2) Bungee cord shall mean a cord made of rubber, latex, or other elastic-type material, whether natural or synthetic;

(3) Commissioner shall mean the Commissioner of Labor or his or her designee;

(4) Operator shall mean a person actually engaged in or directly controlling the operations of an amusement ride;

(5) Owner shall mean a person who owns, leases, controls, or manages the operations of an amusement ride and may include the state or any political subdivision of the state;

(6) Qualified inspector shall mean any person who is (a) found by the commissioner to possess the requisite training and experience to perform competently the inspections required by the Nebraska Amusement Ride Act and (b) certified by the commissioner to perform inspections of amusement rides; and

(7) Reverse bungee jumping shall mean the sport, activity, or practice whereby a person is attached to a bungee cord, the bungee cord is stretched down so that such person is on a fixed catapult, launch, or release position, and such person is catapulted or otherwise launched or released into the air from such fixed position, while attached to a bungee cord, whereby the cord stretches, stops the fall, lengthens, and shortens allowing the person to bounce up and down, and is intended to finally bring the person to a stop at a point above a surface or the ground.

**Source:** Laws 1987, LB 226, § 2; Laws 1994, LB 608, § 2.

**48-1803 Commissioner; adopt rules and regulations; administer act.**

The commissioner shall adopt and promulgate rules and regulations (1) for the safe installation, repair, maintenance, use, operation, and inspection of amusement rides as the commissioner may find necessary for the protection of the general public and (2) necessary to carry out the provisions of the Nebraska Amusement Ride Act. Such rules and regulations shall be of a reasonable nature, based upon generally accepted engineering standards, formulas, and practices, and, insofar as practicable and consistent with the Nebraska Amusement Ride Act, uniform with rules and regulations of other states. Whenever such standards are available in suitable form they may be incorporated by reference by the commissioner. The commissioner shall administer and enforce the Nebraska Amusement Ride Act and all rules and regulations adopted and promulgated pursuant to such act. The commissioner shall coordinate all regulatory and investigative activities with the appropriate state agencies.

**Source:** Laws 1987, LB 226, § 3.

**48-1804 Amusement ride; permit required; inspection.**

Except for purposes of testing and inspection, no amusement ride shall be operated without a valid permit for the operation issued by the commissioner to the owner of such amusement ride. The owner of an amusement ride shall apply for a permit under section 48-1805 to the commissioner on an application furnished by the commissioner and shall include such information as the commissioner may require. Every amusement ride shall be inspected before it is originally put into operation for public use and at least once every year after such ride is put into operation for public use.

**Source:** Laws 1987, LB 226, § 4.

**48-1804.01 Reverse bungee jumping rides; prohibited.**

No person shall operate a reverse bungee jumping ride in this state.

**Source:** Laws 1994, LB 608, § 5.

**48-1805 Permit; issuance; conditions; fee; waiver of inspection.**

(1) The commissioner shall issue a permit to operate an amusement ride to the owner of such amusement ride upon presentation by the owner of (a) an application for a permit, (b) a certificate of inspection by a qualified inspector, (c) proof of liability insurance as required in section 48-1806, and (d) the permit fee. Such permit shall be valid through December 31 of the year in which the inspection is performed.

(2) The commissioner may waive the requirement of subdivision (1)(b) of this section if the owner of the amusement ride gives satisfactory proof to the commissioner that such amusement ride has passed an inspection conducted or required by a federal agency, any other state, or a governmental subdivision of this or of any other state which has standards for the inspection of such an amusement ride at least as stringent as those adopted and promulgated pursuant to the Nebraska Amusement Ride Act.

**Source:** Laws 1987, LB 226, § 5; Laws 2004, LB 947, § 1.

**48-1806 Liability insurance required.**

No amusement ride shall be operated unless at the time of operation the owner has an insurance policy in effect written by an insurance company authorized to do business in this state insuring the owner and operator against liability for injury to persons arising out of the operation of such amusement ride. Such insurance policy shall be in an amount not less than the minimum amount per occurrence as established by the commissioner. Such minimum amount shall be established with due regard to the protection of the general public and the availability of insurance coverage, but such minimum amount shall not be greater than one million dollars per occurrence. The commissioner may require a separate insurance policy from the owner of any equipment used in an amusement ride, subject to the minimums and limitations provided in this section.

**Source:** Laws 1987, LB 226, § 6; Laws 1994, LB 608, § 3.

**48-1807 Amusement ride; inspection; suspend permit; when.**

The commissioner may inspect any amusement ride without notice at any time while such amusement ride is operating in this state. The commissioner may temporarily suspend a permit to operate an amusement ride if it has been determined after inspection to be hazardous or unsafe. An amusement ride shall not be operated while the permit for its operation is suspended. Operation of such an amusement ride shall not resume until the hazardous or unsafe condition is corrected to the satisfaction of the commissioner.

**Source:** Laws 1987, LB 226, § 7.

**48-1808 Accident; report; suspend permit; inspection.**

The owner of an amusement ride shall send a copy of any accident report required by his or her insurer to the commissioner. The commissioner may provide for the suspension of the permit of operation for any amusement ride the breakdown or malfunction of which directly caused serious injury or death of any person. The commissioner may also require an inspection of any amusement ride, whose operation has resulted in any serious injury or death, before operation of such amusement ride may be resumed.

**Source:** Laws 1987, LB 226, § 8.

**48-1809 Permit fees.**

The commissioner shall establish by rules and regulations a schedule of permit fees not to exceed fifty dollars for each amusement ride. Such permit fees shall be established with due regard for the costs of administering the Nebraska Amusement Ride Act and shall be remitted to the State Treasurer for credit to the Mechanical Safety Inspection Fund.

**Source:** Laws 1987, LB 226, § 9; Laws 2007, LB265, § 25.

**48-1810 Repealed. Laws 2007, LB 265, § 38.**

**48-1811 Commissioner; certify inspectors.**

The commissioner may certify such qualified inspectors as may be necessary to carry out the Nebraska Amusement Ride Act.

**Source:** Laws 1987, LB 226, § 11.

**48-1812 Inspection fees.**

(1) The commissioner may establish by rules and regulations a schedule of reasonable inspection fees for each amusement ride. The cost of obtaining the certificate of inspection from a qualified inspector shall be borne by the owner of the amusement ride.

(2) A separate schedule of fees shall be established for the inspection of bungee jumping operations, including the inspection of cranes used for bungee jumping. The fees shall be established taking into consideration the cost of such inspections.

**Source:** Laws 1987, LB 226, § 12; Laws 1994, LB 608, § 4.

**48-1813 Owner; maintain records.**

Each owner shall retain at all times up-to-date maintenance and inspection records for each amusement ride as prescribed by the commissioner. The owner shall make such records available to the commissioner on request.

**Source:** Laws 1987, LB 226, § 13.

**48-1814 Owner; provide schedule.**

The commissioner may require the owner of an amusement ride to provide the commissioner with a tentative schedule of events at which the amusement ride will be operated within this state. The commissioner shall establish timetables and procedures for providing and updating such schedules.

**Source:** Laws 1987, LB 226, § 14.

**48-1815 Operator; requirements.**

No person shall operate an amusement ride unless he or she is at least sixteen years of age. An operator shall be in attendance at all times that an amusement ride is in operation.

**Source:** Laws 1987, LB 226, § 15.

**48-1816 Violation; penalty.**

Any person who knowingly operates or causes to be operated an amusement ride in violation of the Nebraska Amusement Ride Act shall be guilty of a Class II misdemeanor. Each day a violation continues shall constitute a separate offense.

**Source:** Laws 1987, LB 226, § 16.

**48-1817 Application for injunction.**

The Attorney General, acting on behalf of the commissioner, or the county attorney in a county in which an amusement ride is located or operated may apply to the district court, pursuant to the rules of civil procedure, for an order enjoining operation of any amusement ride operated in violation of the Nebraska Amusement Ride Act.

**Source:** Laws 1987, LB 226, § 17.

**48-1818 Act, how construed.**

The Nebraska Amusement Ride Act shall not be construed to alter the duty of care or the liability of an owner of an amusement ride for injuries or death of any person or damage to any property arising out of an accident involving an amusement ride. The state and its officers and employees shall not be construed to assume liability arising out of an accident involving an amusement ride by reason of administration of the Nebraska Amusement Ride Act.

**Source:** Laws 1987, LB 226, § 18.

**48-1819 Local safety standards; authorized.**

The governing board of any city, county, or village may establish and enforce safety standards for amusement rides in addition to, but not in conflict with, the standards established by the commissioner pursuant to the Nebraska Amusement Ride Act.

**Source:** Laws 1987, LB 226, § 19.

**48-1820 Operation of ride after certain date.**

No amusement ride shall be operated in violation of the Nebraska Amusement Ride Act after December 31, 1987.

**Source:** Laws 1987, LB 226, § 20.

**ARTICLE 19**

**DRUG AND ALCOHOL TESTING**

Section

- 48-1901. Legislative intent.
- 48-1902. Terms, defined.
- 48-1903. Test results; use; requirements.
- 48-1904. Specimens; preservation.
- 48-1905. Specimens; chain of custody.
- 48-1906. Test results; release or disclosure; when.
- 48-1907. Sections, how construed.
- 48-1908. Body fluids; prohibited acts; penalty.
- 48-1909. Body fluids; tampering; penalty.
- 48-1910. Refusal to submit to test; effect.

**48-1901 Legislative intent.**

It is the intent of the Legislature through sections 48-1901 to 48-1910 to help in the treatment and elimination of drug and alcohol use and abuse in the workplace while protecting the employee's rights. Nothing in sections 48-1901 to 48-1910 shall be construed to require employers to conduct drug and alcohol testing of their employees nor shall sections 48-1901 to 48-1910 be determinative of the cases or circumstances under which such tests may be given.

**Source:** Laws 1988, LB 582, § 1.

**48-1902 Terms, defined.**

For purposes of sections 48-1901 to 48-1910, unless the context otherwise requires:

(1) Alcohol means any product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, synthetic ethyl alcohol, the four varieties of liquor, alcohol, spirits, wine, and beer, as defined in sections 53-103.01, 53-103.03, 53-103.38, and 53-103.42, every liquid or

solid, patented or not, containing alcohol, spirits, wine, or beer, and alcohol used in the manufacture of denatured alcohol, flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary, and toilet preparations;

(2) Breath-testing device means intoxilyzer model 4011AS or other scientific testing equivalent as approved by and operated in accordance with the department rules and regulations;

(3) Breath-testing-device operator means a person who has obtained or been issued a permit pursuant to the department rules and regulations;

(4) Department means the Department of Health and Human Services;

(5) Department rules and regulations means the techniques and methods authorized pursuant to section 60-6,201;

(6) Drug means any substance, chemical, or compound as described, defined, or delineated in sections 28-405 and 28-419 or any metabolite or conjugated form thereof, except that any substance, chemical, or compound containing any product as defined in subdivision (1) of this section may also be defined as alcohol;

(7) Employee means any person who receives any remuneration, commission, bonus, or other form of wages in return for such person's actions which directly or indirectly benefit an employer; and

(8) Employer means the State of Nebraska and its political subdivisions, all other governmental entities, or any individual, association, corporation, or other organization doing business in the State of Nebraska unless it, he, or she employs a total of less than six full-time and part-time employees at any one time.

**Source:** Laws 1988, LB 582, § 2; Laws 1993, LB 370, § 44; Laws 1994, LB 859, § 1; Laws 1996, LB 1044, § 276; Laws 2007, LB296, § 218; Laws 2010, LB861, § 6.

#### **48-1903 Test results; use; requirements.**

Any results of any test performed on the body fluid or breath specimen of an employee, as directed by the employer, to determine the presence of drugs or alcohol shall not be used to deny any continued employment or in any disciplinary or administrative action unless the following requirements are met:

(1) A positive finding of drugs by preliminary screening procedures has been subsequently confirmed by gas chromatography-mass spectrometry or other scientific testing technique which has been or may be approved by the department; and

(2) A positive finding of alcohol by preliminary screening procedures is subsequently confirmed by either:

(a) Gas chromatography with a flame ionization detector or other scientific testing technique which has been or may be approved by the department; or

(b) A breath-testing device operated by a breath-testing-device operator. Nothing in this subdivision shall be construed to preclude an employee from immediately requesting further confirmation of any breath-testing results by a blood sample if the employee voluntarily submits to give a blood sample taken by qualified medical personnel in accordance with the rules and regulations adopted and promulgated by the department. If the confirmatory blood test

results do not confirm a violation of the employer's work rules, any disciplinary or administrative action shall be rescinded.

Except for a confirmatory breath test as provided in subdivision (2)(b) of this section, all confirmatory tests shall be performed by a clinic, hospital, or laboratory which is certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, 42 U.S.C. 263a.

**Source:** Laws 1988, LB 582, § 3; Laws 2000, LB 1115, § 5.

**48-1904 Specimens; preservation.**

Except for breath test specimens as provided in subdivision (2)(b) of section 48-1903, all specimens which result in a finding of drugs or alcohol shall be refrigerated and preserved in a sufficient quantity for retesting for a period of at least one hundred eighty days.

**Source:** Laws 1988, LB 582, § 4.

**48-1905 Specimens; chain of custody.**

Except for breath test specimens as provided in subdivision (2)(b) of section 48-1903, a written record of the chain of custody of the specimen shall be maintained from the time of the collection of the specimen until the specimen is no longer required.

**Source:** Laws 1988, LB 582, § 5.

**48-1906 Test results; release or disclosure; when.**

The employer or its, his, or her agents shall not release or disclose the test results to the public, except that such results shall be released as required by law or to the employee upon request. Test results may be released to those officers, agents, or employees of the employer who need to know the information for reasons connected with their employment.

**Source:** Laws 1988, LB 582, § 6.

**48-1907 Sections, how construed.**

Nothing in sections 48-1901 to 48-1906 shall be construed to establish any rule, right, or duty not expressly provided for in such sections.

**Source:** Laws 1988, LB 582, § 7.

**48-1908 Body fluids; prohibited acts; penalty.**

(1) It shall be unlawful to provide, acquire, or use body fluids for the purpose of altering the results of any test to determine the presence of drugs or alcohol.

(2) Any employee who violates subsection (1) of this section may be subjected to the same discipline as if the employee had refused the directive of the employer to provide a body fluid or breath sample.

(3) Any person, including an employee, who violates subsection (1) of this section shall be guilty of a Class I misdemeanor.

**Source:** Laws 1988, LB 582, § 8.

**48-1909 Body fluids; tampering; penalty.**

(1) No person shall tamper with or aid or assist another in tampering with body fluids at any time during or after the collection or analysis of such fluids for the purpose of altering the results of any test to determine the presence of drugs or alcohol.

(2) Any employee who violates subsection (1) of this section may be subjected to the same discipline as if the employee had refused the directive of the employer to provide a body fluid or breath sample.

(3) Any person, including an employee, who violates subsection (1) of this section shall be guilty of a Class I misdemeanor.

**Source:** Laws 1988, LB 582, § 9.

**48-1910 Refusal to submit to test; effect.**

Any employee who refuses the lawful directive of an employer to provide a body fluid or breath sample as provided in section 48-1903 may be subject to disciplinary or administrative action by the employer, including denial of continued employment.

**Source:** Laws 1988, LB 582, § 10.

**ARTICLE 20**

**EMPLOYEE BENEFITS**

Section

48-2001. Employee trusts or plans; duration; restraints inapplicable.

48-2002. Employee trusts or plans; kinds; trustee; requirements.

**48-2001 Employee trusts or plans; duration; restraints inapplicable.**

Any trust or plan heretofore or hereafter created for the purposes and of the type enumerated in section 48-2002, whether in real or personal property or in both real and personal property, may continue in perpetuity or for such time as may be necessary to accomplish the purposes of the trust or plan. Such trust or plan shall not be invalid as violating any statute or rule of law against perpetuities, against accumulations of earnings, concerning the suspension of the power of alienation of the title to property, or otherwise limiting the duration of trusts or agreements.

**Source:** Laws 1957, c. 77, § 1, p. 313; R.S.1943, (1989), § 24-619; Laws 1990, LB 823, § 1.

**48-2002 Employee trusts or plans; kinds; trustee; requirements.**

(1) Trusts or plans which are entitled to the exemption from limitation as to their duration provided for in section 48-2001 shall be:

(a) Created by an employer or employers primarily for the benefit of some or all of the employees of such employer or employers, or the families or appointees of such employees, under any pension, profit-sharing, stock bonus, retirement, disability, death benefit, or other similar type of employee benefit plan;

(b) Contributed to by the employer or employees or both; and

(c) Existing for the purpose of distributing the earnings or principal, or earnings and principal, of the trust to or for the benefit of some or all of such

employees, either before or after their employment ceases, or their families or appointees.

(2) In addition, in the case of such trusts hereafter created by public corporations, municipal corporations, or political subdivisions of this state, the trustee shall be qualified to act as a trustee and licensed to do business in Nebraska, the management of the affairs of the trust shall be carried on in this state, and the trust agreement shall contain provisions for termination of the trust and for substitution of trustees, by unilateral action of the public corporation, municipal corporation, or political subdivision which created the trust. If a qualified trust corporation licensed to do business in Nebraska with capital of not less than five hundred thousand dollars applies to the employer for appointment as successor trustee on a basis of cost for administering the trust, not in excess of the basis of cost then existing, no public corporation, municipal corporation, or political subdivision of this state shall incur any additional obligation, under existing agreements as to such trusts, which does not comply with this subsection. Any trust created which violates this subsection shall be void.

**Source:** Laws 1957, c. 77, § 2, p. 313; Laws 1976, LB 655, § 1; R.S.1943, (1989), § 24-620; Laws 1990, LB 823, § 2.

## ARTICLE 21

### CONTRACTOR REGISTRATION

#### Section

- 48-2101. Act, how cited.
- 48-2102. Legislative intent.
- 48-2103. Terms, defined.
- 48-2104. Registration required.
- 48-2105. Registration; application; contents; renewal.
- 48-2106. Application; report of change; amendments.
- 48-2107. Fees; exemption.
- 48-2108. Registration number.
- 48-2109. Cancellation of workers' compensation insurance policy; notice required.
- 48-2110. Failure to maintain workers' compensation insurance; notice of revocation.
- 48-2111. Notice of revocation; service; hearing.
- 48-2112. Investigatory powers.
- 48-2113. Complaints.
- 48-2114. Violation; citation; penalty; legal representation.
- 48-2115. Contractor Registration Cash Fund; created; use; investment.
- 48-2116. Applicability of act.
- 48-2117. Data base of contractors; removal.

#### **48-2101 Act, how cited.**

Sections 48-2101 to 48-2117 shall be known and may be cited as the Contractor Registration Act.

**Source:** Laws 1994, LB 248, § 1; Laws 2009, LB162, § 1.

#### **48-2102 Legislative intent.**

It is the intent of the Legislature that all contractors doing business in Nebraska be registered with the department. It is not the intent of the Legislature to endorse the quality or performance of services provided by any individual contractor.

**Source:** Laws 1994, LB 248, § 2; Laws 2008, LB204, § 1.

**48-2103 Terms, defined.**

For purposes of the Contractor Registration Act:

- (1) Commissioner means the Commissioner of Labor;
- (2) Construction means work on real property and annexations, including new work, additions, alterations, reconstruction, installations, and repairs performed at one or more different sites which may be dispersed geographically;
- (3) Contractor means an individual, firm, partnership, limited liability company, corporation, or other association of persons engaged in the business of the construction, alteration, repairing, dismantling, or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, water wells, pipelines, transmission and power lines, and every other type of structure, project, development, or improvement within the definition of real property and personal property, including such construction, repairing, or alteration of such property to be held either for sale or rental. Contractor also includes any subcontractor engaged in the business of such activities and any person who is providing or arranging for labor for such activities, either as an employee or as an independent contractor, for any contractor or person;
- (4) Department means the Department of Labor;
- (5) Nonresident contractor means a contractor who neither is domiciled in nor maintains a permanent place of business in this state or who, being so domiciled or maintaining such permanent place of residence, spends in the aggregate less than six months of the year in this state; and
- (6) Working days means Mondays through Fridays but does not include Saturdays, Sundays, or federal or state holidays. In computing fifteen working days, the day of receipt of any notice is not included and the last day of the fifteen working days is included.

**Source:** Laws 1994, LB 248, § 3; Laws 2008, LB204, § 2; Laws 2009, LB162, § 2.

**48-2104 Registration required.**

- (1) Before performing any construction work in Nebraska, a contractor shall be registered with the department. If a contractor does business under more than one name, the contractor shall obtain a registration number for each name under which the contractor is doing business. Any person who performs work or has work performed on his or her own property or any person who earns less than five thousand dollars annually for construction services is not a contractor for purposes of the Contractor Registration Act.
- (2) An exemption from the requirements under subsection (1) of this section does not exempt a contractor from withholding requirements under the Nebraska Revenue Act of 1967.

**Source:** Laws 1994, LB 248, § 4; Laws 2008, LB204, § 3; Laws 2009, LB162, § 3.

**Cross References**

Nebraska Revenue Act of 1967, see section 77-2701.

**48-2105 Registration; application; contents; renewal.**

Each contractor shall apply to the department for a registration number on an application form provided by the department. The application shall contain the following information:

- (1) The name and federal employer identification number or, if the applicant is an individual, the social security number of the contractor;
- (2) The principal place of business of the contractor in Nebraska. If the contractor's principal place of business is outside Nebraska, the application shall state the address of the contractor's principal place of business and the name and address of the contractor's registered agent in Nebraska;
- (3) The telephone number of the contractor in the State of Nebraska. If the contractor's principal place of business is outside Nebraska, the application shall state the telephone number of the contractor's principal place of business and the telephone number of the contractor's registered agent in Nebraska;
- (4) The type of business entity of the contractor such as corporation, partnership, limited liability company, sole proprietorship, or trust;
- (5) The contractor option election to collect and remit sales and use tax on purchases of building materials and fixtures annexed to real property;
- (6) The following information about the business entity:
  - (a) If the contractor is a corporation, the name, address, telephone number, and position of each officer of the corporation; and
  - (b) If the contractor is other than a corporation, the name, address, and telephone number of each owner;
- (7) Proof of (a) a certificate or policy of insurance written by an insurance carrier duly authorized to do business in this state which gives the effective dates of workers' compensation insurance coverage indicating that it is in force, (b) a certificate evidencing approval of self-insurance privileges as provided by the Nebraska Workers' Compensation Court pursuant to section 48-145, or (c) a signed statement indicating that the contractor is not required to carry workers' compensation insurance pursuant to the Nebraska Workers' Compensation Act; and
- (8) A description of the business which includes the employer's standard industrial classification code or the principal products and services provided.

Each application shall be renewed annually upon payment of the fee prescribed in section 48-2107.

**Source:** Laws 1994, LB 248, § 5; Laws 1997, LB 752, § 129; Laws 2009, LB162, § 4.

**Cross References**

Nebraska Workers' Compensation Act, see section 48-1,110.

**48-2106 Application; report of change; amendments.**

(1) A contractor shall report to the commissioner any change in the information originally reported on or with the application under section 48-2105 within fifteen days of the change, except that the contractor shall notify the commissioner of changes in workers' compensation insurance coverage at least ten days prior to any change in coverage.

(2) After the time specified in subsection (1) of this section, the commissioner, with good cause shown, may determine that amendments may be made to correct an application.

(3) Amendments to applications shall not be permitted when a change occurs in the business classification such as a change from a sole proprietorship to a corporation.

**Source:** Laws 1994, LB 248, § 6.

**48-2107 Fees; exemption.**

(1) Each application or renewal under section 48-2105 shall be signed by the applicant and accompanied by a fee of forty dollars. The commissioner may adopt and promulgate rules and regulations to establish the criteria for acceptability of filing documents and making payments electronically. The criteria may include requirements for electronic signatures. The commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established. The fee shall not be required when an amendment to an application is submitted. The commissioner shall remit the fees collected under this subsection to the State Treasurer for credit to the Contractor Registration Cash Fund.

(2) A contractor shall not be required to pay the fee under subsection (1) of this section if (a) the contractor is self-employed and does not pay more than three thousand dollars annually to employ other persons in the business and the application contains a statement made under oath or equivalent affirmation setting forth such information or (b) the contractor only engages in the construction of water wells or installation of septic systems. At any time that a contractor no longer qualifies for exemption from the fee, the fee shall be paid to the department. Any false statement made under subdivision (2)(a) of this section shall be a violation of section 28-915.01.

(3) The commissioner shall charge an additional fee of twenty-five dollars for the registration of each nonresident contractor and a fee of twenty-five dollars for the registration of each contract to which a nonresident contractor is a party if the total contract price or compensation to be received is more than ten thousand dollars. The commissioner shall remit the fees collected under this subsection to the State Treasurer for credit to the General Fund.

**Source:** Laws 1994, LB 248, § 7; Laws 2008, LB204, § 4; Laws 2009, LB162, § 5.

**48-2108 Registration number.**

Within thirty days of receipt of a completed application, the commissioner shall issue to the contractor a registration number. The registration number shall be a five-digit number followed by a two-digit number indicating the year of issuance.

**Source:** Laws 1994, LB 248, § 8.

**48-2109 Cancellation of workers' compensation insurance policy; notice required.**

Any insurance company carrying a contractor's workers' compensation insurance policy shall notify the department in case of cancellation by either the insurance company or the contractor of such policy. The notice shall contain (1) the name of the insurance carrier, (2) the name of the insured contractor, and (3) the date the cancellation is effective. Contractors who are approved by

the Nebraska Workers' Compensation Court for self-insurance shall notify the department at least ten days prior to the termination of such self-insurance.

**Source:** Laws 1994, LB 248, § 9.

**48-2110 Failure to maintain workers' compensation insurance; notice of revocation.**

The commissioner shall issue a notice of revocation of registration to a contractor when an investigation reveals that the contractor no longer meets the conditions of registration set out in section 48-2105 by failure to maintain compliance with the laws of this state relating to workers' compensation insurance coverage. If the commissioner receives a notice of cancellation of workers' compensation insurance coverage, the commissioner shall revoke the registration as of the time of cancellation unless the contractor provides a new certification of insurance prior to the cancellation date.

**Source:** Laws 1994, LB 248, § 14.

**48-2111 Notice of revocation; service; hearing.**

The commissioner shall serve notice of revocation on the contractor by mailing such notice by certified mail or any other manner of delivery by which the United States Postal Service can verify delivery to the address of the contractor or the contractor's registered agent listed in the application. Upon a showing of compliance with the application requirements set out in section 48-2105, the commissioner may temporarily reinstate the registration pending a hearing on the revocation. A registration revoked under this section shall not be permanently reinstated. To receive a new registration number, the contractor shall reapply to the commissioner.

**Source:** Laws 1994, LB 248, § 15; Laws 2001, LB 180, § 7.

**48-2112 Investigatory powers.**

(1) The commissioner may make investigations he or she finds necessary or appropriate to determine if there is compliance with the Contractor Registration Act. Investigations shall take place at the times and places as the commissioner directs. For purposes of any investigation under this section, the commissioner may interview persons at the worksite, take photographs, and utilize other reasonable investigatory techniques. The conduct of the investigation shall be such as to preclude unreasonable disruption of the operations of the worksite. Investigations may be conducted, without prior notice, by correspondence, telephone conversations, or review of materials submitted to the department.

(2) For purposes of any investigation or proceeding under this section, the commissioner or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to such person an order requiring him or her to appear before the commissioner or the officer designated by the commissioner and produce

documentary evidence if so ordered or give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt.

**Source:** Laws 1994, LB 248, § 10.

#### **48-2113 Complaints.**

Written complaints regarding the registration of a contractor made to the commissioner in which the complainant provides his or her name and address shall receive a written response as to the results of the investigation. A complainant's name and other identifying information shall not be released if the complaint was included as a part of another complaint when the complainant's identity would be protected under other statutes or rules and regulations.

**Source:** Laws 1994, LB 248, § 11.

#### **48-2114 Violation; citation; penalty; legal representation.**

(1) The commissioner shall issue a citation to a contractor when an investigation reveals that the contractor has violated:

- (a) The requirement that the contractor be registered; or
- (b) The requirement that the contractor's registration information be substantially complete and accurate.

(2) When a citation is issued, the commissioner shall notify the contractor of the proposed administrative penalty, if any, by certified mail or any other manner of delivery by which the United States Postal Service can verify delivery. The administrative penalty shall be not more than five hundred dollars in the case of a first violation and not more than five thousand dollars in the case of a second or subsequent violation.

(3) The contractor shall have fifteen working days from the date of the citation or penalty to contest such citation or penalty. Notice of contest shall be sent to the commissioner who shall provide a hearing pursuant to the Administrative Procedure Act.

(4) If the contractor has never been registered under the Contractor Registration Act, the contractor shall have sixty working days from the date of the citation to register. No administrative penalty shall be assessed if the contractor registers within such sixty-day period. This subsection shall remain in effect until March 1, 2009.

(5) In any civil action to enforce the Contractor Registration Act, the commissioner and the state may be represented by any qualified attorney who is employed by the commissioner and is designated by him or her for this purpose or at the commissioner's request by the Attorney General.

**Source:** Laws 1994, LB 248, § 12; Laws 2001, LB 180, § 8; Laws 2008, LB204, § 5.

#### **Cross References**

Administrative Procedure Act, see section 84-920.

#### **48-2115 Contractor Registration Cash Fund; created; use; investment.**

There is hereby created the Contractor Registration Cash Fund to be administered by the department and used to enforce the Contractor Registration Act and the Employee Classification Act. The fund shall consist of such sums as are

appropriated to it by the Legislature and any fees collected in the administration of the acts that are to be credited to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1994, LB 248, § 13; Laws 1995, LB 7, § 52; Laws 2008, LB204, § 6; Laws 2009, LB162, § 7; Laws 2010, LB563, § 13.

**Cross References**

**Employee Classification Act**, see section 48-2901.

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**48-2116 Applicability of act.**

The Contractor Registration Act shall not apply to the state or any political subdivision thereof.

**Source:** Laws 1994, LB 248, § 16.

**48-2117 Data base of contractors; removal.**

(1) The Department of Labor, in conjunction with the Department of Revenue, shall create a data base of contractors who are registered under the Contractor Registration Act and the Nebraska Revenue Act of 1967. The data base shall be accessible on the web site of the Department of Labor.

(2) Any contractor that fails to comply with the requirements of the Contractor Registration Act or Nebraska Revenue Act of 1967 shall be removed from the data base.

**Source:** Laws 2009, LB162, § 6.

**Cross References**

**Nebraska Revenue Act of 1967**, see section 77-2701.

**ARTICLE 22**

**NON-ENGLISH-SPEAKING EMPLOYEES**

**Section**

- 48-2201. Transferred to section 48-2208.
- 48-2202. Transferred to section 48-2209.
- 48-2203. Transferred to section 48-2210.
- 48-2204. Transferred to section 48-2214.
- 48-2205. Transferred to section 48-2211.
- 48-2206. Transferred to section 48-2212.
- 48-2207. Act, how cited.
- 48-2208. Terms, defined.
- 48-2209. Recruitment of non-English-speaking persons; employer; duties.
- 48-2210. Written statement required; when; contents; employer provide transportation; when.
- 48-2211. Violations; penalty.
- 48-2212. Civil action; injunctive relief; authorized.
- 48-2213. Meatpacking industry worker rights coordinator; established; powers and duties.
- 48-2214. Rules and regulations; commissioner; powers.

**48-2201 Transferred to section 48-2208.**

**48-2202 Transferred to section 48-2209.**

**48-2203** Transferred to section 48-2210.

**48-2204** Transferred to section 48-2214.

**48-2205** Transferred to section 48-2211.

**48-2206** Transferred to section 48-2212.

**48-2207 Act, how cited.**

Sections 48-2207 to 48-2214 shall be known and may be cited as the Non-English-Speaking Workers Protection Act.

**Source:** Laws 2003, LB 418, § 1.

**48-2208 Terms, defined.**

For purposes of the Non-English-Speaking Workers Protection Act, unless the context otherwise requires:

(1) Actively recruit means any affirmative act, as defined by the department, done by or on behalf of an employer for the purpose of recruitment or hiring of non-English-speaking employees who reside more than five hundred miles from the place of employment;

(2) Commissioner means the Commissioner of Labor;

(3) Coordinator means the meatpacking industry worker rights coordinator appointed pursuant to section 48-2213;

(4) Department means the Department of Labor;

(5) Employ means to permit to work;

(6) Employee means any individual employed by any employer but does not include:

(a) Any individual employed in agriculture; or

(b) Any individual employed as a child care provider in or for a private home;

(7) Employer means any individual, partnership, limited liability company, association, corporation, business trust, legal representative, or organized group of persons employing one hundred or more employees at any one time, except for seasonal employment of not more than twenty weeks in any calendar year, or person acting directly or indirectly in the interest of an employer in relation to an employee but does not include the United States, the state, or any political subdivision thereof;

(8) Meatpacking operation means a business in which slaughtering, butchering, meat canning, meatpacking, meat manufacturing, poultry canning, poultry packing, poultry manufacturing, pet food manufacturing, processing of meatpacking products, or rendering is carried on;

(9) Meatpacking products includes livestock products and poultry products as such terms are defined in section 54-1902; and

(10) Non-English-speaking employee means an employee who does not speak, read, or understand English to the degree necessary for comprehension of the terms, conditions, and daily responsibilities of employment.

**Source:** Laws 1995, LB 20, § 1; R.S.1943, (1998), § 48-2201; Laws 2003, LB 418, § 2.

**48-2209 Recruitment of non-English-speaking persons; employer; duties.**

If an employer or a representative of an employer actively recruits any non-English-speaking persons for employment in this state and if more than ten percent of the employees of an employer are non-English-speaking employees and speak the same non-English language, the employer shall provide a bilingual employee who is conversant in the identified non-English language and available at the worksite for each shift during which a non-English-speaking employee is employed to (1) explain and respond to questions regarding the terms, conditions, and daily responsibilities of employment and (2) serve as a referral agent to community services for the non-English-speaking employees.

**Source:** Laws 1995, LB 20, § 2; R.S.1943, (1998), § 48-2202; Laws 2003, LB 418, § 3.

**48-2210 Written statement required; when; contents; employer provide transportation; when.**

(1) An employer or a representative of an employer who actively recruits any non-English-speaking persons for employment in this state and whose work force is more than ten percent non-English-speaking employees who speak the same non-English language shall file with the commissioner a written statement signed by the employer and each such employee which provides relevant information regarding the position of employment, including:

(a) The minimum number of hours the employee can expect to work on a weekly basis;

(b) The hourly wages of the position of employment including the starting hourly wage;

(c) A description of the responsibilities and tasks of the position of employment;

(d) A description of the transportation and housing to be provided, if any, including any costs to be charged for housing or transportation, the length of time such housing is to be provided, and whether or not such housing is in compliance with all applicable state and local housing standards; and

(e) Any occupational physical demands and hazards of the position of employment which are known to the employer.

The statement shall be written in English and in the identified language of the non-English-speaking employee, and the employer or the representative shall explain in detail the contents of the statement prior to obtaining the employee's signature. A copy of the statement shall be given to the employee.

It is a violation of this subsection if an employer or representative knowingly and willfully provides false or misleading information on the statement or regarding the contents of the statement.

(2) An employer shall provide transportation for a recruited employee, at no cost to the employee, to the location from which the employee was recruited if the employee:

(a) Resigns from employment within four weeks after the initial date of employment; and

(b) Requests transportation within not more than three days after the employee's last day of employment with the employer which recruited the employee.

**Source:** Laws 1995, LB 20, § 3; R.S.1943, (1998), § 48-2203; Laws 2003, LB 418, § 4.

**48-2211 Violations; penalty.**

Any employer who violates section 48-2209 or 48-2210 or the rules and regulations adopted and promulgated pursuant thereto is guilty of a Class IV misdemeanor.

**Source:** Laws 1995, LB 20, § 5; R.S.1943, (1998), § 48-2205; Laws 2003, LB 418, § 5.

**48-2212 Civil action; injunctive relief; authorized.**

Any person aggrieved as a result of a violation of section 48-2209 or 48-2210 or the rules and regulations adopted and promulgated pursuant thereto may file suit in any district court of this state. If the court finds that the respondent has intentionally violated section 48-2209 or 48-2210 or the rules and regulations adopted and promulgated pursuant thereto, the court may award damages up to and including an amount equal to the original damages and provide injunctive relief.

**Source:** Laws 1995, LB 20, § 6; R.S.1943, (1998), § 48-2206; Laws 2003, LB 418, § 6.

**48-2213 Meatpacking industry worker rights coordinator; established; powers and duties.**

(1) The position of meatpacking industry worker rights coordinator is established within the department. The coordinator shall be appointed by the Governor.

(2) The duties of the coordinator shall be to inspect and review the practices and procedures of meatpacking operations in the State of Nebraska as they relate to the provisions of the Governor's Nebraska Meatpacking Industry Workers Bill of Rights, which rights are outlined as follows:

- (a) The right to organize;
- (b) The right to a safe workplace;
- (c) The right to adequate facilities and the opportunity to use them;
- (d) The right to complete information;
- (e) The right to understand the information provided;
- (f) The right to existing state and federal benefits and rights;
- (g) The right to be free from discrimination;
- (h) The right to continuing training, including training of supervisors;
- (i) The right to compensation for work performed; and
- (j) The right to seek state help.

(3) The coordinator and his or her designated representatives shall have access to all meatpacking operations in the State of Nebraska at any time meatpacking products are being processed and industry workers are on the job.

(4) Necessary office space, furniture, equipment, and supplies as well as necessary assistance for the coordinator shall be provided by the commissioner.

(5) Preference shall be given to applicants for the coordinator position who are fluent in the Spanish language.

(6) The coordinator shall, on or before December 1 of each year, submit a report to the members of the Legislature and the Governor regarding any recommended actions the coordinator deems necessary or appropriate to provide for the fair treatment of workers in the meatpacking industry.

**Source:** Laws 2000, LB 1363, § 4; R.S.Supp.,2002, § 81-404; Laws 2003, LB 418, § 7.

**48-2214 Rules and regulations; commissioner; powers.**

The commissioner shall adopt and promulgate rules and regulations necessary to carry out the Non-English-Speaking Workers Protection Act. The commissioner or a representative of the commissioner, including the coordinator, may:

(1) Inspect employment records of an employer relating to the total number of employees, the total number of non-English-speaking employees, and the services provided to non-English-speaking employees; and

(2) Interview an employer, any representative, any agent, or an employee of the employer during working hours or at other reasonable times.

**Source:** Laws 1995, LB 20, § 4; R.S.1943, (1998), § 48-2204; Laws 2003, LB 418, § 8.

**ARTICLE 23**

**NEW HIRE REPORTING ACT**

Section

48-2301. Act, how cited.

48-2302. Terms, defined.

48-2303. Employers; report to Department of Health and Human Services; when.

48-2304. Employer; immunity.

48-2305. Multistate employer; transmission of reports.

48-2306. Employer; fine.

48-2307. Department; report.

48-2308. Rules and regulations.

**48-2301 Act, how cited.**

Sections 48-2301 to 48-2308 shall be known and may be cited as the New Hire Reporting Act.

**Source:** Laws 1997, LB 752, § 40.

**48-2302 Terms, defined.**

For purposes of the New Hire Reporting Act:

(1) Date of hire means the day an employee begins employment with an employer;

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

(3) Employee means an independent contractor or a person who is compensated by or receives income from an employer or other payor, regardless of how such income is denominated;

(4) Employer means any individual, partnership, limited liability company, firm, corporation, association, political subdivision, or department or agency of

the state or federal government, labor organization, or any other entity with an employee;

(5) Income means compensation paid, payable, due, or to be due for labor or personal services, whether denominated as wages, salary, earnings, income, commission, bonus, or otherwise;

(6) Payor includes a person, partnership, limited partnership, limited liability partnership, limited liability company, corporation, or other entity doing business or authorized to do business in the State of Nebraska, including a financial institution, or a department or an agency of state, county, or city government; and

(7) Rehire means the first day an employee begins employment with the employer following a termination of employment with such employer. Termination of employment does not include temporary separations from employment, such as an unpaid medical leave, an unpaid leave of absence, a temporary layoff, or an absence for disability or maternity.

**Source:** Laws 1997, LB 752, § 41; Laws 2009, LB288, § 16.

**48-2303 Employers; report to Department of Health and Human Services; when.**

(1) Beginning October 1, 1997, employers who hire or rehire any employee, for any amount of income or compensation, shall report to the department within the time period specified in subsection (2) of this section the name, address, and social security number of that employee, the date of hire or rehire, and the name, address, and federal tax identification number of the employer. Employers shall transmit the required information to the department by forwarding a copy of the employee's federal W-4 with the date of hire or rehire inscribed upon it or any form approved in advance by the department. Employers may transmit the required information by first-class mail, fax, magnetic tape, disc, or electronic or any other means approved by the department.

(2) Employers shall report the hire or rehire of employees (a) within twenty days after the date of hire or rehire or (b) if reports are transmitted magnetically or electronically, by two monthly transmissions, if necessary, which are not less than twelve days or more than sixteen days apart.

**Source:** Laws 1997, LB 752, § 42; Laws 2004, LB 950, § 1.

**48-2304 Employer; immunity.**

An employer shall not be liable under any state law to any individual for disclosure of information or any other action taken in good faith compliance with the New Hire Reporting Act.

**Source:** Laws 1997, LB 752, § 43.

**48-2305 Multistate employer; transmission of reports.**

An employer that has employees who are employed in two or more states and that transmits reports magnetically or electronically may comply with the New Hire Reporting Act by designating one of such states in which the employer has employees as the state to which the employer will transmit the report described in section 48-2303. Any Nebraska employer that transmits reports pursuant to

this section shall notify the department in writing of the state which such employer designates for the purpose of transmitting reports.

**Source:** Laws 1997, LB 752, § 44; Laws 2007, LB296, § 219.

**48-2306 Employer; fine.**

On and after October 1, 1998, the department may levy a fine not to exceed twenty-five dollars for each employee not reported by the employer to the department. The department shall determine whether or not to levy a fine based upon the good faith efforts of an employer to comply with the New Hire Reporting Act. The department shall remit fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1997, LB 752, § 45; Laws 2007, LB296, § 220.

**48-2307 Department; report.**

The department shall issue a report to the Legislature on or before January 31 of each year which discloses the number of employees reported to the department and the number of matches during the preceding calendar year for purposes of the New Hire Reporting Act.

**Source:** Laws 1997, LB 752, § 46; Laws 2007, LB296, § 221.

**48-2308 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to carry out the New Hire Reporting Act.

**Source:** Laws 1997, LB 752, § 47.

**ARTICLE 24**

**IMMIGRANT WORKFORCE**

Section

- 48-2401. Repealed. Laws 2004, LB 940, § 4.
- 48-2402. Repealed. Laws 2004, LB 940, § 4.

**48-2401 Repealed. Laws 2004, LB 940, § 4.**

**48-2402 Repealed. Laws 2004, LB 940, § 4.**

**ARTICLE 25**

**CONVEYANCE SAFETY ACT**

Section

- 48-2501. Act, how cited.
- 48-2502. Terms, defined.
- 48-2503. Conveyance Advisory Committee; created; members; terms; expenses; meetings.
- 48-2504. Committee; powers and duties.
- 48-2505. Repealed. Laws 2007, LB 265, § 38.
- 48-2506. Commissioner; establish fee schedules; administer act.
- 48-2507. Applicability of act.
- 48-2508. Exemptions from act.
- 48-2509. Rules and regulations; commissioner; variance authorized; appeal.
- 48-2510. Registration of conveyances; when required.

Section	
48-2511.	Certificate of inspection; when required; display of certificate.
48-2512.	Existing conveyance; prohibited acts; licensed elevator mechanic; licensed elevator contractor; when required; new conveyance installation; requirements.
48-2512.01.	State elevator inspector; qualifications; deputy inspectors; appointment; qualifications.
48-2513.	State elevator inspector; inspections required; written report.
48-2514.	Alternative inspections; requirements.
48-2515.	Special inspection; expenses; fee; report.
48-2516.	Certificate of inspection; issuance; form.
48-2517.	State elevator inspector; records required.
48-2518.	Entry upon property for purpose of inspection.
48-2519.	Defective or unsafe condition; notice to owner or user; temporary certificate; when issued.
48-2520.	Accident involving conveyance; notification required; when; state elevator inspector; duties.
48-2521.	Elevator mechanic license; elevator contractor license; application; form; contents.
48-2522.	Standards for licensure of elevator mechanics; commissioner; duties.
48-2523.	Elevator contractor license; work experience required.
48-2524.	Reciprocity.
48-2525.	License; issuance; renewal.
48-2526.	Continuing education; extension; when granted; approved providers; records.
48-2527.	Insurance policy; requirements; delivery; notice of alteration or cancellation.
48-2528.	Elevator contractor license; revocation; grounds; elevator mechanic license; disciplinary actions; grounds; procedure; decision; appeal.
48-2529.	Temporary and emergency elevator mechanic thirty-day licenses.
48-2530.	Request for investigation of alleged violation; preliminary inquiry; formal investigation; procedure.
48-2531.	Act; how construed; liability.
48-2532.	Compliance with code at time of installation; notification of dangerous condition.
48-2533.	Violations; penalty.

**48-2501 Act, how cited.**

Sections 48-2501 to 48-2533 shall be known and may be cited as the Conveyance Safety Act.

**Source:** Laws 2006, LB 489, § 1; Laws 2007, LB265, § 26.

**48-2502 Terms, defined.**

For purposes of the Conveyance Safety Act:

(1) Certificate of inspection means a document issued by the commissioner that indicates that the conveyance has had the required safety inspection and tests and that the required fees have been paid;

(2) Commissioner means the Commissioner of Labor;

(3) Committee means the Conveyance Advisory Committee;

(4) Conveyance means any elevator, dumbwaiter, vertical reciprocating conveyor, escalator, moving sidewalk, automated people mover, and other equipment enumerated in section 48-2507 and not exempted under section 48-2508;

(5) Elevator contractor means any person who is engaged in the business of contracting services for erecting, constructing, installing, altering, servicing, testing, repairing, or maintaining conveyances;

(6) Elevator mechanic means any person who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing, or maintaining conveyances; and

(7) Person means an individual, a partnership, a limited liability company, a corporation, and any other business firm or company and includes a director, an officer, a member, a manager, and a superintendent of such an entity.

**Source:** Laws 2006, LB 489, § 2.

**48-2503 Conveyance Advisory Committee; created; members; terms; expenses; meetings.**

(1) The Conveyance Advisory Committee is created. One member shall be the state elevator inspector appointed pursuant to section 48-2512.01. One member shall be the State Fire Marshal or his or her designee. The Governor shall appoint the remaining members of the committee as follows: One representative from a major elevator manufacturing company; one representative from an elevator servicing company; one representative who is a building manager; one representative who is an elevator mechanic; and one representative of the general public from each county that has a population of more than one hundred thousand inhabitants. The committee shall be appointed within ninety days after January 1, 2008.

(2) The members of the committee appointed by the Governor shall serve for terms of three years, except that of the initial members appointed, two shall serve for terms of one year and three shall serve for terms of two years. The state elevator inspector and the State Fire Marshal or his or her designee shall serve continuously. The appointed members shall be reimbursed for their actual and necessary expenses for service on the committee as provided in sections 81-1174 to 81-1177. The members of the committee shall elect a chairperson who shall be the deciding vote in the event of a tie vote.

(3) The committee shall meet and organize within thirty days after the appointment of the members. The committee shall meet quarterly at a time and place to be fixed by the committee for the consideration of code regulations and for the transaction of such other business as properly comes before it. Special meetings may be called by the chairperson or at the request of two or more members of the committee. Any appointed committee member absent from three consecutive meetings shall be dismissed.

**Source:** Laws 2006, LB 489, § 3; Laws 2007, LB265, § 28.

**48-2504 Committee; powers and duties.**

The committee:

(1) May consult with engineering authorities and organizations concerned with standard safety codes;

(2) Shall recommend to the commissioner rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation, and inspection of conveyances;

(3) Shall recommend to the commissioner qualifications for licensure as an elevator mechanic or elevator contractor and conditions for disciplinary actions, including suspension or revocation of a license;

(4) Shall recommend to the commissioner rules and regulations for temporary and emergency elevator mechanic thirty-day licenses;

(5) Shall recommend to the commissioner an enforcement program which will ensure compliance with the Conveyance Safety Act and the rules and regulations adopted and promulgated pursuant to the act. The enforcement program shall include the identification of property locations which are subject to the act, issuing notifications to violating property owners or operators, random onsite inspections and tests on existing installations, and assisting in development of public awareness programs; and

(6) Shall make recommendations to the commissioner regarding variances under section 48-2509, continuing education providers under section 48-2526, and license disciplinary actions under section 48-2528.

**Source:** Laws 2006, LB 489, § 4.

**48-2505 Repealed. Laws 2007, LB 265, § 38.**

**48-2506 Commissioner; establish fee schedules; administer act.**

(1) The commissioner shall, after a public hearing conducted by the commissioner or his or her designee, establish a reasonable schedule of fees for licenses, permits, certificates, and inspections authorized under the Conveyance Safety Act. The commissioner shall establish the fees at a level necessary to meet the costs of administering the act. Inspection fee schedules relating to the inspection of conveyances adopted by the commissioner prior to January 1, 2008, shall continue to be effective until they are amended or repealed by the commissioner.

(2) The commissioner shall administer the Conveyance Safety Act. It is the intent of the Legislature that, beginning in fiscal year 2008-09, the funding for the administration of the act shall be entirely from cash funds remitted to the Mechanical Safety Inspection Fund that are fees collected in the administration of the act.

**Source:** Laws 2006, LB 489, § 6; Laws 2007, LB265, § 29.

**48-2507 Applicability of act.**

(1) The Conveyance Safety Act applies to the construction, operation, inspection, testing, maintenance, alteration, and repair of conveyances. Conveyances include the following equipment, associated parts, and hoistways which are not exempted under section 48-2508:

(a) Hoisting and lowering mechanisms equipped with a car which moves between two or more landings. This equipment includes elevators;

(b) Power driven stairways and walkways for carrying persons between landings. This equipment includes:

(i) Escalators; and

(ii) Moving sidewalks; and

(c) Hoisting and lowering mechanisms equipped with a car, which serves two or more landings and is restricted to the carrying of material by its limited size or limited access to the car. This equipment includes:

(i) Dumbwaiters;

(ii) Material lifts and dumbwaiters with automatic transfer devices; and

(iii) Conveyors and related equipment within the scope of American Society of Mechanical Engineers B20.1.

(2) The act applies to the construction, operation, inspection, maintenance, alteration, and repair of automatic guided transit vehicles on guideways with an exclusive right-of-way. This equipment includes automated people movers.

(3) The act applies to conveyances in private residences located in counties that have a population of more than one hundred thousand inhabitants at the time of installation. Such conveyances are subject to inspection at installation but are not subject to periodic inspections.

**Source:** Laws 2006, LB 489, § 7; Laws 2007, LB265, § 30.

**48-2508 Exemptions from act.**

The Conveyance Safety Act does not apply to:

(1) Conveyances under the jurisdiction and subject to inspection by the United States Government;

(2) Conveyances used exclusively for agricultural purposes;

(3) Personnel hoists within the scope of American National Standards Institute A10.4;

(4) Material hoists within the scope of American National Standards Institute A10.5;

(5) Manlifts within the scope of American Society of Mechanical Engineers A90.1;

(6) Mobile scaffolds, towers, and platforms within the scope of American National Standards Institute A92;

(7) Powered platforms and equipment for exterior and interior maintenance within the scope of American National Standards Institute 120.1;

(8) Cranes, derricks, hoists, hooks, jacks, and slings within the scope of American Society of Mechanical Engineers B30;

(9) Industrial trucks within the scope of American Society of Mechanical Engineers B56;

(10) Portable equipment, except for portable escalators which are covered by American National Standards Institute A17.1;

(11) Tiering or piling machines used to move materials to and from storage located and operating entirely within one story;

(12) Equipment for feeding or positioning materials at machine tools, printing presses, and similar equipment;

(13) Skip or furnace hoists;

(14) Wharf ramps;

(15) Railroad car lifts or dumpers;

(16) Line jacks, false cars, shafters, moving platforms, and similar equipment used for installing a conveyance by an elevator contractor;

(17) Manlifts, hoists, or conveyances used in grain elevators or feed mills;

(18) Dock levelators;

(19) Stairway chair lifts and platform lifts; and

(20) Conveyances in residences located in counties that have a population of one hundred thousand or less inhabitants.

**Source:** Laws 2006, LB 489, § 8; Laws 2007, LB265, § 31.

**48-2509 Rules and regulations; commissioner; variance authorized; appeal.**

(1) The commissioner shall adopt and promulgate rules and regulations which establish the regulations for conveyances under the Conveyance Safety Act. The rules and regulations may include the Safety Code for Elevators and Escalators, American Society of Mechanical Engineers A17.1 except those parts exempted under section 48-2508; the standards for conveyors and related equipment, American Society of Mechanical Engineers B20.1; and the Automated People Mover Standards, American Society of Civil Engineers 21. The commissioner shall annually review to determine if the most current form of such standards should be adopted.

(2) The commissioner may grant a variance from the rules and regulations adopted in subsection (1) of this section in individual situations upon good cause shown if the safety of those riding or using the conveyance is not compromised by the variance. The commissioner shall adopt and promulgate rules and regulations for the procedure to obtain a variance. The committee shall make recommendations to the commissioner regarding each variance requested. The decision of the commissioner in granting or refusing to grant a variance may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 2006, LB 489, § 9.

**Cross References**

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

**48-2510 Registration of conveyances; when required.**

Conveyances upon which construction is started subsequent to January 1, 2008, shall be registered at the time they are completed and placed in service.

**Source:** Laws 2006, LB 489, § 10.

**48-2511 Certificate of inspection; when required; display of certificate.**

On and after January 1, 2008: Prior to any newly installed conveyance being used for the first time, the property owner or lessee shall obtain a certificate of inspection from the commissioner. A fee established under section 48-2506 shall be paid for the certificate of inspection. A licensed elevator contractor shall complete and submit first-time registrations for new installations to the state elevator inspector for the inspector's approval. A certificate of inspection shall be clearly displayed in an elevator car and on or in each other conveyance.

**Source:** Laws 2006, LB 489, § 11.

**48-2512 Existing conveyance; prohibited acts; licensed elevator mechanic; licensed elevator contractor; when required; new conveyance installation; requirements.**

(1) No person shall wire, alter, replace, remove, or dismantle an existing conveyance contained within a building or structure located in a county that has a population of more than one hundred thousand inhabitants unless such person is a licensed elevator mechanic or he or she is working under the direct supervision of a person who is a licensed elevator mechanic. Neither a licensed elevator mechanic nor a licensed elevator contractor is required to perform nonmechanical maintenance of a conveyance. Neither a licensed elevator

contractor nor a licensed elevator mechanic is required for removing or dismantling conveyances which are destroyed as a result of a complete demolition of a secured building.

(2) It shall be the responsibility of licensed elevator mechanics and licensed elevator contractors to ensure that installation and service of a conveyance is performed in compliance with applicable fire and safety codes. It shall be the responsibility of the owner of the conveyance to ensure that the conveyance is maintained in compliance with applicable fire and safety codes.

(3) All new conveyance installations shall be performed by a licensed elevator mechanic under the control of a licensed elevator contractor or by a licensed elevator contractor. Subsequent to installation, a licensed elevator contractor shall certify compliance with the Conveyance Safety Act.

**Source:** Laws 2006, LB 489, § 12; Laws 2007, LB265, § 32.

**48-2512.01 State elevator inspector; qualifications; deputy inspectors; appointment; qualifications.**

(1) The Commissioner of Labor shall appoint a state elevator inspector, subject to the approval of the Governor, who shall work under the direct supervision of the commissioner. The state elevator inspector serving on January 1, 2008, shall continue to serve unless removed by the commissioner.

(2) The person so appointed shall be qualified by (a) not less than five years' experience in the installation, maintenance, and repair of elevators as determined by the commissioner, (b) certification as a qualified elevator inspector by an association accredited by the American Society of Mechanical Engineers, or (c) not less than five years' journeyman experience in elevator installation, maintenance, and inspection as determined by the Commissioner of Labor and shall be familiar with the inspection process and rules and regulations adopted and promulgated under the Conveyance Safety Act.

(3) The commissioner, subject to the approval of the Governor, may appoint deputy inspectors possessing the same qualifications as the state elevator inspector. A qualified individual may apply for the position of inspector or deputy inspector. The application shall include the applicant's social security number, but such social security number shall not be a public record.

**Source:** Laws 1919, c. 190, tit. IV, art. IV, § 14, p. 561; C.S.1922, § 7695; C.S.1929, § 48-414; R.S.1943, § 48-418; Laws 1965, c. 283, § 1, p. 810; Laws 1967, c. 297, § 1, p. 810; Laws 1973, LB 320, § 1; Laws 1982, LB 659, § 2; Laws 1987, LB 36, § 1; Laws 1997, LB 752, § 126; Laws 2006, LB 489, § 35; R.S.Supp.,2006, § 48-418; Laws 2007, LB265, § 27.

**48-2513 State elevator inspector; inspections required; written report.**

(1) Except as provided otherwise in the Conveyance Safety Act, the state elevator inspector shall inspect or cause to be inspected conveyances which are located in a building or structure, other than a private residence, at least once every twelve months in order to determine whether such conveyances are in a safe and satisfactory condition and are properly constructed and maintained for their intended use.

(2) Subsequent to inspection of a conveyance, the inspector shall supply owners or lessees with a written inspection report describing any and all

violations. An owner has thirty days after the date of the published inspection report to correct the violations.

(3) All tests done for the conveyance inspection shall be performed by a licensed elevator mechanic.

**Source:** Laws 2006, LB 489, § 13.

**48-2514 Alternative inspections; requirements.**

(1) No inspection shall be required under the Conveyance Safety Act when an owner or user of a conveyance obtains an inspection by a representative of a reputable insurance company licensed to do business in Nebraska, obtains a policy of insurance from such company upon the conveyance and files with the commissioner a certificate of inspection by such insurance company, files a statement that such conveyance is insured, and pays an administrative fee established pursuant to section 48-2506.

(2) No inspection shall be required under the act when there has been an annual inspection under a city ordinance which meets the standards of the act.

**Source:** Laws 2006, LB 489, § 14.

**48-2515 Special inspection; expenses; fee; report.**

If at any time the owner or user of a conveyance desires a special inspection of a conveyance, it shall be made by the state elevator inspector after due request therefor and the inspector making the inspection shall collect his or her expenses in connection therewith and a fee established pursuant to section 48-2506. A report of the inspection shall be provided to the owner or user who requested the inspection upon their request.

**Source:** Laws 2006, LB 489, § 15.

**48-2516 Certificate of inspection; issuance; form.**

Upon a conveyance passing an inspection under section 48-2513, 48-2514, or 48-2515 and receipt of the inspection fee, the commissioner shall issue the owner or user of the conveyance a certificate of inspection, upon forms prescribed by the commissioner.

**Source:** Laws 2006, LB 489, § 16.

**48-2517 State elevator inspector; records required.**

The state elevator inspector shall maintain a complete and accurate record of the name of the owner or user of each conveyance subject to sections 48-2513 and 48-2514 and a full description of the conveyance and the date when last inspected.

**Source:** Laws 2006, LB 489, § 17.

**48-2518 Entry upon property for purpose of inspection.**

The commissioner, the state elevator inspector, and the deputy inspectors shall have the right and power to enter any public building or structure for the purpose of inspecting any conveyance subject to the Conveyance Safety Act or gathering information with reference thereto.

**Source:** Laws 2006, LB 489, § 18.

**48-2519 Defective or unsafe condition; notice to owner or user; temporary certificate; when issued.**

The state elevator inspector shall notify the owner or user in writing of any conveyance found to be unsafe or unfit for operation setting forth the nature and extent of any defect or other unsafe condition. If the conveyance can be used without making repair or replacement of defective parts or may be used in a limited capacity before repairs or replacements are made, the state elevator inspector may issue a temporary certificate of inspection which shall state the terms and conditions of operation under the temporary certificate. The temporary certificate shall be valid for no longer than thirty days unless an extension is granted by the state elevator inspector for good cause shown.

**Source:** Laws 2006, LB 489, § 19.

**48-2520 Accident involving conveyance; notification required; when; state elevator inspector; duties.**

The owner of a conveyance shall notify the state elevator inspector of any accident causing personal injury or property damage in excess of one thousand dollars involving a conveyance on or before the close of business the next business day following the accident, and the conveyance involved shall not operate until the state elevator inspector has conducted an investigation of the accident and has approved the operation of the conveyance. The state elevator inspector shall investigate and report to the commissioner the cause of any conveyance accident that may occur in the state, the loss of life, the injuries sustained, and such other data as may be of benefit in preventing other similar accidents.

**Source:** Laws 2006, LB 489, § 20.

**48-2521 Elevator mechanic license; elevator contractor license; application; form; contents.**

(1) Any person wishing to engage in the work of an elevator mechanic shall apply for and obtain an elevator mechanic license from the commissioner. The application shall be on a form provided by the commissioner.

(2) Any person wishing to engage in the business of an elevator contractor shall apply for and obtain an elevator contractor license from the commissioner. The application shall be on a form provided by the commissioner.

(3) Each application shall contain:

(a) If an individual, the name, residence and business address, and social security number of the applicant;

(b) If a partnership, the name, residence and business address, and social security number of each partner;

(c) If a domestic corporation, the name and business address of the corporation and the name, residence address, and social security number of the principal officer of the corporation; and if a corporation other than a domestic corporation, the name and address of an agent located locally who is authorized to accept service of process and official notices;

(d) The number of years the applicant has engaged in the business of installing, inspecting, maintaining, or servicing conveyances;

(e) The approximate number of individuals to be employed by the applicant and, if applicable, satisfactory evidence that the employees are or will be covered by workers' compensation insurance;

(f) Satisfactory evidence that the applicant is or will be covered by general liability, personal injury, and property damage insurance;

(g) Permission for the Department of Labor to access the criminal history record information of individuals, partners, or officers maintained by the Federal Bureau of Investigation through the Nebraska State Patrol;

(h) A description of all accidents causing personal injury or property damage in excess of one thousand dollars involving conveyances installed, inspected, maintained, or serviced by the applicant; and

(i) Such other information as the commissioner may by rule and regulation require.

(4) Social security numbers on applications shall not be made public or be considered a part of a public record.

**Source:** Laws 2006, LB 489, § 21.

**48-2522 Standards for licensure of elevator mechanics; commissioner; duties.**

The commissioner shall adopt and promulgate rules and regulations establishing standards for licensure of elevator mechanics. An applicant for an elevator mechanic license shall demonstrate the following qualifications before being granted an elevator mechanic license:

(1) Not less than three years' work experience in the conveyance industry, in construction, maintenance, and service or repair, as verified by current and previous employers;

(2) One of the following:

(a) Satisfactory completion of a written examination administered by the committee on the most recent referenced codes and standards;

(b) Acceptable proof that the applicant has worked as a conveyance constructor, maintenance, or repair person. Such person shall have worked as an elevator mechanic without the direct and immediate supervision of a licensed elevator contractor and have passed a written examination approved by the commissioner. This employment shall not be less than three years immediately prior to the effective date of the license;

(c) Certificates of completion and successfully passing an elevator mechanic examination of a nationally recognized training program for the conveyance industry as provided by the National Elevator Industry Educational Program or its equivalent; or

(d) Certificates of completion of an apprenticeship program for elevator mechanics, having standards substantially equal to those of the Conveyance Safety Act and registered with the Bureau of Apprenticeship and Training of the United States Department of Labor or a state apprenticeship council; and

(3) Any additional qualifications adopted and promulgated in rule and regulation by the commissioner.

**Source:** Laws 2006, LB 489, § 22.

**48-2523 Elevator contractor license; work experience required.**

An applicant for an elevator contractor license shall demonstrate five years' work experience in the conveyance industry in construction, maintenance, and service or repair, as verified by current or previous employers.

**Source:** Laws 2006, LB 489, § 23.

**48-2524 Reciprocity.**

Upon application, an elevator mechanic license or an elevator contractor license may be issued to a person holding a valid license from a state having standards substantially equal to those of the Conveyance Safety Act.

**Source:** Laws 2006, LB 489, § 24.

**48-2525 License; issuance; renewal.**

Upon approval of an application for licensure as an elevator mechanic, the commissioner may issue a license which shall be renewable biennially if the continuing education requirements are met. The fee for licenses and for license renewal for elevator mechanic licenses and elevator contractor licenses shall be set by the commissioner under section 48-2506.

**Source:** Laws 2006, LB 489, § 25.

**48-2526 Continuing education; extension; when granted; approved providers; records.**

(1) The renewal of elevator mechanic licenses granted under the Conveyance Safety Act shall be conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education on new and existing rules and regulations adopted and promulgated by the commissioner. Such course shall consist of not less than eight hours of instruction that shall be attended and completed within one year immediately preceding any license renewal. The individual holding the elevator mechanic license shall pay the cost of such course.

(2) The courses shall be taught by instructors through continuing education providers that may include association seminars and labor training programs. The committee shall make recommendations to the commissioner about approval of continuing education providers.

(3) An elevator mechanic licensee who is unable to complete the continuing education course required under this section prior to the expiration of the license due to a temporary disability may apply for an extension from the state elevator inspector. The extension shall be on a form provided by the state elevator inspector which shall be signed by the applicant and accompanied by a certified statement from a competent physician attesting to such temporary disability. Upon the termination of such temporary disability, the elevator mechanic licensee shall submit to the state elevator inspector a certified statement from the same physician, if practicable, attesting to the termination of such temporary disability. At such time an extension sticker, valid for ninety days, shall be issued to the licensed elevator mechanic and affixed to the license. Such extension shall be renewable for periods of ninety days upon a showing that the disability continues.

(4) Approved continuing education providers shall keep uniform records, for a period of ten years, of attendance of elevator mechanic licensees following a format approved by the state elevator inspector, and such records shall be

available for inspection by the state elevator inspector upon request. Approved continuing education providers are responsible for the security of all attendance records and certificates of completion. Falsifying or knowingly allowing another to falsify such attendance records or certificates of completion shall constitute grounds for suspension or revocation of the approval required under this section.

**Source:** Laws 2006, LB 489, § 26.

**48-2527 Insurance policy; requirements; delivery; notice of alteration or cancellation.**

(1) An elevator contractor shall submit to the commissioner an insurance policy, or certified copy thereof, issued by an insurance company authorized to do business in the state to provide general liability coverage of at least one million dollars for injury or death of any one person and one million dollars for injury or death of any number of persons in any one occurrence and to provide coverage of at least five hundred thousand dollars for property damage in any one occurrence and workers' compensation insurance coverage as required under the Nebraska Workers' Compensation Act.

(2) Such policies, or certified copies thereof, shall be delivered to the commissioner before or at the time of the issuance of a license. In the event of any material alteration or cancellation of any policy, at least ten days' notice thereof shall be given to the commissioner.

**Source:** Laws 2006, LB 489, § 27.

**Cross References**

Nebraska Workers' Compensation Act, see section 48-1,110.

**48-2528 Elevator contractor license; revocation; grounds; elevator mechanic license; disciplinary actions; grounds; procedure; decision; appeal.**

(1) An elevator contractor license issued under the Conveyance Safety Act may be revoked by the commissioner upon verification that the elevator contractor licensee lacks the insurance coverage required by section 48-2527.

(2) An elevator mechanic license or an elevator contractor license issued under the act may be suspended, revoked, or subject to a civil penalty not to exceed five thousand dollars by the commissioner, after notice and hearing, if the licensee:

- (a) Makes a false statement as to material matter in the license application;
- (b) Commits fraud, misrepresentation, or bribery in obtaining the license; or
- (c) Violates any other provision of the act.

(3) No license shall be suspended, revoked, or subject to civil penalty until after a hearing is held before the committee and the commissioner or his or her designee. The hearing shall be held within sixty days after notice of the violation is received and all interested parties shall receive written notice of the hearing at least fifteen days prior to the hearing. Within fifteen days after the hearing, the committee shall make recommendations to the commissioner or his or her designee of appropriate penalties, if any, warranted under the circumstances of the case. The committee does not have the power to suspend or revoke licenses or impose civil penalties. Within thirty days after the hearing, the commissioner shall issue a decision which may include license suspension,

license revocation, and civil penalties. The decision of the commissioner may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 2006, LB 489, § 28.

**Cross References**

Administrative Procedure Act, see section 84-920.

**48-2529 Temporary and emergency elevator mechanic thirty-day licenses.**

The commissioner shall adopt and promulgate rules and regulations establishing standards and procedures for the issuance of temporary and emergency elevator mechanic thirty-day licenses and for the extension of such licenses for good cause shown.

**Source:** Laws 2006, LB 489, § 29.

**48-2530 Request for investigation of alleged violation; preliminary inquiry; formal investigation; procedure.**

(1) Any person may make a request for an investigation into an alleged violation of the Conveyance Safety Act by giving notice to the commissioner or state elevator inspector of such violation or danger.

(2) Upon receipt of a request for an investigation, the commissioner or state elevator inspector shall perform a preliminary inquiry into the charges contained in the request for investigation. A request for an investigation may be made in person or by telephone call and shall set forth with reasonable particularity the grounds for the request for an investigation. During the preliminary inquiry, the name, address, and telephone number of the person making the request for an investigation shall be available only to the commissioner, state elevator inspector, or other person carrying out the preliminary inquiry on behalf of the commissioner or state elevator inspector. The commissioner or state elevator inspector shall keep a record of each request for an investigation received under this section for three years after such request is made.

(3) If after the preliminary inquiry the commissioner or state elevator inspector determines that there are reasonable grounds to believe that such violation or danger exists and is likely to continue to exist such that the operation of the conveyance endangers the public, the commissioner or state elevator inspector shall cause a formal investigation to be made. During the formal investigation, a statement shall be taken from the person who made the request for an investigation and the person's name, address, and telephone number shall be made available to any opposing parties upon request.

(4) If the commissioner or state elevator inspector determines that there are no reasonable grounds to believe that a violation or danger exists under either subsection (2) or (3) of this section, the commissioner shall notify the person requesting the investigation in writing of such determination.

**Source:** Laws 2006, LB 489, § 30.

**48-2531 Act; how construed; liability.**

The Conveyance Safety Act shall not be construed to relieve or lessen the responsibility or liability of any person owning, operating, controlling, maintaining, erecting, constructing, installing, altering, testing, or repairing any

conveyance covered by the act for damages to person or property caused by any defect therein. By administering the Conveyance Safety Act, the state and its officers and employees assume no liability for accidents involving a conveyance.

**Source:** Laws 2006, LB 489, § 31.

**48-2532 Compliance with code at time of installation; notification of dangerous condition.**

Under the Conveyance Safety Act, conveyances shall be required to comply with the code standards applicable at the time such conveyance was or is installed. However, if, upon the inspection of any conveyance, (1) the conveyance is found to be in a dangerous condition or there is an immediate hazard to those using such conveyance or (2) the design or the method of operation in combination with devices used is considered inherently dangerous in the opinion of the state elevator inspector, the state elevator inspector shall notify the owner of the conveyance of such condition and shall order such alterations or additions as may be deemed necessary to eliminate the dangerous condition.

**Source:** Laws 2006, LB 489, § 32.

**48-2533 Violations; penalty.**

(1) Any person who knowingly violates the Conveyance Safety Act is guilty of a Class V misdemeanor. Each violation shall be a separate offense.

(2) Any person who installs a conveyance in violation of the Conveyance Safety Act is guilty of a Class II misdemeanor.

**Source:** Laws 2006, LB 489, § 33.

**ARTICLE 26**

**NEBRASKA UNIFORM ATHLETE AGENTS ACT**

Section

- 48-2601. Act, how cited.
- 48-2602. Terms, defined.
- 48-2603. Service of process; subpoenas.
- 48-2604. Athlete agent; registration required; void contracts.
- 48-2605. Registration as athlete agent; form; requirements.
- 48-2606. Certificate of registration; issuance or denial; renewal.
- 48-2607. Suspension, revocation, or refusal to renew registration.
- 48-2608. Temporary registration.
- 48-2609. Registration and renewal fees.
- 48-2610. Required form of contract.
- 48-2611. Notice to educational institution.
- 48-2612. Student-athlete's right to cancel.
- 48-2613. Required records.
- 48-2614. Prohibited conduct.
- 48-2615. Criminal penalty.
- 48-2616. Civil remedies.
- 48-2617. Administrative penalty.
- 48-2618. Uniformity of application and construction.
- 48-2619. Electronic Signatures in Global and National Commerce Act.

**48-2601 Act, how cited.**

Sections 48-2601 to 48-2619 shall be known and may be cited as the Nebraska Uniform Athlete Agents Act.

**Source:** Laws 2009, LB292, § 1.

**48-2602 Terms, defined.**

In the Nebraska Uniform Athlete Agents Act:

(1) Agency contract means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract;

(2) Athlete agent means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization;

(3) Athletic director means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate;

(4) Contact means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract;

(5) Endorsement contract means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance;

(6) Intercollegiate sport means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics;

(7) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity;

(8) Professional-sports-services contract means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete;

(9) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(10) Registration means registration as an athlete agent pursuant to the act;

(11) 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; and

(12) Student-athlete means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

**Source:** Laws 2009, LB292, § 2.

**48-2603 Service of process; subpoenas.**

(1) By acting as an athlete agent in this state, a nonresident individual appoints the Secretary of State as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

(2) The Secretary of State may issue subpoenas for any material that is relevant to the administration of the Nebraska Uniform Athlete Agents Act.

**Source:** Laws 2009, LB292, § 3.

**48-2604 Athlete agent; registration required; void contracts.**

(1) Except as otherwise provided in subsection (2) of this section, an individual may not act as an athlete agent in this state without holding a certificate of registration under section 48-2606 or 48-2608.

(2) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract if:

(a) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(b) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

(3) An agency contract resulting from conduct in violation of this section is void, and the athlete agent shall return any consideration received under the contract.

**Source:** Laws 2009, LB292, § 4.

**48-2605 Registration as athlete agent; form; requirements.**

(1) An applicant for registration shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application must be in the name of an individual and, except as otherwise provided in subsection (2) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

(a) The name of the applicant and the address of the applicant's principal place of business;

(b) The name of the applicant's business or employer, if applicable;

(c) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;

(d) A description of the applicant's:

(i) Formal training as an athlete agent;

(ii) Practical experience as an athlete agent; and

(iii) Educational background relating to the applicant's activities as an athlete agent;

(e) The names and addresses of three individuals not related to the applicant who are willing to serve as references;

(f) The name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;

(g) The names and addresses of all persons who are:

(i) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and

(ii) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent or greater;

(h) Whether the applicant or any person named pursuant to subdivision (g) of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

(i) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to subdivision (g) of this subsection has made a false, misleading, deceptive, or fraudulent representation;

(j) Any instance in which the conduct of the applicant or any person named pursuant to subdivision (g) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an inter-scholastic or intercollegiate athletic event on a student-athlete or an educational institution;

(k) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to subdivision (g) of this subsection arising out of occupational or professional conduct; and

(l) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to subdivision (g) of this subsection as an athlete agent in any state.

(2) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (1) of this section. The Secretary of State shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(a) Was submitted in the other state within six months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

(b) Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

(c) Was signed by the applicant under penalty of perjury.

**Source:** Laws 2009, LB292, § 5.

**48-2606 Certificate of registration; issuance or denial; renewal.**

(1) Except as otherwise provided in subsection (2) of this section, the Secretary of State shall issue a certificate of registration to an individual who complies with subsection (1) of section 48-2605 or whose application has been accepted under subsection (2) of section 48-2605.

(2) The Secretary of State may refuse to issue a certificate of registration if the Secretary of State determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an

athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:

- (a) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
- (b) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;
- (c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
- (d) Engaged in conduct prohibited by section 48-2614;
- (e) Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;
- (f) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or an educational institution; or
- (g) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(3) In making a determination under subsection (2) of this section, the Secretary of State shall consider:

- (a) How recently the conduct occurred;
- (b) The nature of the conduct and the context in which it occurred; and
- (c) Any other relevant conduct of the applicant.

(4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(5) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (4) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The Secretary of State shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

- (a) Was submitted in the other state within six months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
  - (b) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
  - (c) Was signed by the applicant under penalty of perjury.
- (6) A certificate of registration or a renewal of a registration is valid for two years.

**Source:** Laws 2009, LB292, § 6.

**48-2607 Suspension, revocation, or refusal to renew registration.**

(1) The Secretary of State may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under subsection (2) of section 48-2606.

(2) The Secretary of State may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The Administrative Procedure Act applies to the Nebraska Uniform Athlete Agents Act.

**Source:** Laws 2009, LB292, § 7.

**Cross References**

Administrative Procedure Act, see section 84-920.

**48-2608 Temporary registration.**

The Secretary of State may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

**Source:** Laws 2009, LB292, § 8.

**48-2609 Registration and renewal fees.**

(1) An application for registration or renewal of registration must be accompanied by either an application for registration fee or a renewal of registration fee, as applicable.

(2) The Secretary of State may, by rule and regulation, establish fees for applications for registration and renewals of registration at rates sufficient to cover the costs of administering the Nebraska Uniform Athlete Agents Act, in the event any such fees are required. Such fees shall be collected by the Secretary of State and remitted to the State Treasurer for credit to the Secretary of State Administration Cash Fund.

**Source:** Laws 2009, LB292, § 9.

**48-2610 Required form of contract.**

(1) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(2) An agency contract must state or contain:

(a) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(b) The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(c) A description of any expenses that the student-athlete agrees to reimburse;

(d) A description of the services to be provided to the student-athlete;

(e) The duration of the contract; and

(f) The date of execution.

(3) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

**WARNING TO STUDENT-ATHLETE****IF YOU SIGN THIS CONTRACT:**

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(4) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

**Source:** Laws 2009, LB292, § 10.

**48-2611 Notice to educational institution.**

(1) Within seventy-two hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(2) Within seventy-two hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

**Source:** Laws 2009, LB292, § 11.

**48-2612 Student-athlete's right to cancel.**

(1) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed.

(2) A student-athlete may not waive the right to cancel an agency contract.

(3) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

**Source:** Laws 2009, LB292, § 12.

**48-2613 Required records.**

(1) An athlete agent shall retain the following records for a period of five years:

- (a) The name and address of each individual represented by the athlete agent;
- (b) Any agency contract entered into by the athlete agent; and
- (c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(2) Records required by subsection (1) of this section to be retained are open to inspection by the Secretary of State during normal business hours.

**Source:** Laws 2009, LB292, § 13.

#### **48-2614 Prohibited conduct.**

(1) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

- (a) Give any materially false or misleading information or make a materially false promise or representation;
- (b) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or
- (c) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(2) An athlete agent may not intentionally:

- (a) Initiate contact with a student-athlete unless registered under the Nebraska Uniform Athlete Agents Act;
- (b) Refuse or fail to retain or permit inspection of the records required to be retained by section 48-2613;
- (c) Fail to register when required by section 48-2604;
- (d) Provide materially false or misleading information in an application for registration or renewal of registration;
- (e) Predate or postdate an agency contract; or
- (f) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

**Source:** Laws 2009, LB292, § 14.

#### **48-2615 Criminal penalty.**

An athlete agent who violates section 48-2614 is guilty of a Class I misdemeanor.

**Source:** Laws 2009, LB292, § 15.

#### **48-2616 Civil remedies.**

(1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of the Nebraska Uniform Athlete Agents Act. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

(2) Damages of an educational institution under subsection (1) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or a former student-athlete, the educational institution was injured by a violation of the act or was penalized, disqualified, or suspended

from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(3) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

(4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(5) The act does not restrict rights, remedies, or defenses of any person under law or equity.

**Source:** Laws 2009, LB292, § 16.

#### **48-2617 Administrative penalty.**

The Secretary of State may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars for a violation of the Nebraska Uniform Athlete Agents Act.

**Source:** Laws 2009, LB292, § 17.

#### **48-2618 Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Source:** Laws 2009, LB292, § 18.

#### **48-2619 Electronic Signatures in Global and National Commerce Act.**

The provisions of the Nebraska Uniform Athlete Agents Act governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229, 114 Stat. 464 (2000), as such act existed on January 1, 2009, and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

**Source:** Laws 2009, LB292, § 19.

### **ARTICLE 27**

#### **PROFESSIONAL EMPLOYER ORGANIZATION REGISTRATION ACT**

##### Section

48-2701. Act, how cited.

48-2702. Terms, defined.

48-2703. Act; professional employer agreement; effect on rights or obligations; other requirements applicable; client rights and status.

48-2704. Registration required; restrictions on use of names or title; application; contents; initial registration; when required; limited registration application; interim operating permit; registration renewal; limited registration; eligibility; department; maintain list of registrants; department; powers and duties; confidentiality.

48-2705. Financial commitment required; filing with department.

48-2706. Co-employment relationship; restrictions; rights and obligations; professional employer agreement; contents; written notice to employee; posting of

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- notice; responsibilities of client; liability; sales tax liability; health benefit plan.
- 48-2707. Funds; records.
- 48-2708. Retirement and employee welfare benefit plans.
- 48-2709. Workers' compensation coverage; allocation of responsibility; information to administrator of Nebraska Workers' Compensation Court; notice; posting; contents; notice of cancellation, nonrenewal, or termination; rights of client.
- 48-2710. Fees; Professional Employer Organization Cash Fund; created; use; investment.
- 48-2711. Prohibited acts; violation; penalty; disciplinary action; powers of department; rules and regulations.

**48-2701 Act, how cited.**

Sections 48-2701 to 48-2711 shall be known and may be cited as the Professional Employer Organization Registration Act.

**Source:** Laws 2010, LB579, § 1.

Operative date January 1, 2012.

**48-2702 Terms, defined.**

For purposes of the Professional Employer Organization Registration Act:

- (1) Client means any person who enters into a professional employer agreement with a professional employer organization;
- (2) Co-employer means either a professional employer organization or a client;
- (3) Co-employment relationship means a relationship which is intended to be an ongoing relationship rather than a temporary or project-specific one, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been allocated between the client employer and a professional employer organization as co-employers pursuant to a professional employer agreement and the act. In such a co-employment relationship:
- (a) The professional employer organization is entitled to enforce only such employer rights and is subject to only those employer obligations specifically allocated to the professional employer organization by the professional employer agreement or the act;
- (b) The client is entitled to enforce those rights and is obligated to provide and perform those employer obligations allocated to such client by the professional employer agreement or the act; and
- (c) The client is entitled to enforce any right and is obligated to perform any obligation of an employer not specifically allocated to the professional employer organization by the professional employer agreement or the act;
- (4) Covered employee means an individual having a co-employment relationship with a professional employer organization and a client who meets all of the following criteria: (a) The individual has received written notice of co-employment with the professional employer organization; and (b) the individual's co-employment relationship is pursuant to a professional employer agreement subject to the act. Individuals who are officers, directors, shareholders, partners, and managers of the client or who are members of a limited liability company if such company is the client are covered employees to the extent the professional employer organization and the client have expressly agreed in the

professional employer agreement that such individuals are covered employees, if such individuals meet the criteria of this subdivision and act as operational managers or perform day-to-day operational services for the client;

(5) Department means the Department of Labor;

(6) Direct-hire employee means an individual who is an employee of the professional employer organization within the meaning of the Nebraska Workers' Compensation Act and who is not an employee of a client and who is not a covered employee;

(7) Master policy means a workers' compensation insurance policy issued to a professional employer organization that provides coverage for more than one client and may provide coverage to the professional employer organization with respect to its direct-hire employees or that provides coverage for one client in addition to the professional employer organization's direct-hire employees. Two or more clients insured under the same policy solely because they are under common ownership are considered a single client for purposes of this subdivision;

(8) Multiple coordinated policy means a workers' compensation insurance policy that provides coverage for only a single client or group of clients under common ownership but with payment obligations and certain policy communications coordinated through the professional employer organization;

(9) Person means any individual, partnership, corporation, limited liability company, association, or any other form of legally recognized entity;

(10) Professional employer agreement means a written contract by and between a client and a professional employer organization that provides:

(a) For the co-employment of covered employees;

(b) For the allocation of employer rights and obligations between the client and the professional employer organization with respect to covered employees; and

(c) That the professional employer organization and the client assume the responsibilities required by the Professional Employer Organization Registration Act;

(11)(a) Professional employer organization means any person engaged in the business of providing professional employer services. The applicability of the act to a person engaged in the business of providing professional employer services shall be unaffected by the person's use of the term staff leasing company, administrative employer, employee leasing company, or any name other than professional employer organization or PEO.

(b) The following are not professional employer organizations or professional employment services for purposes of the act:

(i) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements and which does not hold itself out as a professional employer organization, shares employees with a commonly owned company within the meaning of sections 414(b) and (c) of the Internal Revenue Code;

(ii) Independent contractor arrangements by which a person assumes responsibility for the product produced or service performed by such person or his or her agents and retains and exercises primary direction and control over the

work performed by the individuals whose services are supplied under such arrangements; and

(iii) Providing temporary help services;

(12) Professional employer organization group means two or more professional employer organizations that are majority-owned or commonly controlled by the same entity, parent company, or controlling person;

(13) Professional employer services means the service of entering into co-employment relationships;

(14) Registrant means a professional employer organization registered under the act;

(15) Temporary help services means services consisting of a person:

(a) Recruiting and hiring its own employees;

(b) Finding other organizations that need the services of those employees;

(c) Assigning those employees (i) to perform work at or services for the other organizations to support or supplement the other organizations' workforces, (ii) to provide assistance in special work situations, including employee absences, skill shortages, or seasonal workloads, or (iii) to perform special assignments or projects; and

(d) Customarily attempting to reassign the employees to other organizations when they finish each assignment; and

(16) Working capital means current assets less current liabilities as defined by generally accepted accounting principles.

**Source:** Laws 2010, LB579, § 2.

Operative date January 1, 2012.

**Cross References**

Nebraska Workers' Compensation Act, see section 48-1,110.

**48-2703 Act; professional employer agreement; effect on rights or obligations; other requirements applicable; client rights and status.**

(1) Nothing contained in the Professional Employer Organization Registration Act or in any professional employer agreement shall affect, modify, or amend any collective-bargaining agreement or the rights or obligations of any client, professional employer organization, or covered employee under the federal National Labor Relations Act, 29 U.S.C. 151 et seq., or the federal Railway Labor Act, 45 U.S.C. 151 et seq.

(2)(a) Nothing contained in the Professional Employer Organization Registration Act or any professional employer agreement shall:

(i) Diminish, abolish, or remove rights of covered employees as to a client or obligations of such client to a covered employee existing prior to the effective date of the professional employer agreement;

(ii) Affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective, nor prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a client and a covered employee. A professional employer organization shall have no responsibility or liability in connection with, or arising out of, any such existing or new contractual relationship or restrictive covenant unless

the professional employer organization has specifically agreed otherwise in writing;

(iii) Create any new or additional enforceable right of a covered employee against a professional employer organization that is not specifically provided by the professional employer agreement or the act; or

(iv) Diminish, abolish, or remove rights of covered employees as to a client or obligations of a client to covered employees, including, but not limited to, rights and obligations arising from civil rights laws guaranteeing nondiscrimination in employment practices. A co-employer shall, immediately after receipt of such notice, notify the other co-employer of such receipt and shall transmit a copy of the notice to the other co-employer within ten business days after such receipt.

(b)(i) Nothing contained in the act or any professional employer agreement shall affect, modify, or amend any state, local, or federal licensing, registration, or certification requirement applicable to any client or covered employee.

(ii) A covered employee who is required to be licensed, registered, or certified according to law or regulation is deemed solely an employee of the client for purposes of any such license, registration, or certification requirement.

(c) A professional employer organization shall not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity, solely by entering into and maintaining a co-employment relationship with a covered employee who is subject to such licensing, registration, or certification requirements.

(d) A client shall have the sole right to direct and control the professional or licensed activities of covered employees and of the client's business. Such covered employees and clients shall remain subject to regulation by the regulatory or governmental entity responsible for licensing, registration, or certification of such covered employees or clients.

(3) With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client company's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected because the client company has entered into a professional employer agreement with a professional employer organization or uses the services of a professional employer organization.

**Source:** Laws 2010, LB579, § 3.

Operative date January 1, 2012.

**48-2704 Registration required; restrictions on use of names or title; application; contents; initial registration; when required; limited registration application; interim operating permit; registration renewal; limited registration; eligibility; department; maintain list of registrants; department; powers and duties; confidentiality.**

(1) A person engaged in the business of providing professional employer services pursuant to co-employment relationships in which all or a majority of the employees of a client are covered employees shall be registered under the Professional Employer Organization Registration Act.

(2) A person who is not registered under the Professional Employer Organization Registration Act shall not offer or provide professional employer services in

this state and shall not use the names PEO, professional employer organization, staff leasing company, employee leasing company, administrative employer, or any other name or title representing professional employer services.

(3) Each applicant for registration under the act shall provide the department with the following information:

(a) The name or names under which the professional employer organization conducts business;

(b) The address of the principal place of business of the professional employer organization and the address of each office it maintains in this state;

(c) The professional employer organization's taxpayer or employer identification number;

(d) A list by jurisdiction of each name under which the professional employer organization has operated in the preceding five years, including any alternative names, names of predecessors and, if known, successor business entities;

(e) A statement of ownership, which shall include the name and evidence of the business experience of any person that, individually or acting in concert with one or more other persons, owns or controls, directly or indirectly, twenty-five percent or more of the equity interest of the professional employer organization;

(f) A statement of management, which shall include the name and evidence of the business experience of any individual who serves as president or chief executive officer or otherwise has the authority to act as senior executive officer of the professional employer organization; and

(g) A financial statement setting forth the financial condition of the professional employer organization or professional employer organization group. At the time of initial registration, the applicant shall submit the most recent audit of the applicant, which audit may not be older than thirteen months. Thereafter, a professional employer organization or professional employer organization group shall file on an annual basis, within one hundred eighty days after the end of the professional employer organization's fiscal year, a succeeding audit. An applicant may apply for an extension with the department, but any such request shall be accompanied by a letter from the auditor stating the reasons for the delay and the anticipated audit completion date.

The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located and shall be without qualification as to the going concern status of the professional employer organization. A professional employer organization group may submit combined or consolidated financial statements to meet the requirements of this section. A professional employer organization that has not had sufficient operating history to have audited financial statements based upon at least twelve months of operating history shall meet the financial responsibility requirements of section 48-2705 and present financial statements reviewed by a certified public accountant.

(4)(a) Each professional employer organization operating within this state as of January 1, 2012, shall complete its initial registration not later than one hundred eighty days after January 1, 2012. Such initial registration shall be valid until one hundred eighty days from the end of the professional employer organization's first fiscal year that is more than one year after January 1, 2012.

**PROFESSIONAL EMPLOYER ORGANIZATION REGISTRATION ACT § 48-2704**

(b) Each professional employer organization not operating within this state as of January 1, 2012, shall complete its initial registration prior to initiating operations within this state. If a professional employer organization not registered in this state becomes aware that an existing client not based in this state has employees and operations in this state, the professional employer organization shall either decline to provide professional employer services for those employees or notify the department within five business days of its knowledge of this fact and file a limited registration application under subsection (7) of this section or a full registration if there are more than fifty covered employees. The department may issue an interim operating permit for the period the registration application is pending if the professional employer organization is currently registered or licensed by another state and the department determines it to be in the best interests of the potential covered employees.

(5) Within one hundred eighty days after the end of a registrant's fiscal year, such registrant shall renew its registration by notifying the department of any changes in the information provided in such registrant's most recent registration or renewal. A registrant's existing registration shall remain in effect during the pendency of a renewal application.

(6) Professional employer organizations in a professional employer organization group may satisfy any reporting and financial requirements of the Professional Employer Organization Registration Act on a combined or consolidated basis if each member of the professional employer organization group guarantees the financial capacity obligations under the act of each other member of the professional employer organization group. If a professional employer organization group submits a combined or consolidated audited financial statement including entities that are not professional employer organizations or that are not in the professional employer organization group, the controlling entity of the professional employer organization group under the consolidated or combined statement shall guarantee the obligations of the professional employer organizations in the professional employer organization group.

(7)(a) A professional employer organization is eligible for a limited registration under the act if such professional employer organization:

(i) Submits a properly executed request for limited registration on a form provided by the department;

(ii) Is domiciled outside this state and is licensed or registered as a professional employer organization in another state;

(iii) Does not maintain an office in this state or directly solicit clients located or domiciled within this state; and

(iv) Does not have more than fifty covered employees employed or domiciled in this state on any given day.

(b) A limited registration is valid for one year and may be renewed.

(c) A professional employer organization seeking limited registration under this section shall provide the department with information and documentation necessary to show that the professional employer organization qualifies for a limited registration.

(d) Section 48-2705 does not apply to applicants for limited registration.

(8) The department shall maintain a list of professional employer organizations registered under the act that is readily available to the public by electronic or other means.

(9) The department may prescribe forms necessary to promote the efficient administration of this section.

(10) The department shall, to the extent practical, permit by rule and regulation the acceptance of electronic filings, including applications, documents, reports, and other filings required by the department. Such rule and regulation may provide for the acceptance of electronic filings and other assurance by an independent and qualified entity approved by the department that provides satisfactory assurance of compliance acceptable to the department consistent with or in lieu of the requirements of this section and section 48-2705. Such rule and regulation shall permit a professional employer organization to authorize the entity approved by the department to act on the professional employer organization's behalf in complying with the registration requirements of the act, including electronic filings of information and payment of registration fees. Use of such an approved entity shall be optional and not mandatory for a registrant. Nothing in this subsection shall limit or change the department's authority to register or terminate registration of a professional employer organization or to investigate or enforce any provision of the act.

(11) All records, reports, and other information obtained from a professional employer organization under the act, except to the extent necessary for the proper administration of the act by the department, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties.

**Source:** Laws 2010, LB579, § 4.

Operative date January 1, 2012.

**48-2705 Financial commitment required; filing with department.**

(1) Except as provided in subsections (7) and (10) of section 48-2704, each professional employer organization or professional employer organization group shall have either:

(a) Positive working capital of at least one hundred thousand dollars at the time of initial registration and each renewal thereafter as reflected in the financial statements submitted to the department with the initial registration and each annual renewal; or

(b)(i) If the positive working capital of the professional employer organization is less than one hundred thousand dollars, a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount of not less than one hundred thousand dollars; or

(ii) If the financial statement submitted to the department indicates a deficit in working capital, a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount that is not less than one hundred thousand dollars plus an amount that is sufficient to cover that deficit.

(2) The commitment described in subdivision (1)(b) of this section shall be in a form approved by the department, shall be held in a depository designated by the department, and shall secure the payment by the professional employer organization or professional employer organization group of any wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, or other amounts that are payable to or with respect to an employee performing services for a client if the professional employer organization or professional employer organization

group does not make those payments when due. The commitment shall be established in favor of or be made payable to the department, for the benefit of the state and any employee to whom or with respect to whom the professional employer organization or professional employer organization group does not make a payment described in this subsection when due. The professional employer organization or professional employer organization group shall file with the department any agreement, instrument, or other document that is necessary to enforce the commitment against the professional employer organization or professional employer organization group, against any relevant third party, or both.

**Source:** Laws 2010, LB579, § 5.  
Operative date January 1, 2012.

**48-2706 Co-employment relationship; restrictions; rights and obligations; professional employer agreement; contents; written notice to employee; posting of notice; responsibilities of client; liability; sales tax liability; health benefit plan.**

(1) No person shall knowingly enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees or in which less than one-half of the payroll of the client in this state is attributable to covered employees.

(2) Except as specifically provided in the Professional Employer Organization Registration Act or in the professional employer agreement, in each co-employment relationship:

(a) The client shall be entitled to exercise all rights and shall be obligated to perform all duties and responsibilities otherwise applicable to an employer in an employment relationship;

(b) The professional employer organization shall be entitled to exercise only those rights and obligated to perform only those duties and responsibilities specifically required by the act or in the professional employer agreement. The rights, duties, and obligations of the professional employer organization as co-employer with respect to any covered employee shall be limited to those arising pursuant to the professional employer agreement and the act during the term of co-employment by the professional employer organization of such covered employee; and

(c) Unless otherwise expressly agreed by the professional employer organization and the client in a professional employer agreement, the client retains the exclusive right to direct and control the covered employees as is necessary to conduct the client's business, to discharge any of the client's fiduciary responsibilities, or to comply with any licensure requirements applicable to the client or to the covered employees.

(3) Except as specifically provided in the Professional Employer Organization Registration Act, the co-employment relationship between the client and the professional employer organization, and between each co-employer and each covered employee, shall be governed by the professional employer agreement. Each professional employer agreement shall include the following:

(a) The allocation of rights, duties, and obligations as described in this section;

(b) A provision that the professional employer organization shall have responsibility to pay wages to covered employees; to withhold, collect, report, and remit payroll-related and unemployment taxes; and, to the extent the professional employer organization has assumed responsibility in the professional employer agreement, to make payments for employee benefits for covered employees. For purposes of this section, wages does not include any obligation between a client and a covered employee for payments beyond or in addition to the covered employee's salary, draw, or regular rate of pay, such as bonuses, commissions, severance pay, deferred compensation, profit sharing, or vacation, sick, or other paid time off pay, unless the professional employer organization has expressly agreed to assume liability for such payments in the professional employer agreement;

(c) A provision that the professional employer organization shall have a right to hire, discipline, and terminate a covered employee as may be necessary to fulfill the professional employer organization's responsibilities under the act and the professional employer agreement. The client shall have a right to hire, discipline, and terminate a covered employee; and

(d) A provision that the responsibility to obtain workers' compensation coverage for covered employees and for other employees of the client from an insurer licensed to do business in this state and otherwise in compliance with all applicable requirements shall be specified in the professional employer agreement in accordance with section 48-2709. The client shall not be relieved of its obligations under the Nebraska Workers' Compensation Act to provide workers' compensation coverage in the event that the professional employer organization fails to obtain workers' compensation insurance for which it has assumed responsibility.

(4) With respect to each professional employer agreement entered into by a professional employer organization, such professional employer organization shall provide written notice to each covered employee affected by such agreement. The professional employer organization shall provide, and the client shall post in a conspicuous place at the client's worksite, the following:

(a) Notice of the general nature of the co-employment relationship between and among the professional employer organization, the client, and any covered employees; and

(b) Any notice required by the state relating to unemployment compensation and the minimum wage.

(5) Except to the extent otherwise expressly provided by the applicable professional employer agreement:

(a) A client shall be solely responsible for the quality, adequacy, or safety of the goods or services produced or sold in the client's business;

(b) A client shall be solely responsible for (i) directing, supervising, training, and controlling the work of the covered employees with respect to the business activities of the client or when such employees are otherwise acting under the express direction and control of the client and (ii) the acts, errors, or omissions of the covered employees with regard to such activities or when such employees are otherwise acting under the express direction and control of the client;

(c) A client shall not be liable for the acts, errors, or omissions of a professional employer organization or of any covered employee of the client and a professional employer organization when such covered employee is

acting under the express direction and control of the professional employer organization;

(d) Nothing in this subsection shall limit any contractual liability or obligation specifically provided in a professional employer agreement; and

(e) A covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization unless the covered employee is included for such purposes by specific reference in the professional employer agreement and in any applicable prearranged employment contract, insurance contract, or bond.

(6) When a professional employer organization obtains workers' compensation coverage for its clients that is written by an authorized insurer, it shall not be considered to be an insurer based on its provision of workers' compensation insurance coverage to a client, even if the professional employer organization charges the client a different amount than it is charged by the authorized insurer.

(7) For purposes of this state or any county, municipality, or other political subdivision thereof:

(a) Covered employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee. Nothing contained in the Professional Employer Organization Registration Act shall relieve a client of any sales tax liability with respect to its goods or services;

(b) Any tax or assessment imposed upon professional employer services or any business license or other fee which is based upon gross receipts shall allow a deduction from the gross income or receipts of the business derived from performing professional employer services that is equal to that portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement;

(c) Any tax assessed or assessment or mandated expenditure on a per capita or per employee basis shall be assessed against the client for covered employees and against the professional employer organization for its employees who are not covered employees co-employed with a client. Any benefit or monetary consideration that meets the requirements of mandates imposed on a client and that is received by covered employees through the professional employer organization either through payroll or through benefit plans sponsored by the professional employer organization shall be credited against the client's obligation to fulfill such mandates; and

(d) In the case of a tax or an assessment imposed or calculated upon the basis of total payroll, the professional employer organization shall be eligible to apply any small business allowance or exemption available to the client for the covered employees for the purpose of computing the tax.

(8) A professional employer organization shall not offer its covered employees any health benefit plan which is not fully insured by an authorized insurer.

**Source:** Laws 2010, LB579, § 6.

Operative date January 1, 2012.

**Cross References**

Nebraska Workers' Compensation Act, see section 48-1,110.

**48-2707 Funds; records.**

Any funds held by the professional employer organization in a fiduciary capacity shall be recorded separately and held in a fiduciary capacity on behalf of each client. The professional employer organization shall keep copies of all the records pertaining to such deposits and withdrawals and, upon request of a client, shall furnish the client with an accounting and copies of the records.

**Source:** Laws 2010, LB579, § 7.

Operative date January 1, 2012.

**48-2708 Retirement and employee welfare benefit plans.**

(1) A client and a professional employer organization shall each be deemed an employer under the laws of this state for purposes of sponsoring retirement and employee welfare benefit plans for its covered employees.

(2) A fully insured employee welfare benefit plan offered to the covered employees of a single professional employer organization shall be for purposes of state law a single employee welfare benefit plan and shall not be considered a multiple employer welfare arrangement, as defined in section 44-7603, and shall be exempt from the registration requirements of the Multiple Employer Welfare Arrangement Act.

(3) For purposes of the Small Employer Health Insurance Availability Act, a professional employer organization shall be considered the employer of all of its covered employees and all covered employees of any client participating in a health benefit plan sponsored by a single professional employer organization shall be considered employees of the professional employer organization. Subject to any eligibility requirements imposed by the plan or policy, the insurer shall accept and insure all employees of the client and all beneficiaries of those employees.

**Source:** Laws 2010, LB579, § 8.

Operative date January 1, 2012.

**Cross References**

Multiple Employer Welfare Arrangement Act, see section 44-7601.

Small Employer Health Insurance Availability Act, see section 44-5223.

**48-2709 Workers' compensation coverage; allocation of responsibility; information to administrator of Nebraska Workers' Compensation Court; notice; posting; contents; notice of cancellation, nonrenewal, or termination; rights of client.**

(1) The responsibility to obtain workers' compensation coverage for employees covered by the professional employer agreement and for other employees of the client shall be allocated in the professional employer agreement to the client, the professional employer organization, or both, in accordance with this

section. If any such responsibility is allocated to the professional employer organization, the professional employer organization shall:

(a) Advise the client of the provisions of subdivisions (9) and (10) of section 48-115;

(b) Advise the client of its obligation to obtain an additional workers' compensation insurance policy if the professional employer organization's policy limits coverage to co-employees as specified in the professional employer agreement; and

(c) Provide the client with the name of the insurer providing coverage, the policy number, claim notification instructions, and any itemized charges that are to be made for workers' compensation coverage within ten days after enrollment.

(2)(a) If all employees of the client are not covered employees under the professional employer agreement, then a workers' compensation insurance policy obtained by the professional employer organization to cover employees of the client may be written to limit coverage to those employees who are co-employees of the professional employer organization and the client. If a professional employer organization's policy limits coverage to co-employees as specified in the professional employer agreement, then the client shall obtain an additional workers' compensation insurance policy. The policy obtained by the client shall be written to cover any and all employees not covered by the professional employer organization's policy, including any potential new or unknown employees. All insurance policies issued pursuant to this subsection shall be subject to and shall comply with the requirements of this subsection and any rule or regulation adopted by the Department of Insurance.

(b) If all employees of the client are covered employees under the professional employer agreement, then a workers' compensation insurance policy obtained by the professional employer organization to cover employees of the client must be written to cover any and all employees of the client, including potential new or unknown employees that may not be covered employees under the agreement.

(c) A professional employer organization shall not split coverage that it obtains for a client between two or more policies.

(d) A professional employer organization shall not split coverage for its direct-hire employees between two or more policies.

(e) The Department of Insurance may adopt and promulgate rules and regulations to implement this subsection.

(3) If the professional employer agreement allocates responsibility to the professional employer organization to obtain workers' compensation coverage only for co-employees, then the professional employer organization shall provide the following information to the administrator of the Nebraska Workers' Compensation Court. Such information shall be provided for any such professional employer agreement in effect on January 1, 2012, and prior to the effective date of any new professional employer agreement or any amendment of an agreement adding such a provision after January 1, 2012, and shall be provided in a form and manner prescribed by the administrator:

(a) The names and addresses of the client and the professional employer organization;

(b) The effective date of the professional employer agreement;

(c) A description of the employees covered under the professional employer agreement;

(d) Evidence that any and all other employees of the client are covered by a valid workers' compensation insurance policy; and

(e) Any other information the administrator may require regarding workers' compensation coverage of the professional employer organization, the client, or the covered employees.

(4) If workers' compensation coverage for a client's employees covered by the professional employer agreement and for other employees of the client is not entirely available in the voluntary market, then assigned risk workers' compensation coverage written subject to section 44-3,158 may only be written on a single policy that covers all employees and co-employees of the client. Assigned risk workers' compensation insurance for the professional employer organization may also be written, but only on a basis that covers its direct-hire employees and excludes employees and co-employees of its clients. The Department of Insurance may adopt and promulgate rules and regulations to implement this subsection.

(5) If a master policy or multiple coordinated policy providing coverage to a client is obtained by a professional employer organization, then the professional employer organization shall provide the client with a notice that the client shall conspicuously post at its workplace. Such notice shall provide the name and address of the workers' compensation insurer and the individual to whom claims shall be directed. If more than one workers' compensation insurer provides coverage for employees and co-employees of the client, the client shall post such information for all such workers' compensation insurers.

(6) Both the client and the professional employer organization shall be considered the employer for purposes of coverage under the Nebraska Workers' Compensation Act. The protection of the exclusive remedy provision of the act shall apply to the professional employer organization, to the client, and to all covered employees and other employees of the client regardless of which co-employer obtains such workers' compensation coverage.

(7) If a client receives notice of the cancellation, nonrenewal, or termination of workers' compensation coverage obtained by the professional employer organization, then the client may withdraw from the professional employer agreement without penalty unless the client is notified by the professional employer organization of replacement coverage within fifteen days after the notice.

(8) A professional employer organization shall not impose any fee increase on a client based on the actual or anticipated cost of workers' compensation coverage without giving the client at least thirty days' advance notice and an opportunity to withdraw from the professional employer agreement without penalty.

(9) The professional employer organization shall not make any materially inaccurate, misleading, or fraudulent representations to the client regarding the cost of workers' compensation coverage. If the professional employer organization charges the client an itemized amount for workers' compensation coverage, the professional employer organization shall provide the client with an accurate and concise description of the basis upon which it was calculated and the services that are included. A professional employer organization shall not charge a client an itemized amount for workers' compensation coverage that is

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materially inconsistent with the actual amounts that the professional employer organization is charged by the insurer, given reasonably anticipated loss-sensitive charges, if applicable, reasonable recognition of the professional employer organization's costs, and a margin for profit.

**Source:** Laws 2010, LB579, § 9.  
Operative date January 1, 2012.

**Cross References**

**Nebraska Workers' Compensation Act**, see section 48-1,110.

**48-2710 Fees; Professional Employer Organization Cash Fund; created; use; investment.**

(1) The department shall adopt a schedule of fees for initial registration, annual registration renewal, and limited registration, not to exceed two thousand five hundred dollars for initial registration, one thousand five hundred dollars for annual registration renewal, and one thousand dollars for limited registration. Such fees shall not exceed those reasonably necessary for the administration of the Professional Employer Organization Registration Act.

(2) There is hereby created the Professional Employer Organization Cash Fund to be administered by the department. Fees imposed pursuant to this section shall be remitted to the State Treasurer for credit to the fund. Money in the fund may be used for the administration of the Professional Employer Organization Registration Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2010, LB579, § 10.  
Operative date January 1, 2012.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**48-2711 Prohibited acts; violation; penalty; disciplinary action; powers of department; rules and regulations.**

(1)(a) A person shall not knowingly:

(i) Offer or provide professional employer services in this state or use the names PEO, professional employer organization, staff leasing, employee leasing, administrative employer, or other title representing professional employer services unless such person is registered under the Professional Employer Organization Registration Act;

(ii) Provide false or fraudulent information to the department in conjunction with any registration, renewal, or report required under the act; or

(iii) Enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees or in which less than one-half of the payroll of the client in this state is attributable to covered employees.

(b) Any person violating this subsection is guilty of a Class I misdemeanor.

(2) Disciplinary action may be taken by the department:

(a) Against a person for violation of subsection (1) of this section;

(b) Against a professional employer organization or a controlling person of a professional employer organization upon the conviction of a professional employer organization or a controlling person of a professional employer organization of a crime that relates to the operation of the professional employer organization or the ability of a registrant or a controlling person of a registrant to operate a professional employer organization;

(c) Against a professional employer organization or a controlling person of a professional employer organization for knowingly making a material misrepresentation to an insurer, an insurance producer, the department, or other governmental agency; or

(d) Against a professional employer organization or a controlling person of a professional employer organization for a willful violation of the act or any order or regulation issued by the department under the act.

(3)(a) Upon finding, after notice and opportunity for hearing, that a professional employer organization, a controlling person of a professional employer organization, or a person offering professional employer services has violated one or more provisions of this section, and subject to any appeal required, the department may:

- (i) Deny an application for registration;
- (ii) Revoke, restrict, or refuse to renew a registration;
- (iii) Impose an administrative penalty in an amount not to exceed one thousand dollars for each material violation;
- (iv) Place the registrant on probation for the period and subject to conditions that the department specifies; or
- (v) Issue a cease and desist order.

(b) A decision by the department under this subsection may be appealed in accordance with the Administrative Procedure Act.

(4) The department may adopt and promulgate rules and regulations reasonably necessary for the administration and enforcement of this section and sections 48-2704, 48-2705, and 48-2710.

**Source:** Laws 2010, LB579, § 11.  
Operative date January 1, 2012.

**Cross References**

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

**ARTICLE 28**

**NEBRASKA INNOVATION AND HIGH WAGE EMPLOYMENT ACT**

**Section**

- 48-2801. Act, how cited.
- 48-2802. Innovation and Entrepreneurship Task Force; created; members; statewide strategic plan; contents.
- 48-2803. Statewide strategic plan; development; nonprofit organization.
- 48-2804. Statewide strategic plan; preparation and presentation to Legislature.
- 48-2805. Act, termination.

**48-2801 Act, how cited.**

Sections 48-2801 to 48-2805 shall be known and may be cited as the Nebraska Innovation and High Wage Employment Act.

**Source:** Laws 2010, LB1109, § 1.  
Termination date January 1, 2011.

**48-2802 Innovation and Entrepreneurship Task Force; created; members; statewide strategic plan; contents.**

The Legislature recognizes the importance of innovation and high wage employment and the role that innovation plays in the economic well-being of the state. The Innovation and Entrepreneurship Task Force is created. The Executive Board of the Legislative Council shall appoint six members of the Legislature to the task force. The executive board shall appoint one of such members as chairperson and one as vice-chairperson. The task force shall develop a statewide strategic plan to cultivate a climate of entrepreneurship that results in innovation and high wage employment. The task force shall adopt policy criteria to be used in the development of the plan. The plan shall include an inventory of current state and locally sponsored programs and resources targeted to small businesses, microenterprises, and entrepreneurial endeavors in the state. The plan shall provide an overview of best practices from other states, including, but not limited to, an examination of economic gardening and angel investor programs, and provide policy options.

**Source:** Laws 2010, LB1109, § 2.

Termination date January 1, 2011.

**48-2803 Statewide strategic plan; development; nonprofit organization.**

The Innovation and Entrepreneurship Task Force, in consultation with the Executive Board of the Legislative Council, shall commission a nonprofit organization to provide research, analysis, and recommendations for the development of the statewide strategic plan. The nonprofit organization shall be incorporated pursuant to the Nebraska Nonprofit Corporation Act, shall be organized exclusively for nonprofit purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, shall be engaged in activities to facilitate and promote the growth of potential high-growth businesses within the state, and shall be dedicated to the development and growth of the entrepreneurial economy. It is the intent of the Legislature that forty-eight thousand dollars of General Funds be appropriated to the Legislative Council to provide funding for the Nebraska Innovation and High Wage Employment Act.

**Source:** Laws 2010, LB1109, § 3.

Termination date January 1, 2011.

## Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

**48-2804 Statewide strategic plan; preparation and presentation to Legislature.**

The Innovation and Entrepreneurship Task Force shall prepare and present the statewide strategic plan to the Legislature by December 1, 2010.

**Source:** Laws 2010, LB1109, § 4.

Termination date January 1, 2011.

**48-2805 Act, termination.**

The Nebraska Innovation and High Wage Employment Act terminates on January 1, 2011.

**Source:** Laws 2010, LB1109, § 5.

Termination date January 1, 2011.

ARTICLE 29

EMPLOYEE CLASSIFICATION ACT

Section

- 48-2901. Act, how cited.
- 48-2902. Terms, defined.
- 48-2903. Presumption; act; how construed.
- 48-2904. Violation.
- 48-2905. Reports of suspected violations; department; duties; confidentiality.
- 48-2906. Investigations.
- 48-2907. Fines.
- 48-2908. Action to collect unpaid combined taxes plus interest; additional investigation and enforcement action.
- 48-2909. Report; contents.
- 48-2910. Contractor; post notice.
- 48-2911. Contracts; affidavit required; rescission.
- 48-2912. Contractor; false affidavit; penalties.

**48-2901 Act, how cited.**

Sections 48-2901 to 48-2912 shall be known and may be cited as the Employee Classification Act.

**Source:** Laws 2010, LB563, § 1.

**48-2902 Terms, defined.**

For purposes of the Employee Classification Act:

- (1) Commissioner means the Commissioner of Labor;
- (2) Construction has the same meaning as in section 48-2103;
- (3) Contractor means an individual, partnership, limited liability company, corporation, or other business entity engaged in a delivery service or a construction contractor business, as contractor is defined in section 48-2103, and includes any subcontractor performing services for a contractor;
- (4) Delivery service means the transport and delivery of goods, products, supplies, or raw materials upon the highways of this state;
- (5) Department means the Department of Labor; and
- (6) Performing services means the performance of construction labor or delivery services for remuneration.

**Source:** Laws 2010, LB563, § 2.

**48-2903 Presumption; act; how construed.**

(1) An individual performing construction labor services for a contractor is presumed an employee and not an independent contractor for purposes of the Employee Classification Act, unless:

- (a) The individual meets the criteria found in subdivision (5) of section 48-604;
- (b) The individual has been registered as a contractor pursuant to the Contractor Registration Act prior to commencing construction work for the contractor; and
- (c) The individual has been assigned a combined tax rate pursuant to subdivision (4) of section 48-649 or is exempted from unemployment insurance coverage pursuant to subdivision (6) of section 48-604.

(2) An individual performing delivery services for a contractor is presumed an employee and not an independent contractor for purposes of the Employee Classification Act, unless the individual meets the criteria found in subdivision (5) of section 48-604 or is exempted from unemployment insurance coverage pursuant to subdivision (6) of section 48-604.

(3) The Employee Classification Act shall not be construed to affect or apply to a common-law or statutory action providing for recovery in tort and shall not be construed to affect or change the common-law interpretation of independent contractor status as it relates to tort liability or a workers' compensation claim. The act shall also not be construed to affect or alter the use of the term independent contractor as interpreted by the Department of Revenue and shall not be construed to affect any action brought pursuant to the Nebraska Revenue Act of 1967.

**Source:** Laws 2010, LB563, § 3.

**Cross References**

**Contractor Registration Act**, see section 48-2101.  
**Nebraska Revenue Act of 1967**, see section 77-2701.

**48-2904 Violation.**

It is a violation of the Employee Classification Act for a contractor to designate an individual as an independent contractor who would be properly classified as an employee under section 48-2903.

**Source:** Laws 2010, LB563, § 4.

**48-2905 Reports of suspected violations; department; duties; confidentiality.**

The department shall establish and operate a hotline and web site for individuals to report suspected violations of the Employee Classification Act. The hotline and web site may be operated in conjunction with the requirements of the Contractor Registration Act. At a minimum, the department shall require the reporting individual to provide contact information and a description of the suspected violation including the name of the business and job site location. Except to the extent needed in any administrative hearing, civil action, or criminal proceeding brought to enforce the Employment Security Law, Nebraska Revenue Act of 1967, or Nebraska Workers' Compensation Act, information obtained by the department under this section or obtained from any individual pursuant to the administration of the Employee Classification Act shall be held confidential.

**Source:** Laws 2010, LB563, § 5.

**Cross References**

**Contractor Registration Act**, see section 48-2101.  
**Employment Security Law**, see section 48-601.  
**Nebraska Revenue Act of 1967**, see section 77-2701.  
**Nebraska Workers' Compensation Act**, see section 48-1,110.

**48-2906 Investigations.**

The department shall timely investigate all credible reports made pursuant to section 48-2905.

**Source:** Laws 2010, LB563, § 6.

**48-2907 Fines.**

In addition to any other fines or penalties provided by law, if the commissioner finds, after notice and hearing, that a contractor has violated the Employee Classification Act, the contractor shall be assessed, by the commissioner, a five-hundred-dollar fine per each misclassified individual for the first offense and a five-thousand-dollar fine per each misclassified individual for each second and subsequent offense.

**Source:** Laws 2010, LB563, § 7.

**48-2908 Action to collect unpaid combined taxes plus interest; additional investigation and enforcement action.**

Upon finding a contractor has violated the Employee Classification Act, the commissioner shall instigate proceedings pursuant to the Employment Security Law to collect any unpaid combined taxes plus interest. The commissioner shall share any violations with the Department of Revenue for analysis of violations of the Nebraska Revenue Act of 1967 and with the Nebraska Workers' Compensation Court. Upon receipt, the Department of Revenue shall promptly investigate and, if appropriate, proceed with the collection of any income tax not withheld plus interest and penalties. The commissioner, Department of Revenue, and Nebraska Workers' Compensation Court shall refer any violation reasonably believed to be a civil or criminal violation of the Employment Security Law, the Nebraska Revenue Act of 1967, the Nebraska Workers' Compensation Act, or another law to the appropriate prosecuting authority for appropriate action.

**Source:** Laws 2010, LB563, § 8.

**Cross References**

**Employment Security Law**, see section 48-601.

**Nebraska Revenue Act of 1967**, see section 77-2701.

**Nebraska Workers' Compensation Act**, see section 48-1,110.

**48-2909 Report; contents.**

The department shall annually provide a report to the Legislature regarding compliance with and enforcement of the Employee Classification Act. The report shall include, but not be limited to, the number of reports received from both its hotline and web site, the number of investigated reports, the findings of the reports, the amount of combined tax, interest, and fines collected, the number of referrals to the Department of Revenue, Nebraska Workers' Compensation Court, and appropriate prosecuting authority, and the outcome of such referrals.

**Source:** Laws 2010, LB563, § 9.

**48-2910 Contractor; post notice.**

Every contractor shall post in a conspicuous place at the job site or place of business in English and Spanish the following notice:

(1) Every individual working for a contractor has the right to be properly classified by the contractor as an employee rather than an independent contractor if the individual does not meet the requirements of an independent contractor under the law known as the Employee Classification Act.

(2) If you believe you or someone else has not been properly classified as an employee or an independent contractor under the Employee Classification Act, contact the Department of Labor.

**Source:** Laws 2010, LB563, § 10.

**48-2911 Contracts; affidavit required; rescission.**

Any contract between the state or a political subdivision and a contractor shall require that each contractor who performs construction or delivery service pursuant to the contract submit to the state or political subdivision an affidavit attesting that (1) each individual performing services for such contractor is properly classified under the Employee Classification Act, (2) such contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services, (3) such contractor has complied with section 4-114, (4) such contractor has no reasonable basis to believe that any individual performing services for such contractor is an undocumented worker, and (5) as of the time of the contract, such contractor is not barred from contracting with the state or any political subdivision pursuant to section 48-2912. Such contract shall also require that the contractor follow the provisions of the Employee Classification Act. A violation of the act by a contractor is grounds for rescission of the contract by the state or political subdivision.

**Source:** Laws 2010, LB563, § 11.

**48-2912 Contractor; false affidavit; penalties.**

Any contractor who knowingly provides a false affidavit under section 48-2911 to the state or political subdivision shall be subject to the penalties of perjury and upon a second or subsequent violation shall be barred from contracting with the state or any political subdivision for a period of three years after the date of discovery of the falsehood.

**Source:** Laws 2010, LB563, § 12.

**Cross References**

Perjury, penalty, see section 28-915.

**ARTICLE 30**

**TELEWORKER JOB CREATION ACT**

**Section**

- 48-3001. Act, how cited.
- 48-3002. Legislative findings and declarations.
- 48-3003. Terms, defined.
- 48-3004. Job training reimbursements; application; contents; confidentiality; director; duties; written agreement; contents.
- 48-3005. Employer; submit description of training program.
- 48-3006. Job training reimbursements; employer; requirements; amount of reimbursements.
- 48-3007. Request; form; contents.
- 48-3008. Department of Economic Development; audit employer.
- 48-3009. Right to reimbursement and agreement under act; not transferable; exception.
- 48-3010. Job training reimbursements; interest not allowed.
- 48-3011. No preclusion from receiving tax incentives or other benefits.

**48-3001 Act, how cited.**

Sections 48-3001 to 48-3011 shall be known and may be cited as the Teleworker Job Creation Act.

**Source:** Laws 2010, LB1081, § 1.

**48-3002 Legislative findings and declarations.**

The Legislature hereby finds and declares that:

(1) Current economic conditions in the state have resulted in unemployment, loss of jobs, and difficulty in attracting new jobs; and

(2) It is the policy of the state to make revisions in Nebraska's job training structure to encourage businesses to promote the creation of and training for new jobs which can be performed in the home within the state.

**Source:** Laws 2010, LB1081, § 2.

**48-3003 Terms, defined.**

For purposes of the Teleworker Job Creation Act:

(1) Application filing date means the date that the employer files an application for an agreement with the director under the act;

(2) Base year means the three hundred sixty-five days immediately preceding the application filing date;

(3) Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the employer or its predecessors during the base year and who is employed at the project;

(4) Director means the Director of Economic Development;

(5) Employer means a corporation, partnership, limited liability company, cooperative, limited cooperative association, or joint venture, together with such other entities that are, or would be if incorporated, members of the same unitary group as defined in section 77-2734.04, that employs the teleworkers for which the job training reimbursements are applied for under the act;

(6) Qualified training program means a training program which has the following features: (a) The program has at least fifteen hours of instruction per trainee, all of which will occur in the trainee's residence; (b) trainees are each paid at least the federal minimum hourly wage per hour of training performed; (c) trainees are being trained as teleworkers; and (d) the program requires the trainees to pass job-related tests established by the employer;

(7) Qualifying employee means a teleworker who has the following characteristics: (a) The teleworker constitutes an employee of the employer under section 77-2753; (b) the teleworker resides in Nebraska at the time of his or her employment application according to his or her statement on his or her employment application; (c) the teleworker completes a qualified training program; (d) the teleworker is not a base-year employee; (e) the teleworker is not required to purchase a computer from the employer; (f) the teleworker has passed such job-related tests required under the qualified training program; (g) the teleworker has passed a criminal background check as required by the employer; and (h) the teleworker has been allowed to complete the hiring process paperwork from his or her residence, except for any drug testing and notarized proof of identity, which can be performed at such location directed by the employer; and

(8) Teleworker means a person who works for the employer from his or her residence through the use of telecommunication systems, such as the telephone and the Internet, for inbound-only service and order-taking sales calls, which calls may also include the upselling of related products or services.

**Source:** Laws 2010, LB1081, § 3.

**48-3004 Job training reimbursements; application; contents; confidentiality; director; duties; written agreement; contents.**

(1) To earn the job training reimbursements set forth in the Teleworker Job Creation Act, an employer shall file an application for an agreement with the director. An application may be filed at any time on or after April 8, 2010.

(2) The application shall contain:

(a) A written statement describing the expected employment of qualifying employees in this state;

(b) Sufficient documents, plans, and specifications as required by the director to support the plan and to define a project; and

(c) A copy of the letter submitted to the director seeking approval of the employer's qualified training program.

(3) The application and all supporting information shall be confidential except, for each project:

(a) The name of the employer;

(b) The amount of the job training reimbursement;

(c) The number of persons trained, with such number divided into three categories: The number who reside in rural areas; the number who reside in poverty areas; and the number who reside in all other parts of Nebraska, based on the rural areas and poverty areas described in section 48-3006; and

(d) The amount of total wages and other payments subject to withholding, as defined in section 77-2753, paid by the employer to all teleworkers who reside in Nebraska, with such residence as determined by the statement of the qualifying employee on his or her employment application, within three hundred sixty-five days prior to the date of application, for the year of the project, and for the following twelve months.

The employer shall be required to provide this information to the director upon written request by the director.

(4)(a) The director shall approve the application and authorize the total amount of job training reimbursements expected to be earned as a result of the project if he or she is satisfied that (i) the plan in the application defines a project that meets the eligibility requirements established within the Teleworker Job Creation Act and (ii) such requirements will be reached within three hundred sixty-five calendar days after the application filing date. The director shall use the subaccount created under subsection (3) of section 81-1201.21 to provide reimbursements allowed by the act for the training of teleworkers.

(b) The director shall not approve further applications once the director has approved seven project applications filed before the end of fiscal year 2010-11 and the expected job training reimbursements from the approved projects total one million fifty thousand dollars in fiscal year 2010-11. Applications for an agreement shall for purposes of this limit be approved in the order in which they are received by the director.

(c) An employer and the director may enter into agreements for more than one project, up to a total of five approved project applications filed before the end of fiscal year 2010-11. The projects may be either sequential or concurrent. No new qualifying employees shall be included in more than one project for meeting the project requirements or the creation of job training reimbursements. When projects overlap and the plans do not clearly specify, the employer shall specify to which project the employment belongs. The employer has until it submits its request for reimbursement to the director to designate to which project a qualifying employee belongs. The employer may not receive job training reimbursements for a qualifying employee until the employer designates to which project that qualifying employee belongs. Such designation shall be made on such form to be filed with the director as the director shall direct.

(5) After approval, the employer and the director shall enter into a written agreement. The employer shall agree to complete the project, and the director, on behalf of the State of Nebraska, shall designate the approved plans of the employer as a project and, in consideration of the employer's agreement, agree to allow the employer to receive the job training reimbursements contained in the Teleworker Job Creation Act up to the total amount of job training reimbursements that were authorized by the director. The application and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

- (a) The number of qualifying employees 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 employer will need to supply when requesting the job training reimbursements under the act;
- (d) The date the application was filed; and
- (e) The maximum amount of job training reimbursements authorized.

**Source:** Laws 2010, LB1081, § 4.

**48-3005 Employer; submit description of training program.**

(1) To be eligible to file an application for an agreement with the director under the Teleworker Job Creation Act, the employer shall submit a description of its training program to the director for review.

(2) If the employer's training program meets the requirements to constitute a qualified training program under the act, the director shall approve such program and provide the employer with an approval letter.

**Source:** Laws 2010, LB1081, § 5.

**48-3006 Job training reimbursements; employer; requirements; amount of reimbursements.**

(1) Job training reimbursements shall be made to any employer who has an approved application pursuant to the Teleworker Job Creation Act and who trains at least four hundred qualifying employees in a qualified training program within three hundred sixty-five calendar days from the application filing date and offers employment to those qualifying employees to work for the employer as a teleworker. The employer shall, to the extent of available job positions, give a hiring priority preference, over other similarly qualified applicants, to those applicants who (a) reside in Nebraska counties of less than one hundred thousand inhabitants, as determined by the most recent federal

decennial census, with such residence as determined by the statement of the qualifying employee on his or her employment application, or (b) reside in areas of high concentration of poverty within the corporate limits of a city or village 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, as determined by the most recent federal decennial census. Such job positions shall pay a wage of at least the then-required minimum hourly wage required by federal law. If the employer fails to provide such a hiring priority preference to one or more of the persons entitled to it, then the employer shall lose the right to one job training reimbursement for each such failure.

(2) The amount of the job training reimbursements allowed under subsection (1) of this section shall be three hundred dollars for each new qualifying employee hired by the employer after the application filing date, up to a total of five hundred qualifying employees per project, resulting in a maximum reimbursement per project of one hundred fifty thousand dollars.

**Source:** Laws 2010, LB1081, § 6.

**48-3007 Request; form; contents.**

A request for job training reimbursements may be filed annually or quarterly by the employer on a form required by the director. Each request shall contain verification of the number of qualifying employees, designated by project, for which the employer has met the requirements of the Teleworker Job Creation Act, and such amounts shall be paid to the employer upon approval by the director.

**Source:** Laws 2010, LB1081, § 7.

**48-3008 Department of Economic Development; audit employer.**

The Department of Economic Development shall, prior to making the job training reimbursement, audit the employer for compliance with the Teleworker Job Creation Act. The department may utilize the subaccount created under subsection (3) of section 81-1201.21 to support the costs of audits and administration of the Teleworker Job Creation Act.

**Source:** Laws 2010, LB1081, § 8.

**48-3009 Right to reimbursement and agreement under act; not transferable; exception.**

(1) The right to job training reimbursements and the agreement under the Teleworker Job Creation Act shall not be transferable except when a project covered by an agreement is transferred by sale or lease to another employer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986.

(2) The acquiring employer, as of the date of notification of the director of the completed transfer, shall be entitled to any unused job training reimbursements and to any future job training reimbursements allowable under the act.

**Source:** Laws 2010, LB1081, § 9.

**48-3010 Job training reimbursements; interest not allowed.**

Interest shall not be allowable on any job training reimbursements earned under the Teleworker Job Creation Act.

**Source:** Laws 2010, LB1081, § 10.

**48-3011 No preclusion from receiving tax incentives or other benefits.**

Participation in the Teleworker Job Creation Act shall not preclude an employer from receiving tax incentives or other benefits under other federal, state, or local incentive programs.

**Source:** Laws 2010, LB1081, § 11.

## CHAPTER 49

### LAW

#### Article.

1. Common Law. 49-101.
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12. Mail. 49-1201 to 49-1203.
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  - (f) Digital and Electronic Filing. 49-14,141.
15. Nebraska Short Form Act. 49-1501 to 49-1562.
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#### ARTICLE 1

#### COMMON LAW

##### Cross References

##### Constitutional provisions:

District courts have common-law jurisdiction, see Article V, section 9, Constitution of Nebraska.

**Causes of action not provided for in code of civil procedure**, see section 25-2224.

**Foreign states or governments**, common law, how proved, see section 25-1293.

**Judicial notice of**, see section 25-12,101.

**Rule requiring strict construction of statutes in derogation of common law not applicable to code of civil procedure**, see section 25-2218.

**Survival of causes of action**, see section 25-1401.

##### Section

49-101. Common law; applicability.

#### **49-101 Common law; applicability.**

So much of the common law of England as is applicable and not inconsistent with the Constitution of the United States, with the organic law of this state, or with any law passed or to be passed by the Legislature of this state, is adopted and declared to be law within the State of Nebraska.

**Source:** R.S.1866, c. 7, § 1, p. 31; R.S.1913, § 3697; C.S.1922, § 3085; C.S.1929, § 49-101; R.S.1943, § 49-101.

1. Applicability of common law
2. Conflict with statutory law
3. Inconsistent with needs
4. Miscellaneous

**1. Applicability of common law**

The common-law writ of error coram nobis exists in this state under this section. *State v. El-Tabech*, 259 Neb. 509, 610 N.W.2d 737 (2000); *Parker v. State*, 178 Neb. 1, 131 N.W.2d 678 (1964); *Hawk v. State*, 151 Neb. 717, 39 N.W.2d 561 (1949); *Swanson v. State*, 148 Neb. 155, 26 N.W.2d 595 (1947).

The common law fixes the rights and duties of riparian proprietors, except as modified by the Constitution or statutes. *Wasserburger v. Coffee*, 180 Neb. 149, 141 N.W.2d 738 (1966).

Common-law rules as to rights and duties of riparian owners, as altered and modified by statute, are in force in this state. *Metropolitan Utilities Dist. v. Merritt Beach Co.*, 179 Neb. 783, 140 N.W.2d 626 (1966); *Drainage Dist. No. 1 v. Suburban Irr. Dist.*, 139 Neb. 460, 298 N.W. 131 (1941); *Osterman v. Central Nebraska Public Power & Irr. Dist.*, 131 Neb. 356, 268 N.W. 334 (1936); *Kinhead v. Turgeon*, 74 Neb. 573, 104 N.W. 1061 (1905), reversed on rehearing, 74 Neb. 580, 109 N.W. 744 (1906); *Meng v. Coffee*, 67 Neb. 500, 93 N.W. 713 (1903); *Crawford Co. v. Hathaway*, 67 Neb. 325, 93 N.W. 781 (1903).

Antenuptial contracts were void at common law. *Dorshorst v. Dorshorst*, 174 Neb. 886, 120 N.W.2d 32 (1963).

Common-law writ of prohibition is available to litigants in this state. *Conkling v. DeLany*, 167 Neb. 4, 91 N.W.2d 250 (1958).

Common law was adopted governing relation of landlord and tenant. *Wright v. Barclay*, 151 Neb. 94, 36 N.W.2d 645 (1949).

Doctrine of demonstrative legacies is in force in Nebraska. In re *Estate of Lewis*, 148 Neb. 592, 28 N.W.2d 427 (1947).

Common-law remedy of writ of prohibition is not abolished in Nebraska. *State ex rel. Wright v. Barney*, 133 Neb. 676, 276 N.W. 676 (1937).

In this jurisdiction we have adopted the common law of England as governing the relation of landlord and tenant. *Roberts v. Rogers*, 129 Neb. 298, 261 N.W. 354 (1935).

At common law, there was no incapacity of spendthrifts, and this rule is in force in this state. *Taylor v. Koenigstein*, 128 Neb. 809, 260 N.W. 544 (1935).

Statute adopts the common law of England and not the statutory law. *Brooks v. Kimball County*, 127 Neb. 645, 256 N.W. 501 (1934).

Common law is not in force where inapplicable to our needs or conditions or in conflict with constitutional or statutory provisions. *Bishop v. Liston*, 112 Neb. 559, 199 N.W. 825 (1924).

Common-law barrier to transfer of title to real estate by oral wills still exists in this state. *Maurer v. Reifschneider*, 89 Neb. 673, 132 N.W. 197, Ann. Cas. 1912C 643 (1911).

Doctrine of charitable uses, being administered as part of common-law jurisdiction of courts of chancery of England exercising judicial powers only, has been transplanted to this state, and in administration and enforcement of such trusts, courts can exercise only judiciary powers. *St. James Orphan Asylum v. Shelby*, 60 Neb. 796, 84 N.W. 273 (1900).

Rule of common law relating to lien on chattels is in force, in absence of specific agreement. *Drummond Carriage Co. v. Mills*, 54 Neb. 417, 74 N.W. 966 (1898).

Common law is applicable only insofar as it is suited to the genius, spirit, and objects of its intendments. *Cooney v. Moomaw*, 109 F.Supp. 448 (D. Neb. 1953).

**2. Conflict with statutory law**

Common-law rule as to incompetency of parties as witnesses has been changed by statute. *Fincham v. Mueller*, 166 Neb. 376, 89 N.W.2d 137 (1958).

Common-law rule as to legitimation of children born out of wedlock has been changed by statute. *Timmerman v. Timmerman*, 163 Neb. 704, 81 N.W.2d 135 (1957).

Common law with respect to partition has been modified by statute in this state. *Baskins v. Krepcik*, 153 Neb. 36, 43 N.W.2d 624 (1950).

Writ of error coram nobis is not expressly abolished by statute but cannot be used where code provides a remedy. *Carlsen v. State*, 129 Neb. 84, 261 N.W. 339 (1935).

Common-law rule giving executor full title and right to dispose of personal estate of deceased does not prevent prosecution of executor for embezzlement. *Pilger v. State*, 120 Neb. 584, 234 N.W. 403, 75 A.L.R. 297 (1931).

Statute, defining aiding and abetting as a distinct crime, prevails over common law. *Guignon v. State*, 101 Neb. 587, 163 N.W. 858 (1917).

Provision of common law, inconsistent with any law passed or to be passed by the Legislature, is not law of this state. *Moran v. Moran*, 101 Neb. 386, 163 N.W. 315 (1917), overruled on rehearing, 101 Neb. 555, 163 N.W. 1071 (1917).

Mortgage by deposit of title deeds without writing is not effective in this state. *Bloomfield State Bank v. Miller*, 55 Neb. 243, 75 N.W. 569 (1898).

Whether writ of prohibition may be allowed in this state, in aid of appellate jurisdiction, is doubtful. *State ex rel. King v. Hall*, 47 Neb. 579, 66 N.W. 642 (1896).

City of Lincoln could not claim sovereign right to priority of payment out of assets of bankrupt trust company under theory that common law authorizes it, inasmuch as such a rule is inconsistent with Nebraska legislation, and the reason on which the common-law rule was based does not exist. *City of Lincoln v. Ricketts*, 84 F.2d 795 (8th Cir. 1936).

**3. Inconsistent with needs**

Administrator may maintain action for damages after death of his intestate for pain and suffering inflicted on deceased, notwithstanding cause of action did not survive at common law. *Wilfong v. Omaha & C. B. St. Ry. Co.*, 129 Neb. 600, 262 N.W. 537 (1935).

Action for personal injuries resulting from negligence does not abate on death of wrongdoer before commencement of action, but may be brought against his estate. In re *Grainger's Estate*, 121 Neb. 338, 237 N.W. 153, 78 A.L.R. 597 (1931).

Common-law rule of estate by entirety does not prevail in this state. *Kerner v. McDonald*, 60 Neb. 663, 84 N.W. 92 (1900).

Statute of uses is not of the law of this state. *Farmers & Merchants Ins. Co. v. Jensen*, 58 Neb. 522, 78 N.W. 1054 (1899).

Common-law rule of construction of covenants affecting real estate is not in force in this state. *Wattles v. South Omaha Ice & Coal Co.*, 50 Neb. 251, 69 N.W. 785 (1897).

**4. Miscellaneous**

If a defendant is denied his right to appeal because of counsel's failure to timely file notice of appeal, the proper means to attack such denial is a motion for postconviction relief and not a motion for writ of error coram nobis. A motion for writ of error coram nobis reaches only matters of fact unknown to the applicant at the time of judgment, not discoverable through reasonable diligence, and which, if known by the court, would have prevented entry of judgment. *State v. Johnson*, 243 Neb. 758, 502 N.W.2d 477 (1993).

Absence of statute granting interest in improvements to lessee at time school land lease entered required application of rules of this section. *State v. Bardsley*, 185 Neb. 629, 177 N.W.2d 599 (1970).

Cited in consideration of municipal tort immunity. *Brown v. City of Omaha*, 183 Neb. 430, 160 N.W.2d 805 (1968).

Doctrine of the right of privacy was not recognized in the common law. *Brunson v. Ranks Army Store*, 161 Neb. 519, 73 N.W.2d 803 (1955).

The common law is flexible, and by its own principles adapts itself to varying conditions. *State v. Tautges, Rerat & Welch*, 146 Neb. 439, 20 N.W.2d 232 (1945).

Notwithstanding common-law rule forbidding action for damages for death by wrongful act, pending action for personal injuries does not abate by death of plaintiff. *Murray v. Omaha*

Transfer Co., 98 Neb. 482, 153 N.W. 488 (1915), affirming 95 Neb. 175, 145 N.W. 360 (1914).

Term common law refers to that general system of law prevailing in England and most of the United States, by derivation from England, as distinguished from Roman or civil law system, in force in this territory prior to Louisiana Purchase. *Williams v. Miles*, 68 Neb. 463, 94 N.W. 705 (1903), 96 N.W. 151 (1903).

Rule that in adopting a statute from another state Legislature also adopts construction put upon it by that state is not absolute. *Rhea v. State*, 63 Neb. 461, 88 N.W. 789 (1902).

Whether rule of common law, that statutes in derogation thereof are to be strictly construed, is in force in this state, is doubted. *Kearney Electric Co. v. Laughlin*, 45 Neb. 390, 63 N.W. 941 (1895).

The plaintiff's characterization of his action as one seeking damages for misappropriation of his name and image could not serve as a means to escape the rule announced by the Nebraska Supreme Court that under Nebraska law one has no right to control the use of his name and image. *Carson v. National Bank of Commerce Trust & Sav.*, 501 F.2d 1082 (8th Cir. 1974).

## ARTICLE 2

### ADOPTION OF CONSTITUTIONAL AMENDMENTS

#### Cross References

#### Constitutional provisions:

Constitutional convention, proposal for, submitted by Legislature, see Article XVI, section 2, Constitution of Nebraska.

Initiated proposals, see Article III, sections 2 and 4, Constitution of Nebraska.

Legislature, proposals by, see Article XVI, section 1, Constitution of Nebraska.

**Advisory vote of people on amendments to Constitution of the United States**, see section 32-1417.

**Initiated proposals**, procedure, see sections 32-1401 to 32-1416.

#### Section

- 49-201. Constitutional amendments; proposal by Legislature; resolution.
- 49-202. Amendments proposed by Legislature; publication.
- 49-202.01. Amendments proposed by Legislature; explanatory statement; requirements.
- 49-203. Amendments proposed by Legislature; manner of submission.
- 49-204. Amendments proposed by Legislature; election; returns; canvass.
- 49-205. Amendments proposed by Legislature; election; vote required for adoption; proclamation by Governor.
- 49-206. Amendments; how enrolled and numbered; duties of Secretary of State.
- 49-207. Amendments; more than one submitted; order of submission; form of ballot; duty of Secretary of State.
- 49-208. Amendments; official and sample ballots; printing.
- 49-209. Amendments; form of ballots; when transmitted.
- 49-210. Amendments; election; duties of county clerk or election commissioner.
- 49-211. Failure of election officers to make returns; penalty.
- 49-212. Constitutional convention; special election; delegates; number.
- 49-213. Constitutional convention; proclamation; notice; how conducted; returns.
- 49-214. Constitutional convention; candidates nominated by petition.
- 49-215. Constitutional convention; candidates; petition; contents.
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- 49-218. Constitutional convention; candidates; petition; form.
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- 49-220. Constitutional convention; candidates; nonpartisan primary; held, when.
- 49-221. Constitutional convention; primary election; proclamation; notice; returns.
- 49-222. Constitutional convention; delegates; assemble; time; place.
- 49-223. Constitutional convention; delegates; vacancy; how filled.
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- 49-227. Constitutional convention; submission of proposals; time; form; manner.
- 49-228. Constitutional convention; elections; Election Act applicable.
- 49-229. Constitutional convention; delegates; election; ballots; printing; distribution.
- 49-230. Constitutional convention; delegates; compensation.
- 49-231. Constitutional convention; information; duty of state, county, and political subdivision officer to furnish; penalty.
- 49-232. Constitutional convention; preliminary survey committee; appointment; duties.
- 49-233. Constitutional convention; preliminary survey committee; expenses.
- 49-234. Constitutional convention; delegates; preliminary survey committee; compensation; expenses; payment.

Section	
49-235.	Amendments proposed by the Legislature; special election; vote of members; date held.
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49-237.	Amendments proposed by the Legislature; special election; expenses; appropriate funds.
49-238.	Amendments proposed by the Legislature; special election; how conducted.
49-239.	Repealed. Laws 1980, LB 741, § 1.
49-240.	Repealed. Laws 1980, LB 741, § 1.
49-241.	Repealed. Laws 1980, LB 741, § 1.
49-242.	Repealed. Laws 1980, LB 741, § 1.
49-243.	Repealed. Laws 1980, LB 741, § 1.
49-244.	Repealed. Laws 1980, LB 741, § 1.

**49-201 Constitutional amendments; proposal by Legislature; resolution.**

Amendments to the Constitution may be proposed by resolution of the Legislature, and if the same shall be voted for by three-fifths of the members thereof, in the manner provided by Article XVI, section 1, of the Constitution, the amendment or amendments proposed shall be submitted to the electors of this state for approval or rejection in the manner hereinafter provided.

**Source:** Laws 1877, § 1, p. 114; R.S.1913, § 3698; C.S.1922, § 3086; Laws 1925, c. 112, § 1, p. 303; C.S.1929, § 49-201; R.S.1943, § 49-201.

Because of insufficient publication of notice, attempted constitutional amendment, to exclude schools of deaf and blind from jurisdiction of Board of Control, was ineffective. State ex rel Hall v. Cline, 118 Neb. 150, 224 N.W. 6 (1929).

**49-202 Amendments proposed by Legislature; publication.**

Such proposed amendment or amendments shall be published by the Secretary of State once each week for three weeks, in at least one newspaper to be designated by the Governor, in each county where a newspaper is published, immediately preceding the next election of members of the Legislature, with notice prefixed thereto that at such election such proposed amendment or amendments will be submitted to the electors of this state for approval or rejection.

**Source:** Laws 1877, § 2, p. 114; Laws 1895, c. 3, § 1, p. 67; Laws 1909, c. 2, § 1, p. 54; R.S.1913, § 3699; C.S.1922, § 3087; Laws 1925, c. 112, § 2, p. 303; C.S.1929, § 49-202; R.S.1943, § 49-202; Laws 1953, c. 170, § 1, p. 545.

**Cross References**

For required publication, see Article XVI, section 1, Constitution of Nebraska.

**49-202.01 Amendments proposed by Legislature; explanatory statement; requirements.**

(1) When any proposal submitted by the Legislature is placed on the ballot for a vote of the electorate of the entire state, a statement in clear, concise language explaining the effect of a vote for and a vote against the proposal shall be printed immediately preceding the ballot title. Such statement shall be prepared by the Executive Board of the Legislative Council and submitted to the Secretary of State at least four months prior to the general election for certification to the election commissioners and county clerks along with the ballot titles. Such statement shall be printed in italics and shall be so worded as

to not be intentionally an argument or likely to create prejudice either for or against the proposal. The statement shall also be published in italics preceding the ballot title on each proposal published pursuant to section 49-202.

(2) The four-month requirement prescribed in subsection (1) of this section shall not apply to any legislative proposal submitted to the electorate at a special election as provided in Article XVI, section 1, of the Constitution of Nebraska.

**Source:** Laws 1994, LB 76, § 559.

#### **49-203 Amendments proposed by Legislature; manner of submission.**

At such election on the ballot of each elector voting shall be written or printed the words For proposed amendment to the Constitution, and Against proposed amendment to the Constitution, unless the Legislature in the resolution providing for the submission of a proposed amendment or amendments shall otherwise provide.

**Source:** Laws 1877, § 3, p. 114; R.S.1913, § 3700; C.S.1922, § 3088; Laws 1925, c. 112, § 3, p. 304; C.S.1929, § 49-203; R.S.1943, § 49-203.

#### **49-204 Amendments proposed by Legislature; election; returns; canvass.**

Public notice that the proposed amendment or amendments to the Constitution of Nebraska are to be voted upon shall be given as provided in the Constitution. The judges and clerks of election shall make return to the county clerk or election commissioner of their respective counties of (1) the number of electors voting at such election at which such amendments are voted upon, (2) the number of electors who voted for such amendment or amendments, and (3) the number of electors who voted against such amendment or amendments. The several county clerks or election commissioners in the different counties shall make return to the board of state canvassers provided for in section 32-1037 in the same manner and within the same time that they are required to make return of votes cast for officers described in such section. All such returns shall be directed to the Secretary of State and transmitted to him or her in a separate abstract from the abstract and return of votes cast for the officers named in such section.

The returns from the election officers shall be canvassed by the county canvassing board which canvasses the other election returns in the county. The county canvassing board shall determine, from the returns made by the judges and clerks of election, the number of electors voting at the election, the number of electors voting at such election for the amendment or amendments, and the number of electors who voted against the amendment or amendments. The county canvassing board shall enter its findings in the book in which the canvass of other election returns is made, and from the findings so made, the county clerk or election commissioner shall make the returns to the board of state canvassers as provided in this section.

**Source:** Laws 1877, § 4, p. 115; Laws 1895, c. 4, § 1, p. 69; Laws 1897, c. 5, § 1, p. 45; Laws 1907, c. 1, § 1, p. 49; R.S.1913, § 3701; C.S.1922, § 3089; C.S.1929, § 49-204; R.S.1943, § 49-204; Laws 1959, c. 232, § 1, p. 812; Laws 1973, LB 554, § 1; Laws 1994, LB 76, § 558.

Section is constitutional, and it was the duty of state board of canvassers to canvass returns on constitutional amendments. State ex rel. Oldham v. Dean, 84 Neb. 344, 121 N.W. 719 (1909).

**49-205 Amendments proposed by Legislature; election; vote required for adoption; proclamation by Governor.**

If a majority of the electors voting on any such amendment adopt the same, provided the votes cast in favor of such amendment shall not be less than thirty-five percent of the total votes cast at such election, the Governor, within ten days after the result is ascertained, shall make proclamation declaring the proposed amendment or amendments to be a part of the Constitution of the state.

**Source:** Laws 1877, § 5, p. 115; R.S.1913, § 3702; C.S.1922, § 3090; Laws 1925, c. 112, § 4, p. 304; C.S.1929, § 49-205; R.S.1943, § 49-205.

Constitutional amendment, to exclude schools of deaf and blind from jurisdiction of Board of Control, was ineffective for failure to comply with requirements. State ex rel. Hall v. Cline, 118 Neb. 150, 224 N.W. 6 (1929).

**49-206 Amendments; how enrolled and numbered; duties of Secretary of State.**

Whenever any amendments to the Constitution shall have been proposed to and adopted by the electors of this state, as provided in sections 49-201 to 49-205, the same shall be enrolled and numbered in the order of time in which they may be adopted, and preserved by the Secretary of State among the public records of his office.

**Source:** Laws 1877, § 6, p. 115; R.S.1913, § 3703; C.S.1922, § 3091; C.S.1929, § 49-206; R.S.1943, § 49-206.

**49-207 Amendments; more than one submitted; order of submission; form of ballot; duty of Secretary of State.**

Whenever at a session of the Legislature more than one amendment to the Constitution or proposition is submitted to a vote of the people, it shall be the duty of the Secretary of State to provide the form of the ballots containing such propositions or proposed amendments, which are to be submitted to a vote of the people. The Secretary of State shall number the amendments consecutively in the order they are received from the Governor. If more than one amendment to the Constitution or proposition is received at the same time, they shall be submitted in the order they were approved by the Legislature.

**Source:** Laws 1895, c. 5, § 1, p. 69; R.S.1913, § 3704; C.S.1922, § 3092; C.S.1929, § 49-207; R.S.1943, § 49-207; Laws 1955, c. 191, § 1, p. 552.

**49-208 Amendments; official and sample ballots; printing.**

The ballots shall be printed, both official and sample, in conformity with the provisions of the Election Act regulating ballots at a general election.

**Source:** Laws 1895, c. 5, § 2, p. 70; R.S.1913, § 3705; C.S.1922, § 3093; C.S.1929, § 49-208; R.S.1943, § 49-208; Laws 1953, c. 171, § 1, p. 546; Laws 1972, LB 661, § 77; Laws 1994, LB 76, § 560.

**Cross References**

**Election Act**, see section 32-101.

**49-209 Amendments; form of ballots; when transmitted.**

The form of the ballots prepared in conformity with sections 49-202.01, 49-207, and 49-208 shall be transmitted to the county clerks and election commissioners of the several counties of this state at least fifty days before the election at which such proposition or amendments are to be voted upon.

**Source:** Laws 1895, c. 5, § 3, p. 70; R.S.1913, § 3706; C.S.1922, § 3094; C.S.1929, § 49-209; R.S.1943, § 49-209; Laws 1961, c. 242, § 1, p. 722; Laws 1973, LB 554, § 2; Laws 1994, LB 76, § 561; Laws 1997, LB 764, § 109.

**49-210 Amendments; election; duties of county clerk or election commissioner.**

The county clerk or election commissioner of each county shall see that the list of voters book and the official summary of votes cast furnished each voting precinct are suitably printed and ruled so as to enable the election officers to make returns of the votes cast on the various propositions or amendments submitted and to enable the election officers to make full and complete returns of the facts required of them to be made to the county clerk or election commissioner.

**Source:** Laws 1895, c. 5, § 6, p. 71; Laws 1897, c. 5, § 1, p. 46; R.S.1913, § 3707; C.S.1922, § 3095; C.S.1929, § 49-210; R.S.1943, § 49-210; Laws 1973, LB 554, § 3; Laws 1994, LB 76, § 562.

**49-211 Failure of election officers to make returns; penalty.**

Should the officers of election of any election precinct refuse or fail to make return of the votes cast for and against any proposition or proposed amendment to the Constitution, they shall be guilty of a Class V misdemeanor.

**Source:** Laws 1895, c. 5, § 7, p. 71; R.S.1913, § 3708; C.S.1922, § 3096; C.S.1929, § 49-211; R.S.1943, § 49-211; Laws 1977, LB 40, § 305.

**49-212 Constitutional convention; special election; delegates; number.**

When the question of calling a constitutional convention to revise, amend, or change the Constitution of Nebraska is submitted to the electors of the state, and a majority of the electors voting for or against the same vote for a convention, the Legislature shall at its next session provide by law for calling the same and for holding a special election on the first Tuesday after the first Monday in November in the year following the year the electors voted to call a constitutional convention. At such special election, the electors of each legislative district of the state shall elect two delegates to such convention, hereinafter referred to as members of the constitutional convention, who shall have the qualifications of electors.

**Source:** Laws 1953, c. 173, § 1, p. 548.

**49-213 Constitutional convention; proclamation; notice; how conducted; returns.**

The election shall be proclaimed and notice thereof given by the same persons, and in the same manner, as in general elections, and the election shall in all respects be conducted, the returns thereof made, and the results certified

as is provided by law in the election of members to the Legislature, except as otherwise provided by sections 49-212 to 49-234.

**Source:** Laws 1953, c. 173, § 2, p. 548.

**49-214 Constitutional convention; candidates nominated by petition.**

Candidates for members of the constitutional convention shall be nominated by nominating petitions. The nominating petitions shall be in writing and addressed to the Secretary of State. The nominating petitions shall be signed by not less than five percent of the qualified electors of the legislative district. The percentage shall be based on the number of electors voting in the legislative district at the last preceding general election. In no case shall the number of signers to the petition be less than one hundred.

**Source:** Laws 1953, c. 173, § 3, p. 549.

**49-215 Constitutional convention; candidates; petition; contents.**

The petition shall contain a provision to the effect that each signer thereof recommends the candidate or candidates for the nomination contained therein. The names of more than two candidates shall not be set forth in any one petition. Signers shall conform to sections 32-629 and 32-630. No elector shall sign his or her name to the petition or petitions for the nomination of more than two candidates. If an elector has signed his or her name for the nomination of more than two candidates, his or her name shall not be counted for any of such candidates.

**Source:** Laws 1953, c. 173, § 4, p. 549; Laws 1994, LB 76, § 563.

**49-216 Constitutional convention; petition; oath of signers.**

Five of the signers to each separate petition shall swear before a notary public, or other officer entitled to administer oaths, that the petition is bona fide in every respect to the best of their knowledge and belief, and such oath shall be annexed to the petition. If the petition contains less than five signers, the oath shall be signed by all the signers.

**Source:** Laws 1953, c. 173, § 5, p. 549.

**49-217 Constitutional convention; candidates; petition; statements as to candidates.**

In addition to containing the name of the candidate, the petition shall state as to each candidate:

- (1) That he is a candidate for members of the constitutional convention for the legislative district in which the signatures are obtained;
- (2) His place of residence with street and number thereof, if any; and
- (3) A declaration by the candidate that he will qualify if elected.

**Source:** Laws 1953, c. 173, § 6, p. 549.

**49-218 Constitutional convention; candidates; petition; form.**

Nominating petitions shall comply with section 32-628 and shall be in substantially the following form:

I, ....., do hereby announce myself as a candidate for member of the constitutional convention to be convened December ....., 20....., I reside

at ..... in the ..... legislative district, and I will qualify as a member of the constitutional convention if elected.

.....

To the Secretary of State

We, the undersigned electors of the ..... legislative district of Nebraska, do hereby petition that ..... be named as a member of the constitutional convention to be convened December ....., 20....., from the ..... legislative district, and we do each hereby separately recommend his or her election as such.

Name	Address
.....	.....
.....	.....
.....	.....

State of Nebraska     )  
                                  )     ss.  
..... County         )

The undersigned having signed the foregoing petition and being first duly sworn on oath state that the foregoing petition is bona fide in every respect to the best of our knowledge and belief.

.....  
.....  
.....  
.....

Subscribed and sworn to before me this ..... day of ..... 20.....

.....  
Notary Public

The Secretary of State shall prepare and have printed suitable blank forms. Supplies thereof shall be mailed to the several county clerks.

**Source:** Laws 1953, c. 173, § 7, p. 550; Laws 1994, LB 76, § 564; Laws 2004, LB 813, § 20.

**49-219 Constitutional convention; candidates; petitions; time of filing.**

The nominating petitions shall be filed with the Secretary of State not earlier than July 1 of the year the election is to be held and not later than August 1 of the same year.

**Source:** Laws 1953, c. 173, § 8, p. 551.

**49-220 Constitutional convention; candidates; nonpartisan primary; held, when.**

If in any legislative district, the number of persons nominated by nominating petitions exceeds four to be elected delegates to the constitutional convention from such district, then a nonpartisan primary shall be held in such district on the third Tuesday after the first Monday in September before the special election for such candidates. At such primary the four persons receiving the greatest number of votes shall be chosen from those nominated by nominating

petitions. Those so chosen shall be deemed nominated for delegates, and their names only shall appear on the ballot at the special election. At such primary election each elector shall be entitled to vote for two candidates. No party or political designation shall appear on the ballots, either at the primary or special election provided for by sections 49-212 to 49-234.

**Source:** Laws 1953, c. 173, § 9, p. 551.

**49-221 Constitutional convention; primary election; proclamation; notice; returns.**

Primary elections shall be proclaimed and notice thereof given by the same persons and in the same manner as provided by law in the case of a regular state primary or general election. Returns thereof shall be made, the results thereof certified, and the elections otherwise conducted as provided by law in case of primary and general elections for the selection of candidates for members to the Legislature, insofar as such laws are applicable, unless otherwise provided for by sections 49-212 to 49-234.

**Source:** Laws 1953, c. 173, § 10, p. 551.

**49-222 Constitutional convention; delegates; assemble; time; place.**

The elected members of the constitutional convention shall assemble in the legislative chamber in the city of Lincoln on the first Tuesday in December immediately following the election at noon for the purpose of temporary organization. The convention shall be called to order by the Secretary of State.

**Source:** Laws 1953, c. 173, § 11, p. 552.

**49-223 Constitutional convention; delegates; vacancy; how filled.**

If vacancies occur, the same shall be filled in the same manner as vacancies are filled for members of the Legislature.

**Source:** Laws 1953, c. 173, § 12, p. 552.

**49-224 Constitutional convention; delegates; incumbent of public office not disqualified.**

Incumbency of any other public office, either elective or appointive, shall not disqualify the person holding the same from being a member of the constitutional convention.

**Source:** Laws 1953, c. 173, § 13, p. 552.

**49-225 Constitutional convention; rules and regulations; adopt.**

The constitutional convention shall have authority to (1) determine its own rules and proceedings; (2) elect such officers as it may deem necessary for the proper and convenient transaction of the business of the convention and prescribe their duties; (3) make provisions for the publication of its proceedings or any part thereof; and (4) provide for the securing of a copyright of any such publication for the state.

**Source:** Laws 1953, c. 173, § 14, p. 552.

**49-226 Constitutional convention; proceedings; debate; record.**

The proceedings and debates of the convention shall be made a matter of record.

**Source:** Laws 1953, c. 173, § 15, p. 552.

**49-227 Constitutional convention; submission of proposals; time; form; manner.**

The convention shall fix and prescribe the time, form, and manner of submitting to the electors of the state any proposal to revise, amend, or change the Constitution of Nebraska.

**Source:** Laws 1953, c. 173, § 16, p. 552.

**49-228 Constitutional convention; elections; Election Act applicable.**

All the provisions of the Election Act, including corrupt practices, shall apply to all of the elections provided for by sections 49-212 to 49-234 insofar as they are applicable, except there shall be but a single election board to supervise the elections and count the ballots.

**Source:** Laws 1953, c. 173, § 17, p. 552; Laws 1994, LB 76, § 565.

**Cross References**

Election Act, see section 32-101.

**49-229 Constitutional convention; delegates; election; ballots; printing; distribution.**

The ballots for delegates to the constitutional convention shall be printed and distributed in the same manner as ballots for members of the Legislature in the primary election.

**Source:** Laws 1953, c. 173, § 18, p. 553.

**49-230 Constitutional convention; delegates; compensation.**

The members of the constitutional convention shall each receive twelve hundred dollars and the same mileage as authorized in section 81-1176 for state employees.

**Source:** Laws 1953, c. 173, § 19, p. 553; Laws 1981, LB 204, § 85.

**49-231 Constitutional convention; information; duty of state, county, and political subdivision officer to furnish; penalty.**

It shall be the duty of every state, county, and political subdivision officer to promptly transmit any information at his command which either the convention or preliminary survey committee may require of him. If any officer shall fail or refuse to comply with any of the provisions of this section, he shall be guilty of a Class III misdemeanor.

**Source:** Laws 1953, c. 173, § 20, p. 553; Laws 1977, LB 40, § 306.

**49-232 Constitutional convention; preliminary survey committee; appointment; duties.**

For the purpose of aiding the convention in the discharge of its duties, the Supreme Court of the State of Nebraska shall, within thirty days after the proclamation of the Governor that the calling of a constitutional convention has been approved by the electors of this state, appoint a preliminary survey

committee to consist of five members. The committee shall compile and tabulate information relating to the constitutions of the different states or of other constitutional governments and such other information as the committee shall deem pertinent to the problems to be dealt with by the constitutional convention.

**Source:** Laws 1953, c. 173, § 21, p. 553.

**49-233 Constitutional convention; preliminary survey committee; expenses.**

The members of the preliminary survey committee shall be paid their travel expenses and actual expenses for food and lodging while they are away from home and are engaged in the duties provided for by section 49-232 as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1953, c. 173, § 22, p. 553; Laws 1981, LB 204, § 86.

**49-234 Constitutional convention; delegates; preliminary survey committee; compensation; expenses; payment.**

The compensation and mileage of the members of the constitutional convention, provided for by section 49-230, shall be paid by warrant on the State Treasurer, upon vouchers duly certified by the presiding officer of the convention. The expenses of the preliminary survey committee, provided for by section 49-233, shall be paid in the same manner upon the certificate of the Chief Justice of the Supreme Court.

**Source:** Laws 1953, c. 173, § 23, p. 554.

**49-235 Amendments proposed by the Legislature; special election; vote of members; date held.**

A special state election may be called by the vote of four-fifths of the members elected to the Legislature for the purpose of submitting proposed amendments to the Constitution to the electors. Such election shall be held on a date specified by the Legislature, which date shall fall on a Tuesday and be not less than sixty days after passage of the act calling such election.

**Source:** Laws 1969, c. 260, § 1, p. 1002; Laws 1988, LB 588, § 2.

**49-236 Amendments proposed by the Legislature; failure to receive required vote of members for special election; placed on final reading.**

When any act before the Legislature proposes an amendment to the Constitution and proposes calling a special election for submission of such proposal, and such act on final reading receives a favorable vote of less than four-fifths of the members elected to the Legislature, the act shall then be amended to provide for submission of such proposition at the next election of members of the Legislature, and again be placed on final reading. If such act receives a favorable vote of three-fifths of the members elected to the Legislature, the proposition shall be submitted to the electors as provided therein.

**Source:** Laws 1969, c. 260, § 2, p. 1002.

**49-237 Amendments proposed by the Legislature; special election; expenses; appropriate funds.**

When the Legislature calls a special state election to submit a proposed amendment to the Constitution to the electors on a date other than the

statewide primary election as provided in section 32-401, the Legislature shall appropriate to the Secretary of State sufficient funds to pay all expenses of such election. The county clerk or election commissioner in each county shall certify to the Secretary of State all expenses incurred in conducting such election. The Secretary of State shall transmit payment for such expenses to the county clerks or election commissioners who shall then pay the expenses incurred in their counties.

**Source:** Laws 1969, c. 260, § 3, p. 1003; Laws 1997, LB 526, § 2.

**49-238 Amendments proposed by the Legislature; special election; how conducted.**

All pertinent provisions of the Election Act and of Chapter 49, article 2, pertaining to elections, including publication of notice, form of ballot, and canvassing of returns, shall be applicable to special state elections called pursuant to sections 49-235 to 49-238. The Secretary of State may call county canvassing boards and the board of state canvassers into special sessions to canvass votes cast pursuant to such sections. The Secretary of State may take all necessary action to implement such sections.

**Source:** Laws 1969, c. 260, § 4, p. 1003; Laws 1994, LB 76, § 566.

Cross References

Election Act, see section 32-101.

**49-239 Repealed. Laws 1980, LB 741, § 1.**

**49-240 Repealed. Laws 1980, LB 741, § 1.**

**49-241 Repealed. Laws 1980, LB 741, § 1.**

**49-242 Repealed. Laws 1980, LB 741, § 1.**

**49-243 Repealed. Laws 1980, LB 741, § 1.**

**49-244 Repealed. Laws 1980, LB 741, § 1.**

ARTICLE 3

REPEAL OF STATUTES; EFFECT

Section

- 49-301. Repeal of statutes; pending actions not affected.
- 49-302. Repeal of law repealing former law; effect.
- 49-303. Repeal of statutes; deferred operative date; effect.

**49-301 Repeal of statutes; pending actions not affected.**

Whenever a statute shall be repealed, such repeal shall in no manner affect pending actions founded thereon, nor causes of action not in suit that accrued prior to any such repeal, except as may be provided in such repealing statute.

**Source:** G.S.1873, c. 79, § 2, p. 1056; R.S.1913, § 3709; C.S.1922, § 3097; C.S.1929, § 49-301; R.S.1943, § 49-301.

- 1. Pending actions
- 2. Causes of action not in suit
- 3. Construction of statutes
- 4. Miscellaneous

**1. Pending actions**

An administrative proceeding is a "pending action" within the meaning of this section when the agency's final order is rendered. *Morris v. Wright*, 221 Neb. 837, 381 N.W.2d 139 (1986); *In re Application of Ochsner*, 216 Neb. 480, 344 N.W.2d 632 (1984).

A pending action before an administrative board is not a "pending action" within the meaning of general savings statute. *Schilke v. School Dist. No. 107*, 207 Neb. 448, 299 N.W.2d 527 (1980).

A petition to detach land from a school district filed with the board created by section 79-403, is not a pending action within the meaning of this section. *Clark v. Sweet*, 187 Neb. 232, 188 N.W.2d 889 (1971).

Rights under statutes repealed were preserved in pending proceedings before the State Railway Commission. *United Mineral Products Co. v. Nebraska Railroads*, 177 Neb. 802, 131 N.W.2d 388 (1964).

Law abolishing deficiency judgments in foreclosure suits does not apply to pending actions. *Arnold v. Hawley*, 128 Neb. 766, 260 N.W. 284 (1935); *Helfrich v. Baxter*, 128 Neb. 281, 258 N.W. 532 (1935).

It is not presumed that, in repeal of criminal statute, Legislature intended to cause dismissal of pending prosecution. *Lower v. State*, 109 Neb. 590, 191 N.W. 674 (1923).

Action foreclosing mortgage and for deficiency is pending action. *Hanscom v. Meyer*, 61 Neb. 798, 86 N.W. 381 (1901).

Repeal of statute will not affect pending suit to enforce right founded thereon. *Thompson v. West*, 59 Neb. 677, 82 N.W. 13 (1900).

Effect of repeal on pending proceeding, and legislative powers, is discussed. *Kleckner v. Turk*, 45 Neb. 176, 63 N.W. 469 (1895).

A suit pending to enforce a right or remedy conferred solely by statute is abated by the unconditional repeal of such statute before judgment. *Globe Pub. Co. v. State Bank of Nebraska at Crete*, 41 Neb. 175, 59 N.W. 683 (1894).

**2. Causes of action not in suit**

General saving statute preserves right of action on claim for deficiency judgment in suit to foreclose mortgage not due nor in litigation at time Legislature repealed statute permitting deficiency judgment. *Vlazny v. Dittrich*, 136 Neb. 266, 285 N.W. 697 (1939); *Filley v. Mancuso*, 135 Neb. 403, 281 N.W. 850 (1938); *First Trust Co. v. Eastridge Club*, 134 Neb. 785, 279 N.W. 720 (1938).

Right to deficiency judgment on a mortgage obligation created prior to amendment of law regulating foreclosure proceedings is preserved. *Vlazny v. Dittrich*, 136 Neb. 266, 285 N.W. 697 (1939).

Repeal of statute permitting recovery of a deficiency judgment does not prevent action to revive a dormant deficiency judgment. *McCormack v. Murray*, 133 Neb. 125, 274 N.W. 383 (1937).

The general saving statute preserves right of action on a claim for deficiency judgment in suit to foreclose a mortgage not due nor in litigation at time act was passed without a special saving clause. *Stowers v. Stuck*, 131 Neb. 409, 268 N.W. 310 (1936).

Repeal of statute relating to claims against bank depositors' guaranty fund did not affect claim already pending. *State ex rel. Spillman v. Security State Bank of Eddyville*, 116 Neb. 223, 216 N.W. 803 (1927).

Right to a deficiency judgment in an action based upon a mortgage executed before, but matured after, act of 1897 abolishing deficiency judgments was preserved. *Burrows v. Vanderbergh*, 69 Neb. 43, 95 N.W. 57 (1903).

Section relates only to causes of action accrued before such repeal. *City of Lincoln v. First Nat. Bank of Lincoln*, 67 Neb. 401, 93 N.W. 698 (1903).

**3. Construction of statutes**

The simultaneous repeal and reenactment of substantially the same statutory provisions is ordinarily construed to be an affirmation or continuation of the original provisions rather than a true repeal. Where a statute has been repealed and substantially reenacted with additions or changes, the additions or changes are treated as amendments effective from the time the new statute goes into effect. *Dairyland Power Co-op v. State Bd. of Equal.*, 238 Neb. 696, 472 N.W.2d 363 (1991).

A general savings statute providing that if a statute is repealed such repeal shall in no manner affect pending actions nor causes of action not in suit which accrued prior to such repeal, except as may be provided in the repealing statute, relates to substantive and not procedural law. *Denver Wood Products Co. v. Frye*, 202 Neb. 286, 275 N.W.2d 67 (1979).

The rule that punishment for an act is mitigated by amendment before final judgment does not apply where a new statute does not merely lessen the punishment but defines new categories of crimes and taken as a whole evidences a legislative intent that the penalty provision thereof not apply retroactively. *State v. Trowbridge*, 194 Neb. 582, 234 N.W.2d 598 (1975).

This saving clause on appeal applies to both civil and criminal statutes. *State v. Goham*, 187 Neb. 34, 187 N.W.2d 305 (1971).

Where a criminal statute is amended by mitigating the punishment after commission of a prohibited act but before final judgment, the punishment is that provided by the amendatory act unless the Legislature has specifically provided otherwise. *State v. Randolph*, 186 Neb. 297, 183 N.W.2d 225 (1971).

Repeal of a statute does not affect pending cases, nor accrued causes of action except as may be provided in the repealing statute. *State v. Duitsman*, 186 Neb. 39, 180 N.W.2d 685 (1970).

This section does not apply when the Legislature expressly provides that repealing act shall apply retroactively. *Davis v. General Motors Acceptance Corp.*, 176 Neb. 865, 127 N.W.2d 907 (1964).

General saving statute relates to substantive and not to procedural law. *Lindgren v. School Dist. of Bridgeport*, 170 Neb. 279, 102 N.W.2d 599 (1960).

The general saving clause applies as though it were expressly incorporated in a legislative act. *State ex rel. City of Grand Island v. Union Pacific R. R. Co.*, 152 Neb. 772, 42 N.W.2d 867 (1950).

Statutes in pari materia should be construed together. *State v. Omaha Elevator Co.*, 75 Neb. 637, 106 N.W. 979 (1906), 110 N.W. 874 (1906).

That accrued prior to any such repeal refers to time that obligation, out of which action arose, came into existence. *Hunter v. Lang*, 5 Neb. Unof. 323, 98 N.W. 690 (1904).

**4. Miscellaneous**

This section points the way for the Legislature in dealing with a resolution as distinguished from a statute. *State v. Goham*, 191 Neb. 639, 216 N.W.2d 869 (1974).

Where, in amending a statute, the Legislature specifically provides that such amendment shall take effect immediately, and shall apply to pending cases and to all cases hereafter brought, such act is controlling over general saving clause. *City of Fremont v. Dodge County*, 130 Neb. 856, 266 N.W. 771 (1936).

Effect of repealing clause that certain sections and all acts and parts of acts in conflict are repealed is discussed. *State ex rel. Adair v. Drexel*, 74 Neb. 776, 105 N.W. 174 (1905).

Interpretation of statute by court of last resort is binding upon all departments of government. *State ex rel. Norton v. Van Camp*, 36 Neb. 91, 54 N.W. 113 (1893).

Where intention is not doubtful and amendatory act is not incongruous with title and scope of amended statute, amendment is valid. *Fenton v. Yule*, 27 Neb. 758, 43 N.W. 1140 (1889).

**49-302 Repeal of law repealing former law; effect.**

Whenever a law shall be repealed, which repealed a former law, the former law shall not thereby be revived unless specially provided for.

**Source:** G.S.1873, c. 79, § 3, p. 1056; R.S.1913, § 3710; C.S.1922, § 3098; C.S.1929, § 49-302; R.S.1943, § 49-302.

History of the enactment and repeal by the Nebraska Legislature of statutes relative to writ of certiorari in no manner supports the conclusion that the effect thereof is to abolish the writ of prohibition. *State ex rel. Wright v. Barney*, 133 Neb. 676, 276 N.W. 676 (1937).

Act amendatory of unconstitutional act is invalid. *City of Plattsmouth v. Murphy*, 74 Neb. 749, 105 N.W. 293 (1905).

Repeals by implication are not favored and such construction of a statute repealing another will not be adopted unless made necessary by evident intent of Legislature. *Schafer v. Schafer*, 71 Neb. 708, 99 N.W. 482 (1904); *Dawson County v. Clark*, 58 Neb. 756, 79 N.W. 822 (1899).

Where one section refers to another for its powers, provisions referred to become part of section and remain part thereof, although section referred to is repealed. *Shull v. Barton*, 58 Neb. 741, 79 N.W. 732 (1899).

Abortive attempt to limit operation of existing statute does not change its force. *Barker v. Potter*, 55 Neb. 25, 75 N.W. 57 (1898).

Legislative act, containing provision repugnant to an existing law, repeals that law by implication. *State ex rel. Smythe v. Magney*, 52 Neb. 508, 72 N.W. 1006 (1897).

Repeal and reenactment, clearly intended to continue uninterrupted operation of old statute, will be so construed. *State v. Wish*, 15 Neb. 448, 19 N.W. 686 (1884).

**49-303 Repeal of statutes; deferred operative date; effect.**

When any act of the Legislature provides for a deferred operative date and also contains a repeal section, the action of a subsequent Legislature in postponing or accelerating such operative date whether by reference to the session laws or to the sections of the act as caused to be printed by the Revisor of Statutes shall act as a corresponding postponement or acceleration of the operative date of the repeal section without the necessity of specific reference thereto unless the Legislature specifically and clearly expresses a different intent.

**Source:** Laws 1979, LB 70, § 3.

**ARTICLE 4**

**CONSTITUTIONAL REVIEWER OF LEGISLATIVE BILLS**

Section

- 49-401. Repealed. Laws 1947, c. 179, § 7.
- 49-402. Repealed. Laws 1947, c. 179, § 7.
- 49-403. Repealed. Laws 1947, c. 179, § 7.
- 49-404. Repealed. Laws 1947, c. 179, § 7.

**49-401 Repealed. Laws 1947, c. 179, § 7.**

**49-402 Repealed. Laws 1947, c. 179, § 7.**

**49-403 Repealed. Laws 1947, c. 179, § 7.**

**49-404 Repealed. Laws 1947, c. 179, § 7.**

**ARTICLE 5**

**PUBLICATION AND DISTRIBUTION OF SESSION LAWS AND JOURNALS**

**Cross References**

**Constitutional provisions:**

- Journal, legislative, publication of, see Article III, section 11, Constitution of Nebraska.
- Session laws, publication of, see Article III, section 27, Constitution of Nebraska.
- Secretary of State, duties of, see sections 32-1415 and 84-502.

Section

- 49-501. Session laws and journals; distribution by Secretary of State.

## Section

- 49-501.01. Session laws and journal; Clerk of the Legislature; compile; contents.  
 49-502. Session laws and journals; distribution by county clerk to judges, county officers, and county law library.  
 49-503. Requisition by county clerk.  
 49-504. Copies in possession of county officers; delivery to successors.  
 49-505. Distribution to public libraries.  
 49-506. Distribution by Secretary of State.  
 49-507. Distribution by State Librarian.  
 49-508. Distribution to new members of Legislature.  
 49-508.01. Repealed. Laws 2000, LB 534, § 10.  
 49-509. Session laws and journals; sale; price; proceeds; disposal.  
 49-509.01. Session laws; journals; sale.  
 49-510. Repealed. Laws 1986, LB 991, § 2.  
 49-511. Repealed. Laws 1986, LB 991, § 2.

**49-501 Session laws and journals; distribution by Secretary of State.**

The Secretary of State is hereby authorized to distribute the laws and journals of the state.

**Source:** Laws 1907, c. 78, § 1, p. 289; R.S.1913, § 3733; Laws 1915, c. 72, § 1, p. 185; C.S.1922, § 3126; C.S.1929, § 49-501; R.S.1943, § 49-501; Laws 1977, LB 3, § 1.

**49-501.01 Session laws and journal; Clerk of the Legislature; compile; contents.**

The session laws and journal of the Legislature shall be compiled and published by the Clerk of the Legislature after each regular session of the Legislature. The session laws and journal may be published in print or electronic format or in both formats. The session laws shall contain all the laws passed by the preceding session as well as those passed during any special session since the last regular session. The clerk shall distribute one copy of the session laws and journal to each person who was a member of the Legislature by which the laws were enacted and shall distribute a second copy to any such person upon his or her request. The clerk shall provide the session laws and journals to the Secretary of State for distribution pursuant to sections 49-501 to 49-509.01.

**Source:** Laws 1971, LB 36, § 1; Laws 2000, LB 534, § 1; Laws 2010, LB770, § 1.

**49-502 Session laws and journals; distribution by county clerk to judges, county officers, and county law library.**

The county clerk shall distribute one copy of the session laws to the clerk of the district court for the use of the district court in all counties of the state except Lancaster and Douglas Counties, and in those counties one copy for each district judge in the county, to the judge of the county court, the county attorney, and to the county law library. He or she shall also reserve one copy each of the laws and journals for himself or herself and give one copy to each clerk magistrate in the county.

**Source:** Laws 1907, c. 78, § 3, p. 290; R.S.1913, § 3734; C.S.1922, § 3127; C.S.1929, § 49-502; R.S.1943, § 49-502; Laws 1957, c. 210, § 2, p. 743; Laws 1963, c. 303, § 2, p. 897; Laws 1972, LB 1032, § 253; Laws 1975, LB 59, § 1; Laws 1984, LB 13, § 81.

**49-503 Requisition by county clerk.**

The county clerk of each county shall make a requisition upon the Secretary of State for copies of the session laws and the journal of the Legislature for the use of the county of which he or she is clerk. The county clerk shall make the requisition for session laws based on the classification of the county by population as provided in section 23-1114.01. A Class 1 county may request a maximum of three sets, a Class 2 county may request a maximum of five sets, a Class 3 county may request a maximum of seven sets, a Class 4 county may request a maximum of ten sets, a Class 5 county may request a maximum of twelve sets, a Class 6 county may request a maximum of twenty sets, and a Class 7 county may request a maximum of twenty-five sets. The county clerk shall make a requisition for less than the maximum amount authorized if he or she finds that a lesser amount is sufficient for the needs of the county. The county clerk shall make a requisition for one copy of the journal of the Legislature. The Secretary of State shall forward the session laws and journal to each county by the most expeditious and economic means and in print or electronic format as he or she determines, upon recommendation by the Clerk of the Legislature and approval of the Executive Board of the Legislative Council.

**Source:** Laws 1907, c. 78, § 2, p. 289; R.S.1913, § 3735; C.S.1922, § 3128; C.S.1929, § 49-503; R.S.1943, § 49-503; Laws 1987, LB 572, § 1; Laws 2000, LB 534, § 2.

**49-504 Copies in possession of county officers; delivery to successors.**

Each county officer shall deliver to his successor in office all laws and journals which shall have come into his possession under the provisions of sections 49-502 and 49-503 as soon after his successor shall have qualified as such successor or the county clerk may require.

**Source:** Laws 1907, c. 78, § 4, p. 290; R.S.1913, § 3736; C.S.1922, § 3129; C.S.1929, § 49-504; R.S.1943, § 49-504.

**49-505 Distribution to public libraries.**

After the above distribution, the copies of laws and journals remaining in the hands of the county clerk may, upon their application, be distributed to the librarians of any public libraries within the county for whose support an annual tax is levied.

**Source:** Laws 1907, c. 78, § 5, p. 290; R.S.1913, § 3737; C.S.1922, § 3130; C.S.1929, § 49-505; R.S.1943, § 49-505.

**49-506 Distribution by Secretary of State.**

After the Secretary of State has made the distribution provided by section 49-503, he or she shall deliver additional copies of the session laws and the journal of the Legislature pursuant to this section in print or electronic format as he or she determines, upon recommendation by the Clerk of the Legislature and approval of the Executive Board of the Legislative Council.

One copy of the session laws shall be delivered to the Lieutenant Governor, the State Treasurer, the Auditor of Public Accounts, the Reporter of the Supreme Court and Court of Appeals, the State Court Administrator, the State Fire Marshal, the Department of Administrative Services, the Department of

Aeronautics, the Department of Agriculture, the Department of Banking and Finance, the State Department of Education, the Department of Environmental Quality, the Department of Insurance, the Department of Labor, the Department of Motor Vehicles, the Department of Revenue, the Department of Roads, the Department of Veterans' Affairs, the Department of Natural Resources, the Military Department, the Nebraska State Patrol, the Nebraska Commission on Law Enforcement and Criminal Justice, each of the Nebraska state colleges, the Game and Parks Commission, the Nebraska Library Commission, the Nebraska Liquor Control Commission, the Nebraska Accountability and Disclosure Commission, the Public Service Commission, the State Real Estate Commission, the Nebraska State Historical Society, the Public Employees Retirement Board, the Risk Manager, the Legislative Fiscal Analyst, the Public Counsel, the materiel division of the Department of Administrative Services, the State Records Administrator, the budget division of the Department of Administrative Services, the Tax Equalization and Review Commission, the inmate library at all state penal and correctional institutions, the Commission on Public Advocacy, and the Library of Congress; two copies to the Governor, the Secretary of State, the Nebraska Workers' Compensation Court, the Commission of Industrial Relations, and the Coordinating Commission for Postsecondary Education, one of which shall be for use by the community colleges; three copies to the Department of Health and Human Services; four copies to the Nebraska Publications Clearinghouse; five copies to the Attorney General; nine copies to the Revisor of Statutes; sixteen copies to the Supreme Court and the Legislative Council; and thirty-five copies to the University of Nebraska College of Law.

One copy of the journal of the Legislature shall be delivered to the Governor, the Lieutenant Governor, the State Treasurer, the Auditor of Public Accounts, the Reporter of the Supreme Court and Court of Appeals, the State Court Administrator, the Nebraska State Historical Society, the Legislative Fiscal Analyst, the Tax Equalization and Review Commission, the Commission on Public Advocacy, and the Library of Congress; two copies to the Secretary of State, the Commission of Industrial Relations, and the Nebraska Workers' Compensation Court; four copies to the Nebraska Publications Clearinghouse; five copies to the Attorney General and the Revisor of Statutes; eight copies to the Clerk of the Legislature; thirteen copies to the Supreme Court and the Legislative Council; and thirty-five copies to the University of Nebraska College of Law. The remaining copies shall be delivered to the State Librarian who shall use the same, so far as required for exchange purposes, in building up the State Library and in the manner specified in sections 49-507 to 49-509.

**Source:** Laws 1907, c. 78, § 6, p. 290; R.S.1913, § 3738; C.S.1922, § 3131; C.S.1929, § 49-506; R.S.1943, § 49-506; Laws 1947, c. 185, § 4, p. 611; Laws 1961, c. 243, § 2, p. 725; Laws 1969, c. 413, § 1, p. 1419; Laws 1972, LB 1284, § 17; Laws 1987, LB 572, § 2; Laws 1991, LB 663, § 34; Laws 1991, LB 732, § 117; Laws 1993, LB 3, § 34; Laws 1995, LB 271, § 6; Laws 1996, LB 906, § 1; Laws 1996, LB 1044, § 277; Laws 1999, LB 36, § 3; Laws 2000, LB 534, § 3; Laws 2000, LB 900, § 240; Laws 2000, LB 1085, § 2; Laws 2007, LB296, § 222; Laws 2007, LB334, § 6.

#### **49-507 Distribution by State Librarian.**

The State Librarian or his or her designee shall issue one copy each of the session laws and journals to the United States District Attorney, United States

Marshal, the register and receiver of the United States land offices in the state, and each United States Commissioner residing in the state. The State Librarian shall determine whether the copies issued are in print or a reasonably available electronic format, upon recommendation by the Clerk of the Legislature and approval of the Executive Board of the Legislative Council.

**Source:** Laws 1907, c. 78, § 7, p. 291; R.S.1913, § 3739; C.S.1922, § 3132; C.S.1929, § 49-507; R.S.1943, § 49-507; Laws 1987, LB 572, § 3; Laws 2000, LB 534, § 4.

**49-508 Distribution to new members of Legislature.**

The new members of each Legislature shall be furnished by the State Librarian or his or her designee, at the commencement of the first session for which they are elected, with one copy of each of the session laws and journals of the preceding session, with a second copy furnished to any such member upon his or her request.

**Source:** Laws 1907, c. 78, § 8, p. 291; R.S.1913, § 3740; C.S.1922, § 3133; C.S.1929, § 49-508; R.S.1943, § 49-508; Laws 1975, LB 59, § 2; Laws 1980, LB 598, § 1; Laws 1987, LB 572, § 4; Laws 2010, LB770, § 2.

**49-508.01 Repealed. Laws 2000, LB 534, § 10.**

**49-509 Session laws and journals; sale; price; proceeds; disposal.**

Any remaining copies of the session laws and journals in the hands of the State Librarian shall be sold by the Supreme Court at a price of fifteen dollars for bound print copies of the session laws and forty dollars for bound print copies of the journal, except that after two years have elapsed from the date of publication, the court may sell any bound print copies of the session laws and journals at a price of twenty-five cents per volume. Any remaining copies of the session laws and journals in electronic format shall be sold by the Supreme Court at a price not to exceed the amount necessary to recover the cost of production, upon recommendation by the Clerk of the Legislature and approval of the Executive Board of the Legislative Council.

The proceeds shall be remitted to the General Fund. When there is no longer a demand for session laws and journals over two years old, the Supreme Court may dispose of such session laws and journals in such manner as it deems proper.

**Source:** Laws 1907, c. 78, § 9, p. 291; R.S.1913, § 3741; Laws 1921, c. 213, § 5, p. 754; C.S.1922, § 3134; C.S.1929, § 49-509; R.S.1943, § 49-509; Laws 1945, c. 117, § 1, p. 390; Laws 1965, c. 307, § 1, p. 864; Laws 1971, LB 36, § 3; Laws 1973, LB 83, § 1; Laws 1987, LB 572, § 5; Laws 2000, LB 534, § 5.

**49-509.01 Session laws; journals; sale.**

The Clerk of the Legislature is hereby authorized and directed to sell unbound print copies of the session laws and unbound print copies of the daily journal of each legislative session at such price as shall be prescribed by the Executive Board of the Legislative Council, which price shall not exceed the amount necessary to recover costs. For the unbound print journal and laws of a special session, when published separately from that of a regular session, the

price shall be as recommended by the Clerk of the Legislature and approved by the Executive Board of the Legislative Council.

**Source:** Laws 1971, LB 36, § 2; Laws 1979, LB 7, § 1; Laws 2000, LB 534, § 6.

**49-510 Repealed. Laws 1986, LB 991, § 2.**

**49-511 Repealed. Laws 1986, LB 991, § 2.**

## ARTICLE 6

### PRINTING AND DISTRIBUTION OF STATUTES

#### Section

- 49-601. Repealed. Laws 1986, LB 994, § 2.
- 49-602. Repealed. Laws 1986, LB 994, § 2.
- 49-603. Repealed. Laws 1986, LB 994, § 2.
- 49-604. Repealed. Laws 1986, LB 994, § 2.
- 49-605. Repealed. Laws 1986, LB 994, § 2.
- 49-606. Repealed. Laws 1986, LB 994, § 2.
- 49-607. Repealed. Laws 1986, LB 994, § 2.
- 49-608. Repealed. Laws 1986, LB 994, § 2.
- 49-609. Repealed. Laws 1986, LB 994, § 2.
- 49-610. Repealed. Laws 1986, LB 994, § 2.
- 49-611. Repealed. Laws 1986, LB 994, § 2.
- 49-612. Repealed. Laws 1986, LB 994, § 2.
- 49-613. Repealed. Laws 1986, LB 994, § 2.
- 49-614. Repealed. Laws 1986, LB 994, § 2.
- 49-615. Repealed. Laws 1986, LB 994, § 2.
- 49-616. Repealed. Laws 1986, LB 994, § 2.
- 49-617. Printing of statutes; distribution of copies.
- 49-618. Repealed. Laws 1961, c. 284, § 1.

**49-601 Repealed. Laws 1986, LB 994, § 2.**

**49-602 Repealed. Laws 1986, LB 994, § 2.**

**49-603 Repealed. Laws 1986, LB 994, § 2.**

**49-604 Repealed. Laws 1986, LB 994, § 2.**

**49-605 Repealed. Laws 1986, LB 994, § 2.**

**49-606 Repealed. Laws 1986, LB 994, § 2.**

**49-607 Repealed. Laws 1986, LB 994, § 2.**

**49-608 Repealed. Laws 1986, LB 994, § 2.**

**49-609 Repealed. Laws 1986, LB 994, § 2.**

**49-610 Repealed. Laws 1986, LB 994, § 2.**

**49-611 Repealed. Laws 1986, LB 994, § 2.**

**49-612 Repealed. Laws 1986, LB 994, § 2.**

**49-613 Repealed. Laws 1986, LB 994, § 2.**

**49-614 Repealed. Laws 1986, LB 994, § 2.**

**49-615 Repealed. Laws 1986, LB 994, § 2.**

**49-616 Repealed. Laws 1986, LB 994, § 2.**

**49-617 Printing of statutes; distribution of copies.**

The Revisor of Statutes shall cause the statutes to be printed. The printer shall deliver all completed copies to the Supreme Court. These copies shall be held and disposed of by the court as follows: Sixty copies to the State Library to exchange for statutes of other states; five copies to the State Library to keep for daily use; not to exceed twenty-five copies to the Legislative Council for bill drafting and related services to the Legislature and executive state officers; as many copies to the Attorney General as he or she has attorneys on his or her staff; as many copies to the Commission on Public Advocacy as it has attorneys on its staff; up to sixteen copies to the State Court Administrator; thirteen copies to the Tax Commissioner; eight copies to the Nebraska Publications Clearinghouse; six copies to the Public Service Commission; four copies to the Secretary of State; four copies to the Tax Equalization and Review Commission; four copies to the Clerk of the Legislature for use in his or her office and three copies to be maintained in the legislative chamber, one copy on each side of the chamber and one copy at the desk of the Clerk of the Legislature, under control of the sergeant at arms; three copies to the Department of Health and Human Services; two copies each to the Governor of the state, the Chief Justice and each judge of the Supreme Court, each judge of the Court of Appeals, the Clerk of the Supreme Court, the Reporter of the Supreme Court and Court of Appeals, the Commissioner of Labor, the Auditor of Public Accounts, and the Revisor of Statutes; one copy each to the Secretary of State of the United States, each Indian tribal court located in the State of Nebraska, the library of the Supreme Court of the United States, the Adjutant General, the Air National Guard, the Commissioner of Education, the State Treasurer, the Board of Educational Lands and Funds, the Director of Agriculture, the Director of Administrative Services, the Director of Aeronautics, the Director of Economic Development, the director of the Nebraska Public Employees Retirement Systems, the Director-State Engineer, the Director of Banking and Finance, the Director of Insurance, the Director of Motor Vehicles, the Director of Veterans' Affairs, the Director of Natural Resources, the Director of Correctional Services, the Nebraska Emergency Operating Center, each judge of the Nebraska Workers' Compensation Court, each commissioner of the Commission of Industrial Relations, the Nebraska Liquor Control Commission, the State Real Estate Commission, the secretary of the Game and Parks Commission, the Board of Pardons, each state institution under the Department of Health and Human Services, each state institution under the State Department of Education, the State Surveyor, the Nebraska State Patrol, the materiel division of the Department of Administrative Services, the personnel division of the Department of Administrative Services, the Nebraska Motor Vehicle Industry Licensing Board, the Board of Trustees of the Nebraska State Colleges, each of the Nebraska state colleges, each district judge of the State of Nebraska, each judge of the county court, each judge of a separate juvenile court, the Lieutenant Governor, each United States Senator from Nebraska, each United States Representative from Nebraska, each clerk of the district court for the use of the district court, the clerk of the Nebraska Workers' Compensation Court, each clerk of the county court, each county attorney, each county public defender, each county law library, and the inmate library at all state penal and correctional institu-

tions, and each member of the Legislature shall be entitled to two complete sets, and two complete sets of such volumes as are necessary to update previously issued volumes, but each member of the Legislature and each judge of any court referred to in this section shall be entitled, on request, to an additional complete set. Copies of the statutes distributed without charge, as listed in this section, shall be the property of the state or governmental subdivision of the state and not the personal property of the particular person receiving a copy. Distribution of statutes to the library of the College of Law of the University of Nebraska shall be as provided in sections 85-176 and 85-177.

**Source:** Laws 1943, c. 115, § 17, p. 407; R.S.1943, § 49-617; Laws 1944, Spec. Sess., c. 3, § 5, p. 100; Laws 1947, c. 185, § 5, p. 612; Laws 1951, c. 345, § 1, p. 1132; Laws 1957, c. 210, § 3, p. 743; Laws 1961, c. 242, § 2, p. 722; Laws 1961, c. 243, § 3, p. 725; Laws 1961, c. 415, § 5, p. 1247; Laws 1961, c. 416, § 8, p. 1266; Laws 1963, c. 303, § 3, p. 898; Laws 1965, c. 305, § 1, p. 858; Laws 1967, c. 325, § 1, p. 863; Laws 1967, c. 326, § 1, p. 865; Laws 1971, LB 36, § 4; Laws 1972, LB 1032, § 254; Laws 1972, LB 1174, § 1; Laws 1972, LB 1284, § 18; Laws 1973, LB 1, § 5; Laws 1973, LB 563, § 4; Laws 1973, LB 572, § 1; Laws 1974, LB 595, § 1; Laws 1975, LB 59, § 4; Laws 1978, LB 168, § 1; Laws 1984, LB 13, § 82; Laws 1985, LB 498, § 2; Laws 1987, LB 572, § 6; Laws 1991, LB 732, § 118; Laws 1992, Third Spec. Sess., LB 14, § 3; Laws 1995, LB 271, § 7; Laws 1996, LB 906, § 2; Laws 1996, LB 1044, § 278; Laws 1999, LB 36, § 4; Laws 2000, LB 692, § 9; Laws 2000, LB 900, § 241; Laws 2000, LB 1085, § 3; Laws 2007, LB296, § 223; Laws 2007, LB334, § 7; Laws 2007, LB472, § 8; Laws 2010, LB770, § 3.

**49-618 Repealed. Laws 1961, c. 284, § 1.**

## ARTICLE 7

### STATUTE REVISION

#### Cross References

#### Constitutional provisions:

Certification to Legislature by Supreme Court of desirable amendments or changes in laws, see Article IV, section 23, and Article V, section 25, Constitution of Nebraska.

#### Section

- 49-701. Revisor of Statutes; office created.
- 49-702. Revisor of Statutes; duties.
- 49-702.01. Repealed. Laws 1977, LB 8, § 6.
- 49-703. Transferred to section 24-211.03.
- 49-703.01. Repealed. Laws 1961, c. 284, § 1.
- 49-703.02. Repealed. Laws 1955, c. 78, § 6.
- 49-704. Revisor of Statutes; printing contracts; approval; number of volumes.
- 49-705. Revisor of Statutes; supplements and reissued or replacement volumes; powers; clauses to be omitted; changes to be made, how shown.
- 49-705.01. Repealed. Laws 1977, LB 8, § 6.
- 49-706. Repealed. Laws 1977, LB 8, § 6.
- 49-707. Copyright; distribution; price; disposition of proceeds; receipts.
- 49-708. Repealed. Laws 1967, c. 328, § 14.
- 49-709. Repealed. Laws 1961, c. 284, § 1.
- 49-710. Repealed. Laws 1961, c. 284, § 1.
- 49-711. Repealed. Laws 1961, c. 284, § 1.

**STATUTE REVISION**

Section	
49-712.	Repealed. Laws 1961, c. 284, § 1.
49-713.	Repealed. Laws 1961, c. 284, § 1.
49-714.	Repealed. Laws 1961, c. 284, § 1.
49-715.	Repealed. Laws 1961, c. 284, § 1.
49-716.	Repealed. Laws 1961, c. 284, § 1.
49-717.	Repealed. Laws 1961, c. 284, § 1.
49-718.	Repealed. Laws 1961, c. 284, § 1.
49-719.	Repealed. Laws 1961, c. 284, § 1.
49-720.	Repealed. Laws 1961, c. 284, § 1.
49-721.	Repealed. Laws 1977, LB 8, § 6.
49-722.	Repealed. Laws 1977, LB 8, § 6.
49-723.	Repealed. Laws 1977, LB 8, § 6.
49-724.	Repealed. Laws 1977, LB 8, § 6.
49-725.	Repealed. Laws 1977, LB 8, § 6.
49-726.	Repealed. Laws 1977, LB 8, § 6.
49-727.	Repealed. Laws 1977, LB 8, § 6.
49-728.	Repealed. Laws 1977, LB 8, § 6.
49-729.	Repealed. Laws 1977, LB 8, § 6.
49-730.	Repealed. Laws 1977, LB 8, § 6.
49-731.	Repealed. Laws 1977, LB 8, § 6.
49-732.	Repealed. Laws 1977, LB 8, § 6.
49-733.	Repealed. Laws 1977, LB 8, § 6.
49-734.	Repealed. Laws 1977, LB 8, § 6.
49-735.	Repealed. Laws 1977, LB 8, § 6.
49-736.	Repealed. Laws 1977, LB 8, § 6.
49-737.	Repealed. Laws 1977, LB 8, § 6.
49-738.	Repealed. Laws 1977, LB 8, § 6.
49-739.	Repealed. Laws 1977, LB 8, § 6.
49-740.	Repealed. Laws 1977, LB 8, § 6.
49-741.	Repealed. Laws 1977, LB 8, § 6.
49-742.	Repealed. Laws 1977, LB 8, § 6.
49-743.	Repealed. Laws 1977, LB 8, § 6.
49-744.	Repealed. Laws 1977, LB 8, § 6.
49-745.	Repealed. Laws 1977, LB 8, § 6.
49-746.	Repealed. Laws 1977, LB 8, § 6.
49-747.	Repealed. Laws 1977, LB 8, § 6.
49-748.	Repealed. Laws 1977, LB 8, § 6.
49-749.	Repealed. Laws 1977, LB 8, § 6.
49-750.	Repealed. Laws 1977, LB 8, § 6.
49-751.	Repealed. Laws 1977, LB 8, § 6.
49-752.	Repealed. Laws 1977, LB 8, § 6.
49-753.	Repealed. Laws 1977, LB 8, § 6.
49-754.	Repealed. Laws 1977, LB 8, § 6.
49-755.	Repealed. Laws 1977, LB 8, § 6.
49-756.	Repealed. Laws 1977, LB 8, § 6.
49-757.	Repealed. Laws 1977, LB 8, § 6.
49-758.	Repealed. Laws 1977, LB 8, § 6.
49-759.	Repealed. Laws 1977, LB 8, § 6.
49-760.	Repealed. Laws 1977, LB 8, § 6.
49-761.	Repealed. Laws 1977, LB 8, § 6.
49-762.	Repealed. Laws 1977, LB 8, § 6.
49-763.	Repealed. Laws 1977, LB 8, § 6.
49-764.	Repealed. Laws 1977, LB 8, § 6.
49-765.	Revisor of Statutes; reissuance of volumes; duties.
49-766.	Repealed. Laws 1977, LB 8, § 6.
49-767.	Supplements and reissued volumes; certification; deposit of official copy; official version of statutes; use in courts.
49-768.	Repealed. Laws 1977, LB 8, § 6.
49-769.	Section of statutes; not correlated; reconcilable; Revisor of Statutes; duties.
49-770.	Section of statutes; not correlated; not reconcilable; Revisor of Statutes; duties.

Section  
49-771. Revisor of Statutes; obsolete sections; compilation; duties.

**49-701 Revisor of Statutes; office created.**

There is hereby created within the Legislative Council the office of Revisor of Statutes.

**Source:** Laws 1945, c. 119, § 1, p. 392; Laws 1967, c. 328, § 2, p. 869.

Legislature created the office of Revisor of Statutes to implement constitutional provision with respect to report of Judges of Supreme Court to Legislature of defects in Constitution and laws. *Haffke v. State*, 149 Neb. 83, 30 N.W.2d 462 (1948).

**49-702 Revisor of Statutes; duties.**

It shall be the duty of the Revisor of Statutes:

(1) To consult with and assist the Legislative Council prior to each regular session of the Legislature in the preparation of the report of the Legislative Council as to defects in the Constitution of Nebraska and laws of Nebraska and to draft in the form of bills proposed legislation to carry out the recommendations contained in the report;

(2) To prepare for submission to the Legislature, from time to time, when recommended by the Legislative Council in its report as to defects in the Constitution of Nebraska and laws of Nebraska, a rewriting and revision, chapter by chapter, in simplified style and phraseology, of the various chapters of the statutes of Nebraska;

(3) To publish annotations of the decisions of the Supreme Court of Nebraska, the Court of Appeals, and the federal courts as received from the Reporter of the Supreme Court and Court of Appeals; and

(4) To prepare, arrange, and correlate for publication, at the end of each legislative session, the laws enacted during the session and to arrange and correlate for publication replacements of the permanent volumes of the statutes.

**Source:** Laws 1945, c. 119, § 2, p. 392; Laws 1967, c. 328, § 3, p. 869; Laws 1969, c. 412, § 2, p. 1418; Laws 1986, LB 994, § 1; Laws 1994, LB 1244, § 2; Laws 1995, LB 271, § 8.

The duties under subsection (4) of this section are continuing duties imposed upon the Revisor of Statutes each day during which the revisor occupies that office. *State ex rel. Wright v. Pepperl*, 221 Neb. 664, 380 N.W.2d 259 (1986).

Changes made by the Revisor of Statutes in preparing supplements and reissued or replacement volumes of revised statutes cannot change substantive meaning of any statute as enacted by the Legislature. *State v. Karel*, 204 Neb. 573, 284 N.W.2d 12 (1979).

It is the duty of the Revisor of Statutes to prepare report of Judges of Supreme Court to Legislature and to draft legislation to carry out recommendations. *Haffke v. State*, 149 Neb. 83, 30 N.W.2d 462 (1948).

**49-702.01 Repealed. Laws 1977, LB 8, § 6.**

**49-703 Transferred to section 24-211.03.**

**49-703.01 Repealed. Laws 1961, c. 284, § 1.**

**49-703.02 Repealed. Laws 1955, c. 78, § 6.**

**49-704 Revisor of Statutes; printing contracts; approval; number of volumes.**

(1) The Revisor of Statutes may, subject to the approval of the Executive Board of the Legislative Council, negotiate and enter into a contract without advertising for bids for the editing, printing, binding, and publication, under his

supervision and direction, of the supplements and reissued or replacement volumes to the statutes of Nebraska.

(2) The Revisor of Statutes shall cause a sufficient number of copies of such volumes to be printed under contract according to specifications to be formulated by the Revisor of Statutes.

**Source:** Laws 1945, c. 119, § 4, p. 393; Laws 1967, c. 328, § 5, p. 870; Laws 1971, LB 34, § 1; Laws 1977, LB 8, § 1.

**49-705 Revisor of Statutes; supplements and reissued or replacement volumes; powers; clauses to be omitted; changes to be made, how shown.**

(1) The Revisor of Statutes, in preparing supplements and reissued or replacement volumes for publication and distribution, shall not alter the sense, meaning or effect of any act of the Legislature, but may (a) renumber sections and parts of sections, (b) rearrange sections, (c) change reference numbers to agree with renumbered chapters, articles, or sections, (d) substitute the proper section, article, or chapter numbers for the terms the preceding section, this article, this act, and like terms, (e) strike out figures where they are merely a repetition of written words, (f) change capitalization for the purpose of uniformity, and (g) correct manifest clerical or typographical errors. The Revisor of Statutes shall omit all titles to acts, all enacting and repealing clauses, all declarations of emergency, and all validity and construction clauses, including sections stating the effective date of salary changes, unless, from their nature, it may be necessary to retain some of them to preserve the full meaning and intent of the law.

(2) In addition to the authority provided in subsection (1) of this section, the Revisor of Statutes, in preparing supplements and reissued or replacement volumes for publication and distribution, may (a) remove obsolete matter within any section, (b) omit obsolete sections stating the effective date of salary changes, (c) remove from within any section language which the Supreme Court has held to be unconstitutional without impairing the constitutionality of the remainder of the section, (d) omit any section or sections, or any complete act, which the Supreme Court has held to be unconstitutional, (e) reinstate a section as it existed immediately prior to an amendment which the Supreme Court has held unconstitutional, (f) correct faulty internal references, and (g) harmonize provisions with former acts of the Legislature. Changes made under the provisions of this subsection shall be effective only upon publication in the supplement or replacement volume, which publication shall contain a brief note explaining the change made and citing this subsection as the authority therefor. No change made under the provisions of this subsection shall effect any change in the substantive meaning of any section. If the Revisor of Statutes is in doubt whether or not a specific change is authorized by this subsection, he shall not make the change but shall propose it as a legislative bill at the next regular session of the Legislature.

**Source:** Laws 1945, c. 119, § 5, p. 393; Laws 1972, LB 1487, § 1; Laws 1977, LB 8, § 2.

The Revisor of Statutes is obligated by law to print and publish laws as enacted by the Legislature and to not exercise discretion in excising a portion of these laws. The Revisor cannot make corrections or modifications which change the substantive meaning of a statute as enacted by the Legislature. *State v. Urbano*, 256 Neb. 194, 589 N.W.2d 144 (1999).

The fact that the language of a later-enacted statute is nearly identical to the language of an earlier-enacted statute which the Supreme Court has declared unconstitutional does not render the more recent statute unconstitutional unless and until it is declared so by the Supreme Court, and, unless and until a law is declared unconstitutional by the Supreme Court, the authority

granted to the Revisor of Statutes in subsection (2) of this section does not become operative. State ex rel. Wright v. Pepperl, 221 Neb. 664, 380 N.W.2d 259 (1986).

cannot change substantive meaning of any statute as enacted by the Legislature. State v. Karel, 204 Neb. 573, 284 N.W.2d 12 (1979).

Changes made by the Revisor of Statutes in preparing supplements and reissued or replacement volumes of revised statutes

**49-705.01 Repealed. Laws 1977, LB 8, § 6.**

**49-706 Repealed. Laws 1977, LB 8, § 6.**

**49-707 Copyright; distribution; price; disposition of proceeds; receipts.**

The Revisor of Statutes shall cause the supplements and reissued volumes to be copyrighted under the copyright laws of the United States for the benefit of the people of Nebraska.

The supplements and reissued or replacement volumes shall be sold and distributed by the Supreme Court at such price as shall be prescribed by the Executive Board of the Legislative Council, which price shall be sufficient to recover all costs of publication.

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 shall be paid into the state treasury to the credit of the General Fund. The court shall take receipts for all such money paid into the state treasury.

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.

**49-708 Repealed. Laws 1967, c. 328, § 14.**

**49-709 Repealed. Laws 1961, c. 284, § 1.**

**49-710 Repealed. Laws 1961, c. 284, § 1.**

**49-711 Repealed. Laws 1961, c. 284, § 1.**

**49-712 Repealed. Laws 1961, c. 284, § 1.**

**49-713 Repealed. Laws 1961, c. 284, § 1.**

**49-714 Repealed. Laws 1961, c. 284, § 1.**

**49-715 Repealed. Laws 1961, c. 284, § 1.**

**49-716 Repealed. Laws 1961, c. 284, § 1.**

**49-717 Repealed. Laws 1961, c. 284, § 1.**

**49-718 Repealed. Laws 1961, c. 284, § 1.**

**49-719 Repealed. Laws 1961, c. 284, § 1.**

49-720 Repealed. Laws 1961, c. 284, § 1.  
49-721 Repealed. Laws 1977, LB 8, § 6.  
49-722 Repealed. Laws 1977, LB 8, § 6.  
49-723 Repealed. Laws 1977, LB 8, § 6.  
49-724 Repealed. Laws 1977, LB 8, § 6.  
49-725 Repealed. Laws 1977, LB 8, § 6.  
49-726 Repealed. Laws 1977, LB 8, § 6.  
49-727 Repealed. Laws 1977, LB 8, § 6.  
49-728 Repealed. Laws 1977, LB 8, § 6.  
49-729 Repealed. Laws 1977, LB 8, § 6.  
49-730 Repealed. Laws 1977, LB 8, § 6.  
49-731 Repealed. Laws 1977, LB 8, § 6.  
49-732 Repealed. Laws 1977, LB 8, § 6.  
49-733 Repealed. Laws 1977, LB 8, § 6.  
49-734 Repealed. Laws 1977, LB 8, § 6.  
49-735 Repealed. Laws 1977, LB 8, § 6.  
49-736 Repealed. Laws 1977, LB 8, § 6.  
49-737 Repealed. Laws 1977, LB 8, § 6.  
49-738 Repealed. Laws 1977, LB 8, § 6.  
49-739 Repealed. Laws 1977, LB 8, § 6.  
49-740 Repealed. Laws 1977, LB 8, § 6.  
49-741 Repealed. Laws 1977, LB 8, § 6.  
49-742 Repealed. Laws 1977, LB 8, § 6.  
49-743 Repealed. Laws 1977, LB 8, § 6.  
49-744 Repealed. Laws 1977, LB 8, § 6.  
49-745 Repealed. Laws 1977, LB 8, § 6.  
49-746 Repealed. Laws 1977, LB 8, § 6.  
49-747 Repealed. Laws 1977, LB 8, § 6.  
49-748 Repealed. Laws 1977, LB 8, § 6.  
49-749 Repealed. Laws 1977, LB 8, § 6.  
49-750 Repealed. Laws 1977, LB 8, § 6.

**49-751 Repealed. Laws 1977, LB 8, § 6.**

**49-752 Repealed. Laws 1977, LB 8, § 6.**

**49-753 Repealed. Laws 1977, LB 8, § 6.**

**49-754 Repealed. Laws 1977, LB 8, § 6.**

**49-755 Repealed. Laws 1977, LB 8, § 6.**

**49-756 Repealed. Laws 1977, LB 8, § 6.**

**49-757 Repealed. Laws 1977, LB 8, § 6.**

**49-758 Repealed. Laws 1977, LB 8, § 6.**

**49-759 Repealed. Laws 1977, LB 8, § 6.**

**49-760 Repealed. Laws 1977, LB 8, § 6.**

**49-761 Repealed. Laws 1977, LB 8, § 6.**

**49-762 Repealed. Laws 1977, LB 8, § 6.**

**49-763 Repealed. Laws 1977, LB 8, § 6.**

**49-764 Repealed. Laws 1977, LB 8, § 6.**

**49-765 Revisor of Statutes; reissuance of volumes; duties.**

The Revisor of Statutes, when reissuing and bringing up to date the Reissue Revised Statutes of Nebraska, shall incorporate in the reissued volumes all laws enacted by the Legislature since the volumes to be reissued were brought up to date. He or she shall make such corrections of clerical and typographical errors as may have been discovered since the last publications thereof. He or she shall also include therein annotations to all decisions of the Supreme Court, the Court of Appeals, and the federal courts construing the sections therein that have been rendered since the last publication thereof. The reissued volumes shall be made up, printed, and bound to correspond, as nearly as practicable, with the present reissued volumes of the Reissue Revised Statutes of Nebraska.

**Source:** Laws 1973, LB 1, § 1; Laws 1977, LB 8, § 4; Laws 1994, LB 1244, § 3; Laws 1995, LB 589, § 10.

**49-766 Repealed. Laws 1977, LB 8, § 6.**

**49-767 Supplements and reissued volumes; certification; deposit of official copy; official version of statutes; use in courts.**

The Revisor of Statutes shall certify that the contents of the supplements and reissued volumes, as published, are true copies of all laws of a general nature that are in force at the time of the publication thereof. The Revisor of Statutes shall deposit a copy of the supplements and reissued volumes so certified in the office of the Secretary of State. The supplements and reissued volumes shall constitute the official version of the statutes of Nebraska and may be cited as prima facie evidence of the law in all of the courts of this state.

**Source:** Laws 1973, LB 1, § 3; Laws 1977, LB 8, § 5; Laws 1994, LB 1244, § 4.

**49-768 Repealed. Laws 1977, LB 8, § 6.**

**49-769 Section of statutes; not correlated; reconcilable; Revisor of Statutes; duties.**

When one section of the statutes is amended in two or more bills in the same session of the Legislature and has not been correlated as a part of the normal legislative process and the amendments are entirely reconcilable and not in conflict with each other, it shall be the duty of the Revisor of Statutes to correlate them so as to reflect all such amendments and to cause the result to be published in the statutory supplement followed by a brief note explaining the action taken.

**Source:** Laws 1979, LB 70, § 1.

**49-770 Section of statutes; not correlated; not reconcilable; Revisor of Statutes; duties.**

When one section of the statutes is amended in two or more bills in the same session of the Legislature and has not been correlated as a part of the normal legislative process and the amendments are not entirely reconcilable and are in conflict with each other, it shall be the duty of the Revisor of Statutes to cause only the latest version to pass the Legislature to be published in the statutory supplement followed by a brief note explaining the action taken. The Revisor of Statutes shall report each such case to the chairman of the appropriate standing committee at or prior to the convening of the next regular session of the Legislature for whatever action may be appropriate.

**Source:** Laws 1979, LB 70, § 2.

**49-771 Revisor of Statutes; obsolete sections; compilation; duties.**

The Revisor of Statutes shall establish an ongoing and comprehensive system to provide a continuing compilation of sections of the Nebraska statutes which the revisor believes to be obsolete or no longer needed. Preceding each legislative session, the Revisor of Statutes shall provide the chairperson of the Executive Board of the Legislative Council with a list of such sections. The Executive Board may request that legislation be drafted to amend or repeal the obsolete sections and such legislation when introduced shall be treated as a Revisor of Statute’s correctional bill.

**Source:** Laws 1980, LB 598, § 4.

**ARTICLE 8**

**DEFINITIONS, CONSTRUCTION, AND CITATION**

**Cross References**

Crimes, statutes relating to, how construed, see sections 29-105 to 29-109.

**Section**

- 49-801. Statutes; terms, defined.
- 49-801.01. Internal Revenue Code; reference.
- 49-802. Statutes; general rules of construction.
- 49-803. Repealed. Laws 1995, LB 589, § 16.
- 49-804. Appropriations; validity; requirements.
- 49-805. Appropriations; failure to meet criteria; effect.
- 49-805.01. Appropriations from state treasury; specific sums.
- 49-806. Statutes; list of section numbers; rules of construction.

Section  
49-807. Power of attorney; powers relating to rights of survivorship and beneficiary designations.

**49-801 Statutes; terms, defined.**

Unless the context is shown to intend otherwise, words and phrases in the statutes of Nebraska hereafter enacted are used in the following sense:

(1) Acquire when used in connection with a grant of power or property right to any person shall include the purchase, grant, gift, devise, bequest, and obtaining by eminent domain;

(2) Action shall include any proceeding in any court of this state;

(3) Attorney shall mean attorney at law;

(4) Company shall include any corporation, partnership, limited liability company, joint-stock company, joint venture, or association;

(5) Domestic when applied to corporations shall mean all those created by authority of this state;

(6) Federal shall refer to the United States;

(7) Foreign when applied to corporations shall include all those created by authority other than that of this state;

(8) Grantee shall include every person to whom any estate or interest passes in or by any conveyance;

(9) Grantor shall include every person from or by whom any estate or interest passes in or by any conveyance;

(10) Inhabitant shall be construed to mean a resident in the particular locality in reference to which that word is used;

(11) Land or real estate shall include lands, tenements, and hereditaments and all rights thereto and interest therein other than a chattel interest;

(12) Magistrate shall include judge of the county court and clerk magistrate;

(13) Month shall mean calendar month;

(14) Oath shall include affirmation in all cases in which an affirmation may be substituted for an oath;

(15) Peace officer shall include sheriffs, coroners, jailers, marshals, police officers, state highway patrol officers, members of the National Guard on active service by direction of the Governor during periods of emergency, and all other persons with similar authority to make arrests;

(16) Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations;

(17) Personal estate shall include money, goods, chattels, claims, and evidences of debt;

(18) Process shall mean a summons, subpoena, or notice to appear issued out of a court in the course of judicial proceedings;

(19) Service animal shall have the same meaning as in 28 C.F.R. 36.104, as such regulation existed on January 1, 2008;

(20) State when applied to different states of the United States shall be construed to extend to and include the District of Columbia and the several territories organized by Congress;

(21) Sworn shall include affirmed in all cases in which an affirmation may be substituted for an oath;

(22) The United States shall include territories, outlying possessions, and the District of Columbia;

(23) Violate shall include failure to comply with;

(24) Writ shall signify an order or citation in writing issued in the name of the state out of a court or by a judicial officer; and

(25) Year shall mean calendar year.

**Source:** Laws 1947, c. 182, § 1, p. 601; Laws 1967, c. 175, § 2, p. 490; Laws 1972, LB 1032, § 255; Laws 1975, LB 481, § 30; Laws 1984, LB 13, § 83; Laws 1988, LB 1030, § 43; Laws 1993, LB 121, § 303; Laws 2008, LB806, § 12.

In conjunction with section 25-2221 and subsection (13) of this section, a political subdivision has until the end of the last day of the 6-month period after a claimant has filed a tort claim upon which to make a final disposition of such claim. *Geddes v. York County*, 273 Neb. 271, 729 N.W.2d 661 (2007).

Unless the context is shown to intend otherwise, action includes any proceeding in a court and only final orders therein

are bases for appeals. *Grantham v. General Telephone Co.*, 187 Neb. 647, 193 N.W.2d 449 (1972).

Term person in statutes includes a corporation. *Fosler v. Aden*, 175 Neb. 535, 122 N.W.2d 494 (1963).

The word month is legislatively defined as calendar month. *Ruan Transport Corp. v. Peake Inc.*, 163 Neb. 319, 79 N.W.2d 575 (1956).

#### **49-801.01 Internal Revenue Code; reference.**

Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802, 77-5803, 77-5806, and 77-5903, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on April 6, 2010.

**Source:** Laws 1995, LB 574, § 1; Laws 1996, LB 984, § 1; Laws 1997, LB 46, § 1; Laws 1998, LB 1015, § 2; Laws 1999, LB 33, § 1; Laws 2000, LB 944, § 1; Laws 2001, LB 122, § 1; Laws 2001, LB 620, § 45; Laws 2002, LB 989, § 8; Laws 2003, LB 281, § 1; Laws 2004, LB 1017, § 1; Laws 2005, LB 312, § 1; Laws 2005, LB 383, § 1; Laws 2006, LB 1003, § 2; Laws 2007, LB315, § 1; Laws 2008, LB896, § 1; Laws 2009, LB251, § 1; Laws 2010, LB879, § 2.

#### **49-802 Statutes; general rules of construction.**

Unless such construction would be inconsistent with the manifest intent of the Legislature, rules for construction of the statutes of Nebraska hereafter enacted shall be as follows:

(1) When the word may appears, permissive or discretionary action is presumed. When the word shall appears, mandatory or ministerial action is presumed.

(2) The present tense of any verb includes the future, when applicable.

(3) The phrase shall have been includes past and future cases.

(4) Gender when referring to masculine also includes feminine and neuter.

(5) Words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in

the law shall be construed and understood according to such peculiar and appropriate meaning.

(6) Singular words may extend and be applied to several persons or things as well as to one person or thing.

(7) Plural words may extend and be applied to one person or thing as well as to several persons or things.

(8) Title heads, chapter heads, section and subsection heads or titles, and explanatory notes and cross references, in the statutes of Nebraska, supplied in compilation, do not constitute any part of the law.

(9) Whenever, in the statute laws of this state, a reference is made to two or more sections and the section numbers given in the reference are connected by the word to, the reference includes both the sections whose numbers are given and all intervening sections.

(10) No law repealed by subsequent act of the Legislature is revived or affected by the repeal of such repealing act.

(11) The repeal of a curative or validating law does not impair or affect any cure or validation previously perfected thereunder.

The enumeration of the rules of construction set out in this section is not intended to be exclusive, but is intended to set forth the common situations which arise in the preparation of legislative bills where a general statement by the Legislature of its purpose may aid and assist in ascertaining the legislative intent.

**Source:** Laws 1947, c. 182, § 2, p. 603.

1. Singular or plural construction
2. Mandatory or discretionary action
3. Miscellaneous

#### 1. Singular or plural construction

Words county superintendent included the plural county superintendents. Moser v. Turner, 180 Neb. 635, 144 N.W.2d 192 (1966).

Designation in statute of term polling places conferred authority to designate one polling place. Peterson v. Cook, 175 Neb. 296, 121 N.W.2d 399 (1963).

Word municipality in airport act included more than one. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

#### 2. Mandatory or discretionary action

On appeal from a county or municipal court, notice of appeal and bond must be filed within ten days after rendition of judgment and this period cannot be prolonged by filing a motion for new trial. Edward Frank Rozman Co. v. Keillor, 195 Neb. 587, 239 N.W.2d 779 (1976).

The word "shall" in section 9-504(3), U.C.C., makes notice a mandatory obligation. Bank of Gering v. Glover, 192 Neb. 575, 223 N.W.2d 56 (1974).

Use of word may in Sexual Psychopath Act disclosed legislative intent that discretion was vested in district court. State v. Noll, 171 Neb. 831, 108 N.W.2d 108 (1961).

Use of the word shall disclosed legislative intent that mandatory action was intended. Anderson v. Carlson, 171 Neb. 741, 107 N.W.2d 535 (1961).

#### 3. Miscellaneous

The heading, or catchline, is supplied in the compilation of the statutes and does not constitute any part of the law. State v. Holmes, 221 Neb. 629, 379 N.W.2d 765 (1986).

The Chapter heading "Highways, Bridges and Ferries" does not limit the guest statute so as to make it inapplicable to a vehicle on private property. Hale v. Taylor, 192 Neb. 298, 220 N.W.2d 378 (1974).

Unless such construction would be inconsistent with the manifest intent of the Legislature, heads supplied in compilation of sections enacted after passage of this section do not constitute any part of the law enacted. Cosentino v. City of Omaha, 186 Neb. 407, 183 N.W.2d 475 (1971).

This section constitutes legislative sanction of a sound rule of statutory construction. Yeoman v. Houston, 168 Neb. 855, 97 N.W.2d 634 (1959).

### **49-803 Repealed. Laws 1995, LB 589, § 16.**

### **49-804 Appropriations; validity; requirements.**

An appropriation shall only exist when the following criteria have been met:

- (1) There shall be included the phrase there is hereby appropriated;
- (2) A specific fund type shall be identified and the fund shall be appropriated;

- (3) The amount to be appropriated from such fund shall be identified;
- (4) A specific budget program or a specific statement reflecting the purpose for expending such funds shall be identified; and
- (5) The time period during which such funds shall be expended shall be identified.

**Source:** Laws 1979, LB 232, § 1.

**49-805 Appropriations; failure to meet criteria; effect.**

Any legislation not meeting the criteria established in section 49-804 shall not be considered a valid appropriation as defined in Article III, section 22, of the Nebraska Constitution.

**Source:** Laws 1979, LB 232, § 2.

**49-805.01 Appropriations from state treasury; specific sums.**

All appropriations of money from the state treasury, whether such money is derived from the levy of state taxes or from any other source, shall be by the appropriation of specific sums.

**Source:** Laws 1921, c. 24, § 1, p. 150; C.S.1922, § 6228; C.S.1929, § 77-2617; R.S.1943, § 77-2417; Laws 1979, LB 194, § 1; R.S. 1943, (1986), § 77-2417; Laws 1989, LB 13, § 2.

**49-806 Statutes; list of section numbers; rules of construction.**

Unless the Legislature specifies otherwise or the legislative intent is clearly to the contrary, in construing statutes in effect prior to, on, or after July 10, 1984:

(1) If a list of statutes in a section in the form of two section numbers joined by the word to is amended to include a newly enacted statute which is assigned a section number which falls within the range of the specified list, the Revisor of Statutes shall not be required to print the statute showing both the original list and the section number of the newly enacted statute and the list shall be construed to encompass the new statute as of the date the newly enacted statute takes effect or becomes operative, whichever is later;

(2) If a list of statutes in a section is in the form of two section numbers joined by the word to and a statute, the section number of which falls within the range of the list, is repealed, the list shall be construed to exclude the repealed statute as of the date its repeal takes effect or becomes operative, whichever is later; and

(3) If a list of statutes by section numbers is defined to be a named act and the list is later amended to include an additional section or to exclude a repealed section, either by a direct change or by operation of subdivision (2) of this section, any reference to the act by name shall be construed to encompass the added or exclude the repealed section as of the date its enactment or repeal takes effect or becomes operative, whichever is later.

**Source:** Laws 1984, LB 633, § 1.

**49-807 Power of attorney; powers relating to rights of survivorship and beneficiary designations.**

An agent or attorney in fact under a power of attorney, whether the power of attorney is durable or nondurable, may do the following on behalf of the

principal or with the principal's property only if the power of attorney expressly grants the agent or attorney in fact the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

- (1) Create or change rights of survivorship; or
- (2) Create or change a beneficiary designation.

**Source:** Laws 2010, LB712, § 43.

## ARTICLE 9

### COMMISSION ON UNIFORM STATE LAWS

#### Section

- 49-901. Commission on Uniform State Laws; creation; members; terms.  
 49-901.01. Revisor of Statutes; membership.  
 49-902. Members; vacancy in office; filled by Governor.  
 49-903. Members; meetings; officers, terms of office.  
 49-904. Members; duties.  
 49-905. Members; expenses; support of conference; appropriation by Legislature.

#### **49-901 Commission on Uniform State Laws; creation; members; terms.**

A commission is hereby established to be known as the Commission on Uniform State Laws which shall consist of three recognized members of the bar who shall be appointed by the Governor for terms of four years each, and until their successors are appointed, and in addition thereto any residents of this state who because of long service in the cause of the uniformity of state legislation shall have been elected life members of the National Conference of Commissioners on Uniform State Laws.

**Source:** Laws 1951, c. 166, § 1, p. 649.

#### **49-901.01 Revisor of Statutes; membership.**

Until July 15, 1998, the Revisor of Statutes shall continue to serve as an associate member of the National Conference of Commissioners on Uniform State Laws. On and after July 15, 1998, the Revisor of Statutes shall serve as a commissioner.

**Source:** Laws 1998, LB 1158, § 3.

#### **49-902 Members; vacancy in office; filled by Governor.**

Upon the death, resignation, failure, or refusal to serve of any appointed commissioner, his office shall become vacant; and the Governor shall make an appointment to fill the vacancy, such appointment to be for the unexpired term of the former appointee.

**Source:** Laws 1951, c. 166, § 2, p. 649.

#### **49-903 Members; meetings; officers, terms of office.**

The commissioners shall meet at least once in two years and shall organize by the election of one of their number as chairman and another as secretary, who shall hold their respective offices for a term of two years and until their successors are elected.

**Source:** Laws 1951, c. 166, § 3, p. 650.

**49-904 Members; duties.**

Each commissioner shall attend the meeting of the National Conference of Commissioners on Uniform State Laws, and both in and out of such national conference shall do all in his or her power to promote uniformity in state laws, upon all subjects where uniformity may be deemed desirable and practicable. The commission shall report to the Clerk of the Legislature from time to time as the commission may deem proper, an account of its transactions, and its advice and recommendations for legislation. Each member of the Legislature shall receive a copy of such report by making a request for it to the chairperson of the commission. It shall also be the duty of the commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws.

**Source:** Laws 1951, c. 166, § 4, p. 650; Laws 1979, LB 322, § 20; Laws 1981, LB 545, § 12.

**49-905 Members; expenses; support of conference; appropriation by Legislature.**

There may be appropriated a sum sufficient to reimburse members of the Commission on Uniform State Laws for their necessary expenses in performing the duties of their offices as provided in sections 81-1174 to 81-1177, to defray the cost of printing the commission's reports, and to make a contribution for the purposes set forth in section 49-904 on behalf of this state to the National Conference of Commissioners on Uniform State Laws.

**Source:** Laws 1951, c. 166, § 5, p. 650; Laws 1957, c. 212, § 1, p. 747; Laws 1961, c. 245, § 1, p. 730; Laws 1981, LB 204, § 87; Laws 1998, LB 1158, § 2.

**ARTICLE 10****STANDARD TIME**

## Section

- 49-1001. Repealed. Laws 1967, c. 327, § 1.  
49-1002. Repealed. Laws 1967, c. 327, § 1.

**49-1001 Repealed. Laws 1967, c. 327, § 1.**

**49-1002 Repealed. Laws 1967, c. 327, § 1.**

**ARTICLE 11****CONFLICT OF INTEREST**

## Section

- 49-1101. Repealed. Laws 1976, LB 987, § 141.  
49-1102. Repealed. Laws 1976, LB 987, § 141.  
49-1103. Repealed. Laws 1976, LB 987, § 141.  
49-1104. Repealed. Laws 1976, LB 987, § 141.  
49-1105. Repealed. Laws 1976, LB 987, § 141.  
49-1106. Repealed. Laws 1976, LB 987, § 141.  
49-1107. Repealed. Laws 1976, LB 987, § 141.  
49-1108. Repealed. Laws 1976, LB 987, § 141.  
49-1109. Repealed. Laws 1976, LB 987, § 141.  
49-1110. Repealed. Laws 1976, LB 987, § 141.  
49-1111. Repealed. Laws 1976, LB 987, § 141.  
49-1112. Repealed. Laws 1976, LB 987, § 141.

§ 49-1101

LAW

Section

- 49-1113. Repealed. Laws 1976, LB 987, § 141.
- 49-1114. Repealed. Laws 1976, LB 987, § 141.
- 49-1115. Repealed. Laws 1976, LB 987, § 141.
- 49-1116. Repealed. Laws 1976, LB 987, § 141.
- 49-1117. Repealed. Laws 1976, LB 987, § 141.

**49-1101 Repealed. Laws 1976, LB 987, § 141.**

**49-1102 Repealed. Laws 1976, LB 987, § 141.**

**49-1103 Repealed. Laws 1976, LB 987, § 141.**

**49-1104 Repealed. Laws 1976, LB 987, § 141.**

**49-1105 Repealed. Laws 1976, LB 987, § 141.**

**49-1106 Repealed. Laws 1976, LB 987, § 141.**

**49-1107 Repealed. Laws 1976, LB 987, § 141.**

**49-1108 Repealed. Laws 1976, LB 987, § 141.**

**49-1109 Repealed. Laws 1976, LB 987, § 141.**

**49-1110 Repealed. Laws 1976, LB 987, § 141.**

**49-1111 Repealed. Laws 1976, LB 987, § 141.**

**49-1112 Repealed. Laws 1976, LB 987, § 141.**

**49-1113 Repealed. Laws 1976, LB 987, § 141.**

**49-1114 Repealed. Laws 1976, LB 987, § 141.**

**49-1115 Repealed. Laws 1976, LB 987, § 141.**

**49-1116 Repealed. Laws 1976, LB 987, § 141.**

**49-1117 Repealed. Laws 1976, LB 987, § 141.**

**ARTICLE 12**

**MAIL**

Section

- 49-1201. Presumption of mailing.
- 49-1202. Registered, certified mail; record authenticated; evidence of mailing.
- 49-1203. Saturday, Sunday, nonjudicial day, legal holiday; next business day; performance; effect.

**49-1201 Presumption of mailing.**

Any report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or any payment required or authorized to be filed or made to the State of Nebraska, or to any political subdivision thereof, which is: (1) Transmitted through the United States mail; (2) mailed but not received by the state or political subdivision; or (3) received and the cancellation mark is illegible, erroneous, or omitted shall be deemed filed or made and received on the date it was mailed if the sender establishes by

competent evidence that the report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or payment was deposited in the United States mail on or before the date for filing or paying.

**Source:** Laws 1971, LB 867, § 1; Laws 2001, LB 170, § 1.

**49-1202 Registered, certified mail; record authenticated; evidence of mailing.**

If any report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or any payment, referred to in section 49-1201, is sent by United States mail and either registered or certified, a record authenticated by the United States post office of such registration or certification shall be considered competent evidence that the report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or payment was delivered to the state officer or state agency or officer or agency of the political subdivision to which addressed, and the date of registration or certification shall be deemed the postmarked date.

**Source:** Laws 1971, LB 867, § 2; Laws 2002, LB 994, § 5.

**49-1203 Saturday, Sunday, nonjudicial day, legal holiday; next business day; performance; effect.**

If the date for filing any report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or for making any payment, referred to in section 49-1201, falls upon a Saturday, Sunday, nonjudicial day, or legal holiday, such filing or payment shall be considered timely if performed in person or postmarked on the next business day.

**Source:** Laws 1971, LB 867, § 3; Laws 1989, LB 66, § 1; Laws 2002, LB 994, § 6; Laws 2003, LB 760, § 17.

**ARTICLE 13**

**TIME ZONES**

Section

49-1301. Standard time for Nebraska.

49-1302. Daylight time; when.

49-1303. Repealed. Laws 1987, LB 774, § 3.

**49-1301 Standard time for Nebraska.**

The standard time of the State of Nebraska shall be the time established by the Uniform Time Act of 1966 in both the Central and Rocky Mountain time zones.

**Source:** Laws 1974, LB 651, § 1; Laws 1987, LB 774, § 1.

**49-1302 Daylight time; when.**

Daylight time for the State of Nebraska shall be in effect from the first Sunday in April until the last Sunday in October of each year at such clock time as is prescribed in the Uniform Time Act of 1966.

**Source:** Laws 1974, LB 651, § 2; Laws 1987, LB 774, § 2.

**49-1303 Repealed. Laws 1987, LB 774, § 3.****ARTICLE 14****NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT**

## (a) GENERAL PROVISIONS

## Section

49-1401.	Act, how cited.
49-1402.	Legislative findings.
49-1403.	Definitions, where found.
49-1404.	Administrative action, defined.
49-1405.	Ballot question, defined.
49-1406.	Ballot question committee, defined.
49-1407.	Business, defined.
49-1408.	Business with which the individual is associated or business association, defined.
49-1409.	Candidate, defined.
49-1410.	Candidate committee, defined.
49-1411.	Closing date, defined.
49-1412.	Commission, defined.
49-1413.	Committee, defined.
49-1414.	Compensation, defined.
49-1415.	Contribution, defined.
49-1416.	Election, defined.
49-1417.	Elective office, defined.
49-1418.	Executive agency, defined.
49-1419.	Expenditure, defined.
49-1420.	Filed, filer, and filing official; defined.
49-1421.	Financial transaction, defined.
49-1422.	Fundraising event, defined.
49-1423.	Gift, defined.
49-1424.	Government body, defined.
49-1425.	Immediate family, defined.
49-1426.	Income, defined.
49-1427.	Independent committee, defined.
49-1428.	Independent expenditure, defined.
49-1429.	Influencing, defined.
49-1430.	In-kind contribution or expenditure, defined.
49-1431.	Legislative action, defined.
49-1432.	Loan, defined.
49-1433.	Lobbying, defined.
49-1433.01.	Major out-of-state contributor, defined.
49-1434.	Principal, lobbyist, defined.
49-1435.	Nonministerial, defined.
49-1436.	Official in the executive branch, defined.
49-1437.	Official in the legislative branch, defined.
49-1438.	Person, defined.
49-1439.	Political merchandise, defined.
49-1440.	Political party, defined.
49-1441.	Political party committee, defined.
49-1442.	Public employee, defined.
49-1443.	Public official, defined.
49-1443.01.	Relative, defined.
49-1444.	State elective office, defined.

## (b) CAMPAIGN PRACTICES

49-1445.	Candidate for office; candidate committee; slate or team; committee; when formed; violation; penalty.
49-1446.	Committee; treasurer; depository account; contributions and expenditures; requirements; reports; commingling funds; violations; penalty.
49-1446.01.	Committee; certain expenditure of funds authorized.

## POLITICAL ACCOUNTABILITY AND DISCLOSURE

Section	
49-1446.02.	Committee; certain expenditure of funds; prohibited.
49-1446.03.	Committee; expenditure of funds; authorized.
49-1446.04.	Candidate committee; loans; restrictions; civil penalty.
49-1446.05.	Repealed. Laws 2001, LB 242, § 27.
49-1446.06.	Transferred to section 49-1474.02.
49-1447.	Committee treasurer; statements or reports; duties; committee records; violation; penalty.
49-1448.	Commission; rules; purpose.
49-1449.	Committee; statement of organization; filing; procedure; late filing fees.
49-1449.01.	Committee; statement of organization; registration fee; failure to perfect filing; effect.
49-1450.	Committee; statement of organization; contents, enumerated.
49-1451.	Statement of organization; change; late filing fee.
49-1452.	Repealed. Laws 1983, LB 230, § 4.
49-1453.	Committee; dissolution; procedure.
49-1454.	Committee; campaign statement; filing; period covered.
49-1455.	Committee campaign statement; contents.
49-1456.	Committee account; income; how treated; loans.
49-1457.	Political party committee; campaign statement; contents, enumerated; contribution and expenditure information.
49-1458.	Late contribution; how reported; late filing fee.
49-1459.	Campaign statements; filing schedule; statement of exemption.
49-1460.	Repealed. Laws 1983, LB 230, § 4.
49-1461.	Ballot question committee; campaign statement; filing dates.
49-1461.01.	Ballot question committee; surety bond; requirements; violations; penalty.
49-1462.	Committee; campaign statement; when filed; period covered.
49-1463.	Campaign statement; statement of exemption; violations; late filing fee; civil penalty.
49-1463.01.	Late filing fee; relief; reduction or waiver; when.
49-1463.02.	Late filing fees and civil penalties; interest.
49-1464.	Campaign statements of committees; where filed; public availability.
49-1465.	Campaign statement; verification statement; signature; requirements.
49-1466.	Dissolved candidate committee; unexpended funds; how treated.
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(a) GENERAL PROVISIONS

**49-1401 Act, how cited.**

Sections 49-1401 to 49-14,141 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.

The constitutionality of the Nebraska Political Accountability and Disclosure Act is generally irrelevant to a disciplinary proceeding. Ordinarily, a respondent has no standing to challenge the act. State ex rel. NSBA v. Douglas, 227 Neb. 1, 416 N.W.2d 515 (1987).

**49-1402 Legislative findings.**

The Legislature finds:

(1) That the public interest in the manner in which election campaigns are conducted has increased greatly in recent years, creating a need for additional disclosure and accountability;

(2) That there is a compelling state interest in ensuring that the state and local elections are free of corruption and the appearance of corruption and that this can only be achieved if (a) the sources of funding of campaigns are fully disclosed and (b) the use of money in campaigns is fully disclosed;

(3) That it is essential to the proper operation of democratic government that public officials and employees be independent and impartial, that governmental decisions and policy be made in the proper channels of governmental structure,

and that public office or employment not be used for private gain other than the compensation provided by law; and

(4) That the attainment of one or more of these ends is impaired when there exists, or appears to exist, a substantial conflict between the private interests of a public official and his or her duties as such official; and that although the vast majority of public officials and employees are dedicated and serve with high integrity, the public interest requires that the law provide greater accountability, disclosure, and guidance with respect to the conduct of public officials and employees.

**Source:** Laws 1976, LB 987, § 2; Laws 1997, LB 49, § 2.

#### **49-1403 Definitions, where found.**

For purposes of the Nebraska Political Accountability and Disclosure Act, unless the context otherwise requires, the definitions found in sections 49-1404 to 49-1444 shall be used.

**Source:** Laws 1976, LB 987, § 3; Laws 1981, LB 134, § 2; Laws 1991, LB 232, § 2; Laws 1997, LB 49, § 3; Laws 2000, LB 1021, § 2.

#### **49-1404 Administrative action, defined.**

Administrative action shall mean any decision on, or proposal, consideration, enactment, or defeat of any rule, regulation, or other official policy action or nonaction by any executive agency, or any policy matter which is within the official jurisdiction of an executive agency.

**Source:** Laws 1976, LB 987, § 4.

#### **49-1405 Ballot question, defined.**

(1) Ballot question shall mean any question which is submitted or which is intended to be submitted to a popular vote at an election, including, but not limited to, a question submitted or intended to be submitted by way of initiative, referendum, recall, or judicial retention, whether or not it qualifies for the ballot.

(2) Ballot question shall also mean any question which has been submitted to a popular vote at an election as a result of legislative action or adoption of a resolution by a political subdivision to place an issue or issues on the ballot.

**Source:** Laws 1976, LB 987, § 5; Laws 1991, LB 534, § 1; Laws 1998, LB 632, § 2; Laws 2009, LB626, § 2.

#### **49-1406 Ballot question committee, defined.**

Ballot question committee shall mean any committee acting in support of, or in opposition to, the qualification, passage, or defeat of a ballot question but which does not receive contributions or make expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate.

**Source:** Laws 1976, LB 987, § 6.

#### **49-1407 Business, defined.**

Business shall mean any corporation, partnership, limited liability company, sole proprietorship, firm, enterprise, franchise, association, organization, self-

employed individual, holding company, joint-stock company, receivership, trust, activity, or entity.

**Source:** Laws 1976, LB 987, § 7; Laws 1993, LB 121, § 304.

**49-1408 Business with which the individual is associated or business association, defined.**

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

**Source:** Laws 1976, LB 987, § 8; Laws 1986, LB 548, § 12; Laws 1993, LB 121, § 305; Laws 1994, LB 884, § 67.

**49-1409 Candidate, defined.**

(1) Candidate shall mean an individual: (a) Who files, or on behalf of whom is filed, a fee, affidavit, nomination papers, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus, committee, or convention is certified to the appropriate filing official; (c) who is an officeholder who is the subject of a recall vote; or (d) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made. An elected officeholder shall, if eligible under law, be considered to be a candidate for reelection to that same office for the purposes of the Nebraska Political Accountability and Disclosure Act only.

(2) Candidate shall not include any individual who is a candidate within the meaning of the Federal Election Campaign Act of 1971, 2 U.S.C. 431, as such section existed on January 1, 2006.

**Source:** Laws 1976, LB 987, § 9; Laws 1980, LB 535, § 1; Laws 2005, LB 242, § 3.

**49-1410 Candidate committee, defined.**

Candidate committee shall mean the committee designated in a candidate's filed statement of organization as that individual's candidate committee. A candidate committee shall be presumed to be under the control and direction of the candidate named in the same statement of organization, except that the candidate for Lieutenant Governor shall not have a separate candidate commit-

tee but shall be included in the candidate committee with the candidate for Governor of the same political party.

**Source:** Laws 1976, LB 987, § 10; Laws 1980, LB 535, § 2; Laws 2001, LB 768, § 11.

**49-1411 Closing date, defined.**

Closing date shall mean the date through which a campaign statement is required to be complete.

**Source:** Laws 1976, LB 987, § 11.

**49-1412 Commission, defined.**

Commission shall mean the Nebraska Accountability and Disclosure Commission created by section 49-14,105.

**Source:** Laws 1976, LB 987, § 12.

**49-1413 Committee, defined.**

(1) Committee shall mean (a) any combination of two or more individuals which receives contributions or makes expenditures of over five thousand dollars in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions or (b) a person whose primary purpose is to receive contributions or make expenditures and who receives or makes contributions or expenditures of over five thousand dollars in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions, except that an individual, other than a candidate, shall not constitute a committee.

(2) Except as otherwise provided in section 49-1445, a committee shall be considered formed and subject to the Nebraska Political Accountability and Disclosure Act upon raising, receiving, or spending over the five thousand dollars in a calendar year referred to in this section.

(3) A corporation, labor organization, or industry, trade, or professional association is not a committee if it makes expenditures or provides personal services pursuant to sections 49-1469 to 49-1469.08.

**Source:** Laws 1976, LB 987, § 13; Laws 1980, LB 535, § 3; Laws 1983, LB 230, § 1; Laws 1987, LB 480, § 2; Laws 1999, LB 416, § 2; Laws 2005, LB 242, § 4.

**49-1414 Compensation, defined.**

Compensation shall mean anything of monetary value received or to be received from a person, whether in the form of a fee, salary, forbearance, forgiveness, or any other form of recompense.

**Source:** Laws 1976, LB 987, § 14.

**49-1415 Contribution, defined.**

(1) Contribution shall mean a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, dona-

tion, pledge or promise of money or anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned.

(2) Contribution shall include the purchase of tickets or payment of an attendance fee for events such as dinners, luncheons, rallies, testimonials, and similar fundraising events; an individual's own money or property other than the individual's homestead used on behalf of that individual's candidacy; and the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office.

(3) Contribution shall not include:

(a) Volunteer personal services provided without compensation, or payments of costs incurred of less than two hundred fifty dollars in a calendar year by an individual for personal travel expenses if the costs are voluntarily incurred without any understanding or agreement that the costs shall be, directly or indirectly, repaid;

(b) Amounts received pursuant to a pledge or promise to the extent that the amounts were previously reported as a contribution; or

(c) Food and beverages, not to exceed fifty dollars in value during a calendar year, which are donated by an individual and for which reimbursement is not given.

**Source:** Laws 1976, LB 987, § 15.

**49-1416 Election, defined.**

Election shall mean a primary, general, special, or other election held in this state or a convention or caucus of a political party held in this state to nominate a candidate. Election shall include a vote on a ballot question.

**Source:** Laws 1976, LB 987, § 16; Laws 1997, LB 49, § 4.

**49-1417 Elective office, defined.**

Elective office shall mean a public office filled by an election, except for federal offices. A person who is appointed to fill a vacancy in a public office which is ordinarily elective holds an elective office.

**Source:** Laws 1976, LB 987, § 17.

**49-1418 Executive agency, defined.**

Executive agency shall mean a board, commission, agency, or other body in the executive branch of the state government.

**Source:** Laws 1976, LB 987, § 18.

**49-1419 Expenditure, defined.**

(1) Expenditure shall mean a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question. An offer or tender of an expenditure is not an expenditure if expressly and unconditionally rejected or returned.

(2) Expenditure shall include a contribution or a transfer of anything of ascertainable monetary value for purposes of influencing the nomination or election of any candidate or the qualification, passage, or defeat of a ballot question.

(3) Expenditure shall not include:

(a) An amount paid pursuant to a pledge or promise to the extent the amount was previously reported as an expenditure;

(b) An expenditure for communication by a person strictly with the person's paid members or shareholders;

(c) An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot question or candidate by name or clear inference;

(d) An expenditure by a broadcasting station, newspaper, magazine, or other periodical or publication for any news story, commentary, or editorial in support of or opposition to a candidate for elective office or a ballot question in the regular course of publication or broadcasting; or

(e) An expenditure for nonpartisan voter registration activities. This subdivision shall not apply if a candidate or a group of candidates sponsors, finances, or is identified by name with the activity. This subdivision shall apply to an activity performed pursuant to the Election Act by an election commissioner or other registration official who is identified by name with the activity.

(4) Expenditure for purposes of sections 49-1480 to 49-1492.01 shall mean an advance, conveyance, deposit, distribution, transfer of funds, loan, payment, pledge, or subscription of money or anything of value and any contract, agreement, promise, or other obligation, whether or not legally enforceable, to make an expenditure. Expenditure shall not include payments for transportation by lobbyists or the cost of communicating positions from a principal to a lobbyist or from a lobbyist to a principal.

**Source:** Laws 1976, LB 987, § 19; Laws 1979, LB 162, § 1; Laws 1994, LB 76, § 567; Laws 1997, LB 49, § 5; Laws 2005, LB 242, § 5.

**Cross References**

Election Act, see section 32-101.

**49-1420 Filed, filer, and filing official; defined.**

(1) Filed shall mean the receipt by the appropriate filing official of a statement or report required to be filed under the Nebraska Political Accountability and Disclosure Act.

(2) Filer shall mean each person required to file a statement or report pursuant to the act.

(3) Filing official shall mean the official designated pursuant to the act to receive required statements and reports.

**Source:** Laws 1976, LB 987, § 20; Laws 2005, LB 242, § 6.

**49-1421 Financial transaction, defined.**

Financial transaction shall mean a loan, purchase, sale, or other type of transfer or exchange of money, goods, other property, or services for value.

**Source:** Laws 1976, LB 987, § 21.

**49-1422 Fundraising event, defined.**

Fundraising event shall mean an event such as a dinner, reception, testimonial, rally, auction, bingo, or similar affair through which contributions are solicited or received by such means as purchase of a ticket, payment of an attendance fee, donations or chances for prizes, or through purchase of goods or services.

**Source:** Laws 1976, LB 987, § 22.

**49-1423 Gift, defined.**

Gift shall mean a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, unless consideration of equal or greater value is given therefor. Gift shall not include a campaign contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, a gift received from a relative, a breakfast, luncheon, dinner, or other refreshments consisting of food and beverage provided for immediate consumption, or the occasional provision of transportation within the State of Nebraska.

**Source:** Laws 1976, LB 987, § 23; Laws 2000, LB 1021, § 3.

**49-1424 Government body, defined.**

Government body shall mean an authority, department, commission, committee, council, board, bureau, division, office, legislative body, or other agency in the executive, legislative, or judicial branch of state government or of one or more political subdivisions thereof or a school district, state college, state university, or other state-supported institution of higher education.

**Source:** Laws 1976, LB 987, § 24.

**49-1425 Immediate family, defined.**

Immediate family shall mean a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes.

**Source:** Laws 1976, LB 987, § 25.

**49-1426 Income, defined.**

Income shall mean any money or thing of value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense then constituting income under the Internal Revenue Code.

**Source:** Laws 1976, LB 987, § 26.

**49-1427 Independent committee, defined.**

Independent committee shall mean a committee other than a candidate, ballot question, or political party committee.

**Source:** Laws 1976, LB 987, § 27; Laws 1980, LB 535, § 4.

**49-1428 Independent expenditure, defined.**

Independent expenditure shall mean an expenditure as defined in section 49-1419 by a person if the expenditure is not made at the direction of, under the control of, or with the cooperation of another person and if the expenditure is not a contribution to a committee.

**Source:** Laws 1976, LB 987, § 28; Laws 1997, LB 420, § 16.

**49-1429 Influencing, defined.**

Influencing shall mean promoting, supporting, affecting, modifying, opposing, or delaying by any means, including the providing of or use of information, statistics, studies, or analyses.

**Source:** Laws 1976, LB 987, § 29.

**49-1430 In-kind contribution or expenditure, defined.**

In-kind contribution or expenditure shall mean a contribution as defined in section 49-1415 or expenditure as defined in subsections (1), (2), and (3) of section 49-1419, other than money.

**Source:** Laws 1976, LB 987, § 30.

**49-1431 Legislative action, defined.**

Legislative action shall mean introduction, sponsorship, support, opposition, consideration, debate, voting, passage, defeat, approval, veto, delay, or an official action by an official in the executive branch or an official in the legislative branch on a bill, resolution, amendment, nomination, appointment, report, or any matter pending or proposed in a committee or the Legislature.

**Source:** Laws 1976, LB 987, § 31.

**49-1432 Loan, defined.**

Loan shall mean a transfer of money, property, or anything of ascertainable monetary value in exchange for an obligation, conditional or not, to repay in whole or part.

**Source:** Laws 1976, LB 987, § 32.

**49-1433 Lobbying, defined.**

Lobbying shall mean the practice of promoting or opposing for another person, as defined in section 49-1438, the introduction or enactment of legislation or resolutions before the Legislature or the committees or the members thereof, and shall also include the practice of promoting or opposing executive approval of legislation or resolutions.

**Source:** Laws 1976, LB 987, § 33.

**49-1433.01 Major out-of-state contributor, defined.**

Major out-of-state contributor means a corporation, union, industry association, trade association, or professional association which is not organized under the laws of the State of Nebraska and which makes contributions or expenditures totaling more than ten thousand dollars in any calendar year in connection with one or more elections.

**Source:** Laws 1997, LB 49, § 6.

**49-1434 Principal, lobbyist, defined.**

(1) Principal means a person who authorizes a lobbyist to lobby in behalf of that principal.

(2) Lobbyist means a person who is authorized to lobby on behalf of a principal and includes an officer, agent, attorney, or employee of the principal whose regular duties include lobbying.

(3) Principal or lobbyist does not include:

(a) A public official or employee of a branch of state government, except the University of Nebraska, or an elected official of a political subdivision who is acting in the course or scope of his or her office or employment;

(b) Any publisher, owner, or working member of the press, radio, or television while disseminating news or editorial comment to the general public in the ordinary course of business;

(c) An employee of a principal or lobbyist whose duties are confined to typing, filing, and other types of clerical office work;

(d) Any person who limits his or her activities (i) to appearances before legislative committees and who so advises the committee at the time of his or her appearance whom he or she represents or that he or she appears at the invitation of a named member of the Legislature or at the direction of the Governor or (ii) to writing letters or furnishing written material to individual members of the Legislature or to the committees thereof;

(e) Any individual who does not engage in lobbying for another person as defined in section 49-1438; or

(f) An employee of a political subdivision whose regular employment duties do not ordinarily include lobbying activities as long as such employee is not additionally compensated for such lobbying activities, other than his or her regular salary, and is not reimbursed for any lobbying expenditures except his or her travel, lodging, and meal expenses and the meal expenses for members of the Legislature.

**Source:** Laws 1976, LB 987, § 34; Laws 1979, LB 162, § 2; Laws 1991, LB 232, § 3; Laws 2006, LB 940, § 3.

**49-1435 Nonministerial, defined.**

Nonministerial shall mean an action other than an action which a person performs in a prescribed manner under prescribed circumstances in obedience to the mandate of legal authority, without the exercise of personal judgment regarding whether to take the action.

**Source:** Laws 1976, LB 987, § 35.

**49-1436 Official in the executive branch, defined.**

Official in the executive branch shall mean an official holding a state executive office as provided in Article IV, Constitution of Nebraska, including Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, Tax Commissioner, the heads of such other executive departments as set forth in the Constitution or as may be established by law, a deputy thereto, or a member of any state board or commission. This includes an individual who is elected or appointed and has not yet taken, or an

individual who is nominated for appointment to, any of the offices enumerated in this section.

**Source:** Laws 1976, LB 987, § 36.

**49-1437 Official in the legislative branch, defined.**

Official in the legislative branch shall mean a member or member-elect of the Legislature, a member of an official body established by and responsible to the Legislature, or employee thereof other than an individual employed by the state in a clerical or nonpolicymaking capacity.

**Source:** Laws 1976, LB 987, § 37.

**49-1438 Person, defined.**

Person shall mean a business, individual, proprietorship, firm, partnership, limited liability company, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or other organization or group of persons acting jointly.

**Source:** Laws 1976, LB 987, § 38; Laws 1993, LB 121, § 306.

**49-1439 Political merchandise, defined.**

Political merchandise shall mean goods such as bumper stickers, pins, hats, beverages, literature, or other items sold by a person at a fundraiser or to the general public for publicity or for the purpose of raising funds to be used in supporting or opposing a candidate for nomination for or election to an elective office or in supporting or opposing the qualification, passage, or defeat of a ballot question.

**Source:** Laws 1976, LB 987, § 39.

**49-1440 Political party, defined.**

Political party shall mean a political party which has a right under law to have the names of its candidates listed on the ballot in a general election.

**Source:** Laws 1976, LB 987, § 40.

**49-1441 Political party committee, defined.**

Political party committee shall mean a state central, district, or county committee of a political party which is a committee.

**Source:** Laws 1976, LB 987, § 41.

**49-1442 Public employee, defined.**

Public employee shall mean an employee of the state or a political subdivision thereof.

**Source:** Laws 1976, LB 987, § 42.

**49-1443 Public official, defined.**

Public official shall mean an official in the executive branch, an official in the legislative branch, or an elected or appointed official in the judicial branch of the state government or a political subdivision thereof; any elected or appointed

member of a school board; and an elected or appointed member of a governing body of a state institution of higher education.

**Source:** Laws 1976, LB 987, § 43.

**49-1443.01 Relative, defined.**

Relative shall mean any person related to another by blood or marriage to the third degree of consanguinity, including a foster parent, foster child, stepparent, stepchild, and adopted children and their adoptive parents.

**Source:** Laws 2000, LB 1021, § 4.

**49-1444 State elective office, defined.**

State elective office shall mean the office of Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, member of a board or commission with one or more election districts of more than one county, and member of the Legislature.

**Source:** Laws 1976, LB 987, § 44.

(b) CAMPAIGN PRACTICES

**49-1445 Candidate for office; candidate committee; slate or team; committee; when formed; violation; penalty.**

(1) A candidate shall form a candidate committee upon raising, receiving, or expending more than five thousand dollars in a calendar year.

(2) A candidate committee may consist of one member with the candidate being the member.

(3) A person who is a candidate for more than one office shall form a candidate committee for an office upon raising, receiving, or expending more than five thousand dollars in a calendar year for that office.

(4) Two or more candidates who campaign as a slate or team for public office shall form a committee upon raising, receiving, or expending jointly in any combination more than five thousand dollars in a calendar year.

(5) The fee to file for office shall not be included in determining if a candidate has raised, received, or expended more than five thousand dollars in a calendar year.

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

**Source:** Laws 1976, LB 987, § 45; Laws 1980, LB 535, § 5; Laws 1983, LB 230, § 2; Laws 1987, LB 480, § 3; Laws 1990, LB 601, § 1; Laws 1999, LB 416, § 3; Laws 2005, LB 242, § 7.

Generally, the Nebraska Political Accountability and Disclosure Act requires candidates for elective state office to form candidate committees and file campaign statements with the Nebraska Accountability and Disclosure Commission once the

candidate has raised, received, or expended \$5,000 in a calendar year. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

**49-1446 Committee; treasurer; depository account; contributions and expenditures; requirements; reports; commingling funds; violations; penalty.**

(1) Each committee shall have a treasurer who is a qualified elector of this state. A candidate may appoint himself or herself as the candidate committee treasurer.

(2) Except for funds received as provided in the Campaign Finance Limitation Act, each committee shall designate one account in a financial institution in this state as an official depository for the purpose of depositing all contributions which it receives in the form of or which are converted to money, checks, or other negotiable instruments and for the purpose of making all expenditures. Secondary depositories shall be used for the sole purpose of depositing contributions and promptly transferring the deposits to the committee's official depository.

(3) No contribution shall be accepted and no expenditure shall be made by a committee which has not filed a statement of organization and which does not have a treasurer. When the office of treasurer in a candidate committee is vacant, the candidate shall be the treasurer until the candidate appoints a new treasurer.

(4) No expenditure shall be made by a committee without the authorization of the treasurer or the assistant treasurer. The contributions received or expenditures made by a candidate or an agent of a candidate shall be considered received or made by the candidate committee.

(5) Contributions received by an individual acting in behalf of a committee shall be reported promptly to the committee's treasurer not later than five days before the closing date of any campaign statement required to be filed by the committee and shall be reported to the committee treasurer immediately if the contribution is received less than five days before the closing date.

(6) A contribution shall be considered received by a committee when it is received by the committee treasurer or a designated agent of the committee treasurer notwithstanding the fact that the contribution is not deposited in the official depository by the reporting deadline.

(7) Contributions received by a committee shall not be commingled with any funds of an agent of the committee or of any other person except for funds received or disbursed by a separate segregated political fund for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office, as provided in section 49-1469.06, including independent expenditures made in such elections.

(8) Any person who violates this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1976, LB 987, § 46; Laws 1977, LB 41, § 40; Laws 1980, LB 535, § 6; Laws 1988, LB 1136, § 1; Laws 1993, LB 587, § 12; Laws 2005, LB 242, § 8.

**Cross References**

Campaign Finance Limitation Act, see section 32-1601.

**49-1446.01 Committee; certain expenditure of funds authorized.**

(1) No committee, other than a political party committee, may expend funds except to make an expenditure, as defined in subsection (1), (2), or (3) of section 49-1419, or as provided in section 49-1446.03 or 49-1469.06.

(2) A candidate committee of an officeholder may make expenditures for the payment of installation and use of telephone and telefax machines located in an officeholder's public office and used by such officeholder.

(3) Any committee, including a political party committee, may invest funds in investments authorized for the state investment officer in the Nebraska Capital

Expansion Act and the Nebraska State Funds Investment Act. Nothing in this section shall prohibit a separate segregated political fund from disbursing funds as provided in section 49-1469.06.

**Source:** Laws 1981, LB 134, § 5; Laws 1988, LB 1136, § 2; Laws 1988, LB 1174, § 1; Laws 1992, LB 722, § 1; Laws 1994, LB 1066, § 39; Laws 1997, LB 49, § 8; Laws 2002, LB 1086, § 3; Laws 2005, LB 242, § 9.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**49-1446.02 Committee; certain expenditure of funds; prohibited.**

Notwithstanding any other provision of the Nebraska Political Accountability and Disclosure Act, no committee shall expend funds for the purchase or payment of:

- (1) Clothes or medical or dental expenses of a candidate or the members of his or her immediate family;
- (2) Installment payments for an automobile owned by a candidate;
- (3) Mortgage or rental payments for a permanent residence of a candidate;
- (4) The satisfaction of personal debts, including installment payments on personal loans, except campaign loans subject to reporting required by subsection (2) of section 49-1456;
- (5) Personal services, including the services of a lawyer or accountant, except campaign services subject to reporting pursuant to the provisions of section 49-1455; or
- (6) Office supplies, staff, or furnishings for the public office for which an individual is a candidate for nomination or election except as set out in subsection (2) of section 49-1446.01.

**Source:** Laws 1981, LB 134, § 6; Laws 1992, LB 722, § 2; Laws 2005, LB 242, § 10.

**49-1446.03 Committee; expenditure of funds; authorized.**

Except as otherwise provided in the Nebraska Political Accountability and Disclosure Act, any committee may, in addition to the expenditures set forth in section 49-1446.01, make expenditures for the following:

- (1) The necessary continued operation of the campaign office or offices of the candidate or political committee;
- (2) Social events primarily for the benefit of campaign workers and volunteers or constituents;
- (3) Obtaining public input and opinion;
- (4) Repayment of campaign loans incurred prior to election day;
- (5) Newsletters and other communications for the purpose of information, thanks, acknowledgment, or greetings or for the purpose of political organization and planning;
- (6) Gifts of acknowledgment, including flowers and charitable contributions, except that gifts to any one individual shall not exceed fifty dollars in any one calendar year;

(7) Meals, lodging, and travel by an officeholder related to his or her candidacy and for members of the immediate family of the officeholder when involved in activities related to his or her candidacy;

(8) Conference fees, meals, lodging, and travel by an officeholder and his or her staff when involved in activities related to the duties of his or her public office; and

(9) In the case of the candidate committee for the Governor, conference fees, meals, lodging, and travel by the Governor, his or her staff, and his or her immediate family, when involved in activities related to the duties of the Governor.

**Source:** Laws 1981, LB 134, § 7; Laws 2005, LB 242, § 11.

**49-1446.04 Candidate committee; loans; restrictions; civil penalty.**

(1) A candidate committee shall not accept more than fifteen thousand dollars in loans prior to or during the first thirty days after formation of the candidate committee.

(2) After the thirty-day period and until the end of the term of the office to which the candidate sought nomination or election, the candidate committee shall not accept loans, other than loans allowed under subsection (2) of section 32-1608.03, in an aggregate amount of more than fifty percent of the contributions of money, other than the proceeds of loans, which the candidate committee has received during such period as of the date of the receipt of the proceeds of the loan. Any loans which have been repaid as of such date shall not be taken into account for purposes of the aggregate loan limit.

(3) A candidate committee shall not pay interest, fees, gratuities, or other sums in consideration of a loan, advance, or other extension of credit to the candidate committee by the candidate, a member of the candidate's immediate family, or any business with which the candidate is associated.

(4) The penalty for violation of this section shall be a civil penalty of not less than two hundred fifty dollars and not more than the amount of money received by a candidate committee in violation of this section if the candidate committee received more than two hundred fifty dollars. The commission shall assess and collect the civil penalty and shall remit the penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1995, LB 399, § 2; Laws 2005, LB 242, § 12; Laws 2006, LB 188, § 13.

**49-1446.05 Repealed. Laws 2001, LB 242, § 27.**

**49-1446.06 Transferred to section 49-1474.02.**

**49-1447 Committee treasurer; statements or reports; duties; committee records; violation; penalty.**

(1) The committee treasurer shall keep detailed accounts, records, bills, and receipts necessary to substantiate the information contained in a statement or report filed pursuant to sections 49-1445 to 49-1479.02 or rules and regulations adopted and promulgated under the Nebraska Political Accountability and Disclosure Act.

(2)(a) For any committee other than a candidate committee, the committee treasurer shall be responsible for filing all statements and reports of the committee required to be filed under the act and shall be personally liable subject to section 49-1461.01 for any late filing fees, civil penalties, and interest that may be due under the act as a result of a failure to make such filings.

(b) For candidate committees, the candidate shall be responsible for filing all statements and reports required to be filed by his or her candidate committee under the Nebraska Political Accountability and Disclosure Act or the Campaign Finance Limitation Act. The candidate shall be personally liable for any late filing fees, civil penalties, and interest that may be due under either act as a result of a failure to make such filings and may use funds of the candidate committee to pay such fees, penalties, and interest.

(3) The committee treasurer shall record the name and address of each person from whom a contribution is received except for contributions of fifty dollars or less received pursuant to subsection (2) of section 49-1472.

(4) The records of a committee shall be preserved for five years and shall be made available for inspection as authorized by the commission.

(5) Any person violating this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 47; Laws 1977, LB 41, § 41; Laws 2000, LB 438, § 2; Laws 2005, LB 242, § 13.

#### Cross References

**Campaign Finance Limitation Act**, see section 32-1601.

A candidate for an elective state office is responsible for filing all statements and reports required to be filed by his or her candidate committee pursuant to the Nebraska Political Accountability and Disclosure Act and the Campaign Finance Limitation Act. Nebraska Legislature on behalf of State v. Herger, 271 Neb. 976, 720 N.W.2d 372 (2006).

#### **49-1448 Commission; rules; purpose.**

The commission shall promulgate rules for the withdrawal of funds from a committee account for petty cash expenditures and for keeping records of the withdrawals.

**Source:** Laws 1976, LB 987, § 48.

#### **49-1449 Committee; statement of organization; filing; procedure; late filing fees.**

(1) Each committee shall file a statement of organization pursuant to this section and pay a registration fee pursuant to section 49-1449.01 with the commission. Except as provided in subsection (2) of this section, such statement of organization shall be filed and fee paid within ten days after a committee is formed. The commission shall maintain a statement of organization filed by a committee until notified of the committee's dissolution. Any person who fails to file with the commission a statement of organization required by this subsection shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of this subsection, not to exceed seven hundred fifty dollars.

(2) If the committee is formed within thirty days prior to an election for which the committee exists, the statement of organization shall be filed and registration fee paid within two business days after the committee is formed. Any person who fails to file with the commission a statement of organization

required by this subsection shall pay to the commission a late filing fee of one hundred dollars for each day the statement remains not filed in violation of this subsection, not to exceed one thousand dollars.

**Source:** Laws 1976, LB 987, § 49; Laws 1980, LB 535, § 7; Laws 1999, LB 416, § 5; Laws 2001, LB 242, § 3; Laws 2003, LB 349, § 1; Laws 2007, LB527, § 2.

**49-1449.01 Committee; statement of organization; registration fee; failure to perfect filing; effect.**

(1) At the time that each committee files its statement of organization pursuant to section 49-1449, the committee shall pay to the commission a registration fee of one hundred dollars. The filing of a statement of organization is not perfected unless accompanied by the registration fee.

(2) A committee which has not perfected its filing of a statement of organization by the date due as specified in section 49-1449 shall not make or receive contributions or expenditures until such time as the filing of the statement of organization is perfected, except that:

(a) A committee may make an expenditure to pay the registration fee; and

(b) A committee may make expenditures for thirty days after the termination of its registration if the expenditures are part of the process of dissolving the committee and the committee dissolves within thirty days after the termination of its registration.

(3) The registration fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Nebraska Accountability and Disclosure Commission Cash Fund.

**Source:** Laws 2007, LB527, § 3.

**49-1450 Committee; statement of organization; contents, enumerated.**

The statement of organization required by section 49-1449 shall include the following information:

(1) The name, street address, and telephone number, if any, of the committee. The committee address may be the home address of the candidate or treasurer of the committee;

(2) The name, street address, and telephone number, if any, of each person, other than an individual, that is a member of the committee;

(3) The full name, street address, and telephone number, if any, of the treasurer and other principal officers of the committee;

(4) The name and address of the financial institution in which the official committee depository is located, and the name and address of each financial institution in which a secondary depository is or is intended to be located;

(5) The full name of and office sought by each candidate and a brief statement identifying the substance of each ballot question supported or opposed by the committee;

(6) Identification of the committee as a candidate committee, political party committee, independent committee, or ballot question committee if it is identifiable as such a committee; and

(7) Such other information as may be required by the rules and regulations of the commission.

**Source:** Laws 1976, LB 987, § 50.

**49-1451 Statement of organization; change; late filing fee.**

When any of the information required in a statement of organization is changed, such change shall be reported when the next campaign statement is required to be filed. Any person who fails to report a change to the commission under this section shall pay to the commission a late filing fee of twenty-five dollars for each day the change remains not reported in violation of this section, not to exceed seven hundred fifty dollars.

**Source:** Laws 1976, LB 987, § 51; Laws 1980, LB 535, § 8; Laws 1999, LB 416, § 6.

**49-1452 Repealed. Laws 1983, LB 230, § 4.**

**49-1453 Committee; dissolution; procedure.**

(1) A committee may be dissolved by the filing of a statement of dissolution with the commission, the payment of all fees, penalties, and interest which may be owed, and complying with the rules and regulations of the commission for dissolution of committees. Except as otherwise provided in subsection (2) of this section, no committee shall be dissolved until such statement is filed and such payments are made.

(2) A committee may be dissolved if the commission determines that fees, penalties, and interest owed by a committee are uncollectible.

**Source:** Laws 1976, LB 987, § 53; Laws 2000, LB 438, § 4; Laws 2005, LB 242, § 14.

**49-1454 Committee; campaign statement; filing; period covered.**

Any committee which supports or opposes a candidate or the qualification, passage, or defeat of a ballot question shall file a legibly printed or typed campaign statement pursuant to sections 49-1459 and 49-1461. The period covered by a campaign statement is the period beginning with the day after the closing date of the most recent campaign statement filed and ending with the closing date of the campaign statement due. If the committee filing the campaign statement has not previously filed a campaign statement, the period covered shall begin on the date the person or persons forming the committee raised, received, or spent any money.

**Source:** Laws 1976, LB 987, § 54; Laws 1980, LB 535, § 9; Laws 1983, LB 230, § 3; Laws 1987, LB 480, § 4.

The Nebraska Political Accountability and Disclosure Act requires candidate committees to file two preelection campaign statements and one postelection campaign statement for both

the primary and general elections. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

**49-1455 Committee campaign statement; contents.**

(1) The campaign statement of a committee, other than a political party committee, shall contain the following information:

(a) The filing committee's name, address, and telephone number and the full name, residential and business addresses, and telephone numbers of its committee treasurer;

(b) Under the heading RECEIPTS, the total amount of contributions received during the period covered by the campaign statement; under the heading EXPENDITURES, the total amount of expenditures made during the period covered by the campaign statement; and the cumulative amount of those totals for the election period. If a loan was repaid during the period covered by the campaign statement, the amount of the repayment shall be subtracted from the total amount of contributions received. Forgiveness of a loan shall not be included in the totals. Payment of a loan by a third party shall be recorded and reported as a contribution by the third party but shall not be included in the totals. In-kind contributions or expenditures shall be listed at fair market value and shall be reported as both contributions and expenditures;

(c) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement;

(d) The full name of each individual from whom contributions totaling more than two hundred fifty dollars are received during the period covered by the report, together with the individual's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by that individual for the election period;

(e) The full name of each person, except those individuals reported under subdivision (1)(d) of this section, which contributed a total of more than two hundred fifty dollars during the period covered by the report together with the person's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by the person for the election period;

(f) The name of each committee which is listed as a contributor shall include the full name of the committee's treasurer;

(g) Except as otherwise provided in subsection (3) of this section: The full name and street address of each person to whom expenditures totaling more than two hundred fifty dollars were made, together with the date and amount of each separate expenditure to each such person during the period covered by the campaign statement; the purpose of the expenditure; and the full name and street address of the person providing the consideration for which any expenditure was made if different from the payee;

(h) The amount and the date of expenditures for or against a candidate or ballot question during the period covered by the campaign statement and the cumulative amount of expenditures for or against that candidate or ballot question for the election period. An expenditure made in support of more than one candidate or ballot question, or both, shall be apportioned reasonably among the candidates or ballot questions, or both; and

(i) The total amount of funds disbursed by a separate segregated political fund, by state, for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office, including independent expenditures made in such elections.

(2) For purposes of this section, election period means (a) the period beginning January 1 of the calendar year prior to the year of the election in which the candidate is seeking office through the end of the calendar year of such election for candidate committees of candidates seeking covered elective offices as defined in subdivision (1)(a) of section 32-1603, (b) the period beginning July 1 of the calendar year prior to the year of the election in which the candidate is seeking office through the end of the calendar year of such

election for candidate committees of candidates seeking covered elective offices so defined in subdivision (1)(b) of section 32-1603, and (c) the calendar year of the election for all other committees.

(3) A campaign statement shall include the total amount paid to individual petition circulators during the reporting period, if any, but shall not include the name, address, or telephone number of any individual petition circulator if the only payment made to such individual was for services as a petition circulator.

**Source:** Laws 1976, LB 987, § 55; Laws 1988, LB 1136, § 3; Laws 1993, LB 587, § 13; Laws 1997, LB 420, § 18; Laws 1999, LB 416, § 7; Laws 2008, LB39, § 6.

**49-1456 Committee account; income; how treated; loans.**

(1) Any income received by a committee on an account consisting of funds or property belonging to the committee shall not be considered a contribution to the committee but shall be reported as income. Any interest paid by a committee shall be reported as an expenditure.

(2) A loan made or received shall be set forth in a separate schedule providing the date and amount of the loan and, if the loan is repaid, the date and manner of repayment. The committee shall provide the name and address of the lender and any person who is liable directly, indirectly, or contingently on each loan of more than two hundred fifty dollars.

**Source:** Laws 1976, LB 987, § 56; Laws 1981, LB 134, § 3; Laws 1999, LB 416, § 8.

**49-1457 Political party committee; campaign statement; contents, enumerated; contribution and expenditure information.**

(1) The campaign statement filed by a political party committee shall contain the following information:

(a) The full name and street address of each person from whom contributions totaling more than two hundred fifty dollars in value are received in a calendar year, the amount, and the date or dates contributed; and if the person is a committee, the name and address of the committee and the full name and street address of the committee treasurer, together with the amount of the contribution and the date received;

(b) An itemized list of all expenditures, including in-kind contributions and expenditures and loans, made during the period covered by the campaign statement which were contributions to a candidate committee of a candidate for elective office or a ballot question committee; or independent expenditures in support of the qualification, passage, or defeat of a ballot question, or in support of the nomination or election of a candidate for elective office or the defeat of any of the candidate's opponents;

(c) The total expenditure by the committee for each candidate for elective office or ballot question in whose behalf an independent expenditure was made or a contribution was given for the election; and

(d) The filer's name, address, and telephone number, if any, and the full name, residential and business addresses, and telephone numbers of the committee treasurer.

(2) A contribution to a candidate or ballot question committee listed under subdivision (1)(b) of this section shall note the name and address of the

committee, the name of the candidate and the office sought, if any, the amount contributed, and the date of the contribution.

(3) An independent expenditure listed under subdivision (1)(b) of this section shall note the name of the candidate for whose benefit the expenditure was made and the office sought by the candidate, or a brief description of the ballot question for which the expenditure was made, the amount, date, and purpose of the expenditure, and the full name and address of the person to whom the expenditure was made.

(4) An expenditure listed which was made in support of more than one candidate or ballot question, or both, shall be apportioned reasonably among the candidates or ballot questions, or both.

**Source:** Laws 1976, LB 987, § 57; Laws 1999, LB 416, § 9.

#### **49-1458 Late contribution; how reported; late filing fee.**

(1) A committee which receives a late contribution shall report the contribution to the commission by filing a report within two days after the date of its receipt. The report may be filed by hand delivery, facsimile transmission, telegraph, express delivery service, or any other written means of communication, including electronic means approved by the commission, and need not contain an original signature.

(2) The report shall include the full name, street address, occupation, employer, and principal place of business of the contributor, the amount of the contribution, and the date of receipt.

(3) A late contribution shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

(4) Any committee which fails to file a report of late contributions with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such committee shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the late contribution which was required to be reported, not to exceed ten percent of the amount of the late contribution which was required to be reported.

(5) For purposes of this section, late contribution means a contribution of one thousand dollars or more received after the closing date for campaign statements as provided in subdivision (1)(b) of section 49-1459.

**Source:** Laws 1976, LB 987, § 58; Laws 1996, LB 1263, § 1; Laws 1999, LB 416, § 10; Laws 2000, LB 438, § 5; Laws 2005, LB 242, § 15; Laws 2007, LB434, § 1.

#### **49-1459 Campaign statements; filing schedule; statement of exemption.**

(1) Except as provided in subsection (2) of this section, campaign statements as required by the Nebraska Political Accountability and Disclosure Act shall be filed according to the following schedule:

(a) A first preelection campaign statement shall be filed not later than the thirtieth day before the election. The closing date for a campaign statement filed under this subdivision shall be the thirty-fifth day before the election;

(b) A second preelection campaign statement shall be filed not later than the tenth day before the election. The closing date for a campaign statement filed under this subdivision shall be the fifteenth day before the election; and

(c) A postelection campaign statement shall be filed not later than the fortieth day following the primary election and the seventieth day following the general election. The closing date for a postprimary election campaign statement filed under this subdivision shall be the thirty-fifth day following the election. The closing date for a postgeneral election campaign statement filed under this subdivision shall be December 31 of the year in which the election is held. If all liabilities of a candidate and committee are paid before the closing date and additional contributions are not expected, the campaign statement may be filed at any time after the election, but not later than the dates provided under this subdivision.

(2) Any committee may file a statement in writing with the commission indicating that the committee does not expect to receive contributions or make expenditures of more than one thousand dollars in the calendar year of an election. Such written statement shall be signed by the committee treasurer or the assistant treasurer, and in the case of a candidate committee, it shall also be signed by the candidate. Such written statement shall be filed on or before the thirtieth day before the election. A committee which files a written statement pursuant to this subsection is not required to file campaign statements according to the schedule prescribed in subsection (1) of this section but shall file a sworn statement of exemption not later than the fortieth day following the primary election and the seventieth day following the general election stating only that the committee did not, in fact, receive or expend an amount in excess of one thousand dollars. If the committee receives contributions or makes expenditures of more than one thousand dollars during the election year, the committee is then subject to all campaign filing requirements under subsection (1) of this section.

**Source:** Laws 1976, LB 987, § 59; Laws 1980, LB 535, § 10; Laws 1993, LB 587, § 14; Laws 1998, LB 632, § 3; Laws 1999, LB 416, § 11.

The Nebraska Political Accountability and Disclosure Act requires candidate committees to file two preelection campaign statements and one postelection campaign statement for both the primary and general elections. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

**49-1460 Repealed. Laws 1983, LB 230, § 4.**

**49-1461 Ballot question committee; campaign statement; filing dates.**

In addition to the campaign statements required to be filed pursuant to sections 49-1459 and 49-1462, a ballot question committee shall file a campaign statement as required by the Nebraska Political Accountability and Disclosure Act according to the following schedule:

(1) The first campaign statement shall be filed not later than the last day of the calendar month in which the petition form is filed with the Secretary of State pursuant to section 32-1405. The closing date for the campaign statement shall be five days before the deadline for filing the first campaign statement;

(2) Additional campaign statements shall be filed on the last day of each calendar month thereafter except for the calendar month during which the signed petitions must be filed with the Secretary of State as provided in section 32-1407. The closing date for such campaign statements shall be five days before the deadline for filing the statement; and

(3) A final campaign statement shall be filed not later than thirty days after the deadline for filing petitions with the Secretary of State as provided in section 32-1407. The closing date for the campaign statement shall be twenty-five days after the deadline for filing such petitions.

The campaign statements required to be filed pursuant to this section shall be filed whether or not petitions have or will be filed with the Secretary of State. Any person who fails to file a campaign statement with the commission pursuant to this section shall be subject to late filing fees as provided in section 49-1463.

**Source:** Laws 1976, LB 987, § 61; Laws 1980, LB 535, § 12; Laws 1989, LB 637, § 4; Laws 1991, LB 534, § 2; Laws 1994, LB 76, § 568.

**49-1461.01 Ballot question committee; surety bond; requirements; violations; penalty.**

(1) A ballot question committee shall file with the commission a surety bond running in favor of the State of Nebraska with surety by a corporate bonding company authorized to do business in this state and conditioned upon the payment of all fees, penalties, and interest which may be imposed under the Nebraska Political Accountability and Disclosure Act.

(2) A bond in the amount of five thousand dollars shall be filed with the commission within thirty days after the committee receives contributions or makes expenditures in excess of one hundred thousand dollars in a calendar year, and the amount of the bond shall be increased by five thousand dollars for each additional five hundred thousand dollars received or expended in a calendar year.

(3) Proof of any required increase in the amount of the bond shall be filed with the commission within thirty days after each additional five hundred thousand dollars is received or expended. Any failure to pay late filing fees, civil penalties, or interest due under the act shall be recovered from the proceeds of the bond prior to recovery from the treasurer of the committee.

(4) Any person violating this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 2000, LB 438, § 3; Laws 2005, LB 242, § 16.

**49-1462 Committee; campaign statement; when filed; period covered.**

Unless otherwise required to file an election campaign statement as required by section 49-1459, a committee shall file a campaign statement with a closing date of December 31 of such year not later than January 31 of the following year. The period covered by the campaign statement filed pursuant to this section shall begin from the day after the closing date of the previous campaign statement filed.

**Source:** Laws 1976, LB 987, § 62; Laws 1987, LB 480, § 6; Laws 1993, LB 587, § 15.

**49-1463 Campaign statement; statement of exemption; violations; late filing fee; civil penalty.**

(1) Any person who fails to file a campaign statement with the commission under sections 49-1459 to 49-1463 shall pay to the commission a late filing fee of twenty-five dollars for each day the campaign statement remains not filed in

violation of this section, not to exceed seven hundred fifty dollars. In addition, if a candidate who files an affidavit under subdivision (5)(a) of section 32-1604 fails to file a campaign statement as required by sections 49-1459 to 49-1463 within the prescribed time resulting in any abiding candidate not receiving public funds as described in subsection (6) of section 32-1604 or resulting in a delay in the receipt of such funds, the commission shall assess a civil penalty of not less than two thousand dollars and not more than three times (a) the amount of public funds the abiding candidate received after the delay or (b) the amount of public funds the abiding candidate would have received if the campaign statement had been filed within the prescribed time.

(2) Any committee which fails to file a statement of exemption with the commission under subsection (2) of section 49-1459 shall pay to the commission a late filing fee of twenty-five dollars for each day the statement of exemption remains not filed in violation of this section, not to exceed two hundred twenty-five dollars.

**Source:** Laws 1976, LB 987, § 63; Laws 1980, LB 535, § 13; Laws 1998, LB 632, § 4; Laws 1999, LB 416, § 12; Laws 2006, LB 188, § 14.

#### **49-1463.01 Late filing fee; relief; reduction or waiver; when.**

(1) A person required to pay a late filing fee imposed under section 32-1604, 32-1604.01, 32-1606.01, 49-1449, 49-1458, 49-1463, 49-1467, 49-1469.08, 49-1478.01, or 49-1479.01 may apply to the commission for relief. The commission by order may reduce the amount of a late filing fee imposed and waive any or all of the interest due on the fee upon a showing by such person that (a) the circumstances indicate no intent to file late, (b) the person has not been required to pay late filing fees for two years prior to the time the filing was due, (c) the late filing shows that less than five thousand dollars was raised, received, or expended during the reporting period, and (d) a reduction of the late fees and waiver of interest would not frustrate the purposes of the Nebraska Political Accountability and Disclosure Act.

(2) A person required to pay a late filing fee imposed for failure to file a statement of exemption under subsection (2) of section 49-1459 may apply to the commission for relief. The commission by order may reduce or waive the late filing fee and waive any or all of the interest due on the fee, and the person shall not be required to make a showing as provided by subsection (1) of this section.

**Source:** Laws 1987, LB 480, § 7; Laws 1996, LB 1263, § 2; Laws 1997, LB 420, § 19; Laws 1998, LB 632, § 5; Laws 2000, LB 438, § 7; Laws 2001, LB 242, § 4; Laws 2005, LB 242, § 17; Laws 2006, LB 188, § 15.

#### **49-1463.02 Late filing fees and civil penalties; interest.**

Interest shall accrue on all late filing fees and civil penalties imposed under the Nebraska Political Accountability and Disclosure Act at the rate specified in section 45-104.02, as such rate may from time to time be adjusted. The interest shall begin to accrue thirty days after the commission sends notice to the person of the assessment of the late filing fee or civil penalty. A written request filed with the commission for relief from late filing fees shall stay the accrual of interest on a late filing fee until such time as the commission grants or denies

the request. The commission may waive the payment of accrued interest in the amount of twenty-five dollars or less.

**Source:** Laws 2000, LB 438, § 9; Laws 2007, LB527, § 4.

**49-1464 Campaign statements of committees; where filed; public availability.**

The campaign statement of any committee, including a candidate committee, a ballot question committee, or a political party committee, shall be filed with the commission. The commission shall make all campaign statements available to the public on its web site as soon as practicable. A campaign statement shall be available on the web site for the duration of the election period for which the statement is filed and for an additional six months thereafter.

**Source:** Laws 1976, LB 987, § 64; Laws 1980, LB 535, § 14; Laws 1993, LB 587, § 16; Laws 2001, LB 242, § 5.

**49-1465 Campaign statement; verification statement; signature; requirements.**

(1) A campaign statement filed by a committee shall:

(a) Be signed by the committee treasurer; and

(b) Contain a verification statement which states that the treasurer used all reasonable diligence in its preparation, that to the treasurer's knowledge it is true and complete, and if the committee is a candidate committee, that to the best of the candidate's knowledge the statement is true and complete.

(2) The verification statement shall be signed by the treasurer and, in the case of a candidate committee, by the candidate.

(3) The verification statement shall be required to perfect the filing of the campaign statement. A campaign statement shall cover the period beginning the day after the closing date of the last campaign statement and end on the closing date as specified in the Nebraska Political Accountability and Disclosure Act.

**Source:** Laws 1976, LB 987, § 65; Laws 1999, LB 581, § 2.

**49-1466 Dissolved candidate committee; unexpended funds; how treated.**

Any person, who after being a candidate for office dissolves the candidate committee as provided in section 49-1453, may transfer any unexpended funds from such committee to another candidate committee, a political party committee, or a tax-exempt charitable institution or may return such unexpended funds to the contributors of the funds upon dissolution of the candidate committee.

**Source:** Laws 1976, LB 987, § 66; Laws 2000, LB 438, § 8.

**49-1467 Person; independent expenditure report; when filed; contents; public availability; late filing fee; violation; penalty.**

(1) Any person, other than a committee, who makes an independent expenditure advocating the election of a candidate or the defeat of a candidate's opponents or the qualification, passage, or defeat of a ballot question, which is in an amount of more than two hundred fifty dollars, shall file a report of the independent expenditure, within ten days, with the commission.

(2) The report shall be made on an independent expenditure report form provided by the commission and shall include the date of the expenditure, a brief description of the nature of the expenditure, the amount of the expenditure, the name and address of the person to whom it was paid, the name and address of the person filing the report, and the name, address, occupation, employer, and principal place of business of each person who contributed more than two hundred fifty dollars to the expenditure.

(3) The commission shall make all independent expenditure reports available to the public on its web site as soon as practicable. An independent expenditure report shall be available on the web site for the duration of the election period for which the report is filed and for an additional six months thereafter.

(4) Any person who fails to file a report of an independent expenditure with the commission shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of this section not to exceed seven hundred fifty dollars.

(5) Any person who violates this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1976, LB 987, § 67; Laws 1977, LB 41, § 42; Laws 1996, LB 1263, § 3; Laws 1999, LB 416, § 13; Laws 2001, LB 242, § 6; Laws 2005, LB 242, § 18.

**49-1468 Contribution or expenditure made by a dependent minor; contribution controlled by another; how reported.**

(1) Any contribution or expenditure made by a dependent minor shall be reported in the name of the minor's parent or guardian.

(2) Any contribution which is controlled by, or made at the direction of, another person, including a parent organization, subsidiary, division, committee, department, branch, or local unit of a person, shall be reported by the person making the contribution and shall be regarded as a contribution attributable to both persons.

**Source:** Laws 1976, LB 987, § 68.

**49-1469 Businesses and organizations; contributions, expenditures, or services; report; contents; separate segregated political fund; when required.**

(1) A corporation, labor organization, or industry, trade, or professional association, which is organized under the laws of the State of Nebraska or doing business in this state and which is not a committee, may:

- (a) Make an expenditure;
- (b) Make a contribution; and
- (c) Provide personal services.

(2) Such a corporation, labor organization, or industry, trade, or professional association shall not be required to file reports of independent expenditures pursuant to section 49-1467, but if it makes a contribution or expenditure, or provides personal services, with a value of more than two hundred fifty dollars, it shall file a report with the commission within ten days after the end of the calendar month in which the contribution or expenditure is made or the personal services are provided. The report shall include:

(a) The nature, date, and value of the contribution or expenditure and the name of the candidate or committee or a description of the ballot question to or for which the contribution or expenditure was made; and

(b) A description of any personal services provided, the date the services were provided, and the name of the candidate or committee or a description of the ballot question to or for which the personal services were provided.

(3) A corporation, labor organization, or industry, trade, or professional association may not receive contributions unless it establishes and administers a separate segregated political fund which shall be utilized only in the manner set forth in sections 49-1469.05 and 49-1469.06.

**Source:** Laws 1976, LB 987, § 69; Laws 1977, LB 41, § 43; Laws 1980, LB 535, § 15; Laws 1983, LB 214, § 1; Laws 1988, LB 1136, § 4; Laws 1993, LB 587, § 17; Laws 1996, LB 1263, § 4; Laws 1999, LB 416, § 14; Laws 2005, LB 242, § 19.

**49-1469.01 Transferred to section 49-1476.**

**49-1469.02 Transferred to section 49-1476.01.**

**49-1469.03 Transferred to section 49-1476.02.**

**49-1469.04 Transferred to section 49-1479.02.**

**49-1469.05 Businesses and organizations; separate segregated political fund; restrictions.**

(1) A corporation, labor organization, or industry, trade, or professional association which establishes and administers a separate segregated political fund:

(a) Shall not make an expenditure to such fund, except that it may make expenditures and provide personal services for the establishment and administration of such separate segregated political fund; and

(b) Shall file the reports required by subsection (2) of section 49-1469 with respect to the expenditures made or personal services provided for the establishment and administration of such fund but need not file such reports for the expenditures made from such fund.

(2) If a corporation makes an expenditure to a separate segregated political fund which is established and administered by an industry, trade, or professional association of which such corporation is a member, such corporation shall not be required to file the reports required by subsection (2) of section 49-1469.

**Source:** Laws 2005, LB 242, § 20.

**49-1469.06 Businesses and organizations; separate segregated political fund; contributions and expenditures; limitations.**

(1) All contributions to and expenditures from a separate segregated political fund shall be limited to money or anything of ascertainable value obtained through the voluntary contributions of the employees, officers, directors, stockholders, or members of the corporation, including a nonprofit corporation, labor organization, or industry, trade, or professional association, and the affiliates thereof, under which such fund was established.

(2) No contribution or expenditure shall be received or made from such fund if obtained or made by using or threatening to use job discrimination or financial reprisals.

(3) Only expenditures to candidates and committees and independent expenditures may be made from a fund established by a corporation, labor organization, or industry, trade, or professional organization. Such separate segregated political fund may receive and disburse funds for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office and making independent expenditures in such elections if such receipts and disbursements are made in conformity with the solicitation provisions of this section and the corporation, labor organization, or industry, trade, or professional association which establishes and administers such fund complies with the laws of the jurisdiction in which such receipts or disbursements are made.

(4) The expenses for establishment and administration of a separate segregated political fund of a corporation, labor organization, or industry, trade, or professional association may be paid from the separate segregated political fund of such corporation, labor organization, or industry, trade, or professional association.

**Source:** Laws 2005, LB 242, § 21.

**49-1469.07 Businesses and organizations; separate segregated political fund; status.**

A separate segregated political fund is hereby declared to be an independent committee and subject to all of the provisions of the Nebraska Political Accountability and Disclosure Act applicable to independent committees, and the corporation, labor organization, or industry, trade, or professional association which establishes and administers such fund shall make the reports and filings required therefor.

**Source:** Laws 2005, LB 242, § 22.

**49-1469.08 Businesses and organizations; late filing fee; violation; penalty.**

(1) Any corporation, labor organization, or industry, trade, or professional association which fails to file a report with the commission required by section 49-1469 or 49-1469.07 shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of such sections not to exceed seven hundred fifty dollars.

(2) Any person who knowingly violates this section, section 49-1469, 49-1469.05, 49-1469.06, or 49-1469.07 shall be guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 242, § 23.

**49-1470 Campaign statements; public information; copies, cost; duration kept.**

(1) Campaign statements shall be open for public inspection and reproduction, commencing as soon as practicable, but not later than the fifth business day following the day on which they were received, during regular business hours.

(2) Copies of statements or parts of statements shall be provided by the officials with whom they are filed at a cost of not to exceed fifty cents per page.

(3) Campaign statements shall be preserved for a period of not less than eighteen months by the officials other than the commission with whom they are filed, and not less than five years by the commission.

(4) No fee or charge shall be collected by any official for the filing of any campaign statement, or for the forms upon which statements are to be prepared, except as otherwise provided by law.

**Source:** Laws 1976, LB 987, § 70; Laws 1983, LB 479, § 1.

**49-1471 Contribution or expenditure in excess of fifty dollars; not to be made in cash; violation; penalty.**

A contribution or expenditure of more than fifty dollars shall not be made or accepted in cash. Contributions and expenditures of more than fifty dollars, other than an in-kind contribution or expenditure, shall be made by written instrument containing the names of the payor and the payee. Any person who knowingly violates this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 71; Laws 1977, LB 41, § 44.

**49-1472 Anonymous contribution; restrictions on use; other contributions; how treated; violation; penalty.**

(1) A person shall not accept or expend an anonymous contribution. An anonymous contribution received by a person shall not knowingly be deposited but shall be given to a tax-exempt charitable organization. The charitable organization receiving the contribution shall provide the person with a receipt. The person shall give a copy of the receipt to the commission.

(2) A contribution received as the result of a fundraising event, or from the sale of political merchandise, or from membership fees, dues, or subscriptions for political purposes to an independent committee that is fifty dollars or less shall not be considered an anonymous contribution.

(3) A person making a contribution pursuant to subsection (2) of this section which is fifty dollars or more shall furnish the recipient with the donor's name, address, and the total amount contributed.

(4) Any person violating the provisions of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 72; Laws 1977, LB 41, § 45.

**49-1473 Contributions; legal name of contributor; violation; penalty.**

A contribution shall not be made, directly or indirectly, by any person in a name other than the name by which that person is identified for legal purposes. Any person violating the provisions of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 73; Laws 1977, LB 41, § 46.

**49-1474 Political newsletter or mass mailing; not to be sent at public expense; violation; penalty.**

No political newsletter or other campaign mass mailing shall be sent at public expense by or on behalf of any elected official after that person has

announced his or her candidacy for any office. An elected official violating the provisions of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 74; Laws 1977, LB 41, § 47; Laws 1986, LB 548, § 13.

**49-1474.01 Political material; disclaimer requirements; violation; penalty.**

(1) The person, except an individual or individuals acting independently utilizing their own personal resources, who pays for the production, distribution, or posting of a billboard, placard, poster, pamphlet, or other printed matter relating to a candidate or ballot question shall cause a disclaimer containing the name and street address of the person to appear on such matter. The person who pays for a radio or television advertisement relating to a candidate or ballot question shall cause a disclaimer containing the name of such person to be included in the advertisement, and the radio or television station shall, for a period of at least six months, keep the street address of such person on file and divulge it to any person upon request.

(2) The size and placement of the disclaimer shall be determined by rules and regulations adopted and promulgated by the commission. The rules and regulations shall exempt from the disclaimer required by this section windshield stickers, yard signs, bumper stickers, campaign buttons, and balloons and may also exempt other items relating to a candidate or committee which are printed or reproduced at the request of such candidate or committee.

(3) Any person who knowingly violates the provisions of this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1980, LB 535, § 20; Laws 1987, LB 479, § 1; Laws 1989, LB 637, § 5; Laws 1995, LB 399, § 3.

**49-1474.02 Dissemination of message by telecommunication or electronic means; requirements.**

(1) Any person who makes an expenditure reportable under the Nebraska Political Accountability and Disclosure Act to disseminate by any means of telecommunication a prerecorded message or a recorded message relating to a candidate or ballot question shall include, immediately preceding the message, the name of the person making the expenditure. Such messages shall be disseminated only between the hours of 8 a.m. and 9 p.m. at the location of the person receiving the messages.

(2) Any person who makes an expenditure reportable under the act to disseminate by any means of telecommunication a message relating to a candidate or ballot question which is not a recorded message or a prerecorded message shall, immediately upon the request of the recipient of the message, disclose the name of the person making the expenditure. If the message is disseminated through an employee or agent of the person making the expenditure, the employee or agent shall, immediately upon the request of the recipient of the message, disclose the name of the person making the expenditure.

(3) Any person who makes an expenditure reportable under the act to disseminate by any electronic means, including the Internet or email, a mes-

sage relating to a candidate or ballot question shall include in the message the name of the person making the expenditure.

**Source:** Laws 2001, LB 242, § 2; R.S.1943, (2003), § 49-1446.06; Laws 2005, LB 242, § 24; Laws 2008, LB720, § 1.

**49-1475 Contribution; intermediary or agent of contributor; disclosure; violation; penalty.**

Any person who accepts a contribution, other than by written instrument, on behalf of another and acts as the intermediary or agent of the person from whom the contribution was accepted shall disclose to the recipient of the contribution the intermediary's own name and address and the name and address of the actual source of the contribution. Any person violating the provisions of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 75; Laws 1977, LB 41, § 48.

**49-1476 Lottery contractor; legislative findings.**

The Legislature finds that in sponsoring a lottery, the state undertakes a unique enterprise which can succeed only if the public has confidence in the integrity of the lottery and the process by which government decisions relating to the lottery are made. The Legislature finds that there is a compelling state interest in ensuring the integrity and the appearance of integrity of elections for state elective office and of the state-sponsored lottery. The Legislature further finds that the practice of contributions being given to candidates for state elective offices by individuals or entities holding contracts with the state to supply goods or services in connection with the state-sponsored lottery for significant monetary prizes contributes to actual corruption or the appearance of corruption and diminishes public confidence in government and in the state-sponsored lottery. The Legislature finds that sections 49-1476.01 and 49-1476.02 are consistent with these findings.

**Source:** Laws 1995, LB 28, § 4; R.S.1943, (2003), § 49-1469.01; Laws 2005, LB 242, § 25.

**49-1476.01 Lottery contractor; contributions and expenditures prohibited; penalty.**

(1) A person who is awarded a contract by the Director of the Lottery Division as a lottery contractor for a major procurement as defined in section 9-803 may not make a contribution to or an independent expenditure for a candidate for a state elective office during the term of the contract or for three years following the most recent award or renewal of the contract.

(2) A person shall be considered to have made a contribution or independent expenditure if the contribution or independent expenditure is made by the person, by an officer of the person, by a separate segregated political fund established and administered by the person as provided in sections 49-1469 to 49-1469.08, or by anyone acting on behalf of the person, officer, or fund.

(3) A person who knowingly or intentionally violates this section shall be guilty of a Class IV felony.

**Source:** Laws 1995, LB 28, § 5; R.S.1943, (2003), § 49-1469.02; Laws 2005, LB 242, § 26.

**49-1476.02 Lottery contractor contribution; receipt prohibited; penalty.**

(1) No person, including a candidate or candidate committee, shall accept or receive any contribution prohibited by section 49-1476.01. A person who knowingly or intentionally accepts any such contribution shall be guilty of a Class III misdemeanor.

(2) Any person, including a candidate or candidate committee, who receives a contribution prohibited by section 49-1476.01 shall, upon being notified of the violation by the commission, transfer a sum equal to the amount of such contribution to a tax-exempt charitable institution.

**Source:** Laws 1995, LB 28, § 6; R.S.1943, (2003), § 49-1469.03; Laws 2005, LB 242, § 27.

**49-1477 Contributions from persons other than committee; information required; violation; penalty.**

No person shall receive a contribution from a person other than a committee unless, for purposes of the recipient person's record-keeping and reporting requirements, the contribution is accompanied by the name and address of each person who contributed more than one hundred dollars to the contribution. Any person violating the provisions of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 77; Laws 1977, LB 41, § 50.

**49-1478 Expenditure; limitations; reports required; violations; penalty.**

(1) An expenditure shall not be made, other than for overhead or normal operating expenses, by an agent or an independent contractor, including an advertising agency, on behalf of or for the benefit of a person unless the expenditure is reported by the committee as if the expenditure were made directly by the committee, or unless the agent or independent contractor files an agent's expenditure report as provided in subsection (3) of this section. The agent or independent contractor shall make known to the committee all information required to be reported by the committee. Any person violating this subsection shall be guilty of a Class III misdemeanor.

(2) An expenditure shall not be made, other than for overhead or normal operating expenses, by a person gathering petition signatures on behalf of or for the benefit of a person, including a ballot question committee, unless the expenditure is reported by the ballot question committee as if the expenditure were made directly by the committee, or unless the person gathering petition signatures files an agent's expenditure report as provided in subsection (3) of this section. The person gathering petition signatures shall make known to the committee all information required to be reported by the committee. For purposes of this section, petition signature means a signature affixed to a petition for the purpose of qualifying a ballot question to appear on a ballot. Any person violating this subsection shall be guilty of a Class III misdemeanor.

(3) A person gathering petition signatures, an agent, or an independent contractor who is required to file an agent's report shall file a separate agent's report for each person on whose behalf an expenditure is made. An agent's report shall be filed with the commission within ten days after the end of the calendar month in which the expenditure is made. An agent's report shall include:

(a) The name, permanent address, temporary address, permanent telephone number, and temporary telephone number of the person making expenditures for the purpose of gathering signatures, the agent, or the independent contractor;

(b) The name, address, and telephone number of the person on whose behalf the expenditure is made;

(c) The name, permanent address, and temporary address of the person to whom the expenditure is made, except that if the expenditure is solely for the services of an individual circulating petitions, such individual's name and address shall not be included;

(d) The date and amount of each expenditure; and

(e) A description of the goods or services purchased and the purpose of the goods or services.

(4) A person required to report under subsection (3) of this section shall include in the report the total amount paid to individual petition circulators during the reporting period but shall not include the name, address, or telephone number of any individual petition circulator if the only payment made to such individual was for services as a petition circulator.

**Source:** Laws 1976, LB 987, § 78; Laws 1977, LB 41, § 51; Laws 1997, LB 49, § 9; Laws 2008, LB39, § 7.

**49-1478.01 Late independent expenditure; reports required; late filing fee.**

(1) An independent committee, including a separate segregated political fund, which makes a late independent expenditure shall report the expenditure to the commission by filing within two days after the date of the expenditure the committee's full name and street address, the amount of the expenditure, and the date of the expenditure. The report shall include (a) the full name and street address of the recipient of the expenditure, (b) the name and office sought of the candidate whose nomination or election is supported or opposed by the expenditure, and (c) the identification of the ballot question, the qualification, passage, or defeat of which is supported or opposed. Filing of a report of a late independent expenditure may be by any written means of communication, including electronic means approved by the commission, and need not contain an original signature. A late independent expenditure shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

(2) A committee which fails to file a report of a late independent expenditure with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such committee shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the late independent expenditure which was required to be reported, not to exceed ten percent of the amount of the late independent expenditure which was required to be reported.

(3) For purposes of this section, late independent expenditure means an independent expenditure as defined in section 49-1428 of one thousand dollars or more made after the closing date for campaign statements as provided in subdivision (1)(b) of section 49-1459.

**Source:** Laws 2000, LB 438, § 6; Laws 2007, LB434, § 2.

**49-1479 Contributions made for transfer or in behalf of a committee; unlawful; exceptions; penalty.**

(1) Except as provided by subsections (3) and (4) of section 49-1479.01, a contribution shall not be made by a person to another person with the agreement or arrangement that the person receiving the contribution will then transfer that contribution to a particular candidate committee.

(2) A candidate committee shall not make a contribution to or an independent expenditure in behalf of another candidate committee, except that a candidate committee may make a contribution to another candidate committee for a fundraising event of such other candidate committee.

(3) Any person violating the provisions of subsection (1) or (2) of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 79; Laws 1977, LB 41, § 52; Laws 1980, LB 535, § 16; Laws 1987, LB 480, § 8.

**49-1479.01 Earmarked contribution; requirements; report; late filing fee; violation; penalty.**

(1) Any contribution by a person made on behalf of or to a candidate or committee, including contributions which are in any way earmarked or otherwise directed to the candidate or committee through an intermediary or agent, shall be considered to be a contribution from the person to the candidate or committee.

(2) For purposes of this section, earmarked shall mean a designation, instruction, or encumbrance, including those which are direct or indirect, express or implied, or oral or written, which results in any part of a contribution or expenditure, including any in-kind expenditure made in exchange for a contribution, being made to or expended on behalf of a candidate or a committee.

(3) Any intermediary or agent, other than a committee, which receives an earmarked contribution shall forward the earmarked contribution to the recipient candidate or committee within ten days after receipt of such contribution.

(4) An intermediary or agent which is not a committee shall file a report of the earmarked contribution with the commission within ten days after receipt of the contribution. Any committee which is an intermediary or agent shall file a report of the earmarked contribution with the commission by the date the next campaign statement is required to be filed. The report of the earmarked contribution filed pursuant to this section shall be on a form prescribed by the commission.

(5) Any intermediary or agent making an earmarked contribution shall disclose to the recipient of the earmarked contribution the name and address of the intermediary or agent and the actual source of the contribution by providing the recipient with a copy of the report of the earmarked contribution at the time that the earmarked contribution is made.

(6) Any person or committee which fails to file a report of an earmarked contribution with the commission as required by this section shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of this section not to exceed seven hundred fifty dollars.

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

**Source:** Laws 1987, LB 480, § 5; Laws 1996, LB 1263, § 5; Laws 1999, LB 416, § 16; Laws 2005, LB 242, § 28.

**49-1479.02 Major out-of-state contributor; report; contents; applicability; late filing fee.**

(1) A major out-of-state contributor shall file with the commission an out-of-state contribution report. An out-of-state contribution report shall be filed on a form prescribed by the commission within ten days after the end of the calendar month in which a person becomes a major out-of-state contributor. For the remainder of the calendar year, a major out-of-state contributor shall file an out-of-state contribution report with the commission within ten days after the end of each calendar month in which the contributor makes a contribution or expenditure.

(2) An out-of-state contribution report shall disclose as to each contribution or expenditure not previously reported (a) the amount, nature, value, and date of the contribution or expenditure, (b) the name and address of the committee, candidate, or person who received the contribution or expenditure, (c) the name and address of the person filing the report, and (d) the name, address, occupation, and employer of each person making a contribution of more than two hundred dollars in the calendar year to the person filing the report.

(3) This section shall not apply to (a) a person who files a report of a contribution or an expenditure pursuant to subsection (2) of section 49-1469, (b) a person required to file a report or campaign statement pursuant to section 49-1469.07, (c) a committee having a statement of organization on file with the commission, or (d) a person or committee registered with the Federal Election Commission.

(4) Any person who fails to file an out-of-state contribution report with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such person shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the contributions or expenditures which were required to be reported, not to exceed ten percent of the amount of the contributions or expenditures which were required to be reported.

**Source:** Laws 1997, LB 49, § 7; Laws 1999, LB 416, § 15; R.S.1943, (2003), § 49-1469.04; Laws 2005, LB 242, § 29; Laws 2007, LB434, § 3.

(c) LOBBYING PRACTICES

**49-1480 Lobbyist; registration; application; contents.**

Every person employed, retained, or authorized as a lobbyist shall, before commencing any lobbying activity, file an application with the Clerk of the Legislature for registration as a lobbyist, and if the clerk is satisfied that the application has been properly prepared the registration shall be deemed to be complete. The application shall be on a form prescribed by the clerk and approved by the Executive Board of the Legislative Council, and shall include as a minimum the following:

(1) The name, permanent residence address, and office address of the lobbyist;

(2) The name and address of the principal of such lobbyist;

(3) The nature of the business of such principal and the amounts or sums given or to be given the lobbyist as compensation or reimbursement for lobbying. A lobbyist who is salaried or retained by a principal need only report that portion of compensation or reimbursement reasonably attributable to lobbying;

(4) A description of the business activity of the lobbyist;

(5) An identification of the matters on which the principal or lobbyist expects to lobby;

(6) If the principal is an industry, trade, or professional association, a specific description of the industry, trade, or profession represented by the principal and the names and addresses of its officers;

(7) If the principal is not an industry, trade, or professional association, a specific description of the interests and groups represented by the principal and the names and addresses of its officers; and

(8) The name and address of any official in the legislative or executive branch, and of any members of any such official's staff or immediate family, who are employed by the lobbyist or any person acting on behalf of such lobbyist if such information is known or reasonably should have been known to the lobbyist.

**Source:** Laws 1976, LB 987, § 80; Laws 1979, LB 162, § 3; Laws 1997, LB 752, § 130; Laws 2001, LB 242, § 7.

**49-1480.01 Application for registration; fee; collection; registration renewal.**

(1) The Clerk of the Legislature shall collect a fee of two hundred dollars for an application for registration by a lobbyist for each principal if the lobbyist receives or will receive compensation for such lobbying. Except as provided by section 49-1434, a lobbyist who receives compensation shall include an individual who is an employee or member of a principal whose duties of employment, office, or membership include engaging in lobbying activities.

(2) A fee of fifteen dollars shall be collected for an application by a lobbyist for each principal if the lobbyist is not receiving and will not be receiving compensation for such lobbying. Any lobbyist who receives compensation who did not anticipate receiving such compensation at the time of application for registration shall, within five days of the receipt of any compensation, file an amended registration form which shall be accompanied by an additional fee of one hundred eighty-five dollars for such year.

(3) The registration of a lobbyist for each of his or her principals may be renewed by the payment of a fee as provided by subsections (1) and (2) of this section. Such fee shall be paid to the Clerk of the Legislature on or before December 31 of each calendar year. The registration of a lobbyist for each of his or her principals shall terminate as of the end of the calendar year for which the lobbyist registered unless the registration is renewed as provided in this section.

**Source:** Laws 1994, LB 872, § 2; Laws 1994, LB 1243, § 3; Laws 2005, LB 242, § 30.

**49-1481 List of registered lobbyists and principals; print in Legislative Journal; additional information; when.**

(1) On the fourth legislative day of each legislative session, the Clerk of the Legislature shall insert the following in the Legislative Journal:

- (a) A list of the names of all lobbyists whose registration is then in effect;
- (b) The name of the principal in whose behalf the lobbyist is registered; and
- (c) Any additional information as directed by the Legislature.

(2) On the last legislative day of each week after the fourth legislative day, the clerk shall cause to be inserted in the Legislative Journal the names of any additional lobbyists and principals who have registered or who have changed their registration.

**Source:** Laws 1976, LB 987, § 81; Laws 2005, LB 242, § 31.

**49-1482 Lobbyists and principals; registration fees; disbursement.**

The Clerk of the Legislature shall charge a fee pursuant to section 49-1480.01 for each application for registration by a lobbyist for each principal. Such fees when collected shall be remitted to the State Treasurer. Three-fourths of such fees shall be credited to the Nebraska Accountability and Disclosure Commission Cash Fund and one-fourth to the Clerk of the Legislature Cash Fund.

**Source:** Laws 1976, LB 987, § 82; Laws 1977, LB 4, § 1; Laws 1982, LB 928, § 41; Laws 1994, LB 872, § 3; Laws 1994, LB 1243, § 4; Laws 2005, LB 242, § 32.

**49-1483 Lobbyist and principal; file separate statements; when; contents.**

(1) Every lobbyist who is registered or required to be registered shall, for each of his or her principals, file a separate statement for each calendar quarter with the Clerk of the Legislature within thirty days after the end of each calendar quarter. Every principal employing a lobbyist who is registered or required to be registered shall file a separate statement for each calendar quarter with the Clerk of the Legislature within thirty days after the end of each calendar quarter.

(2) Each statement shall show the following:

(a) The total amount received or expended directly or indirectly for the purpose of carrying on lobbying activities, with the following categories of expenses each being separately itemized: (i) Miscellaneous expenses; (ii) entertainment, including expenses for food and drink as provided in subdivision (3)(a) of this section; (iii) lodging expenses; (iv) travel expenses; (v) lobbyist compensation, except that when a principal retains the services of a person who has only part-time lobbying duties, only the compensation paid which is reasonably attributable to influencing legislative action need be reported; (vi) lobbyist expense reimbursement; (vii) admissions to a state-owned facility or a state-sponsored industry or event as provided in subdivision (3)(a) of this section; and (viii) extraordinary office expenses directly related to the practice of lobbying;

(b) A detailed statement of any money which is loaned, promised, or paid by a lobbyist, a principal, or anyone acting on behalf of either to an official in the executive or legislative branch or member of such official's staff. The detailed

statement shall identify the recipient and the amount and the terms of the loan, promise, or payment; and

(c) The total amount expended for gifts, other than admissions to a state-owned facility or a state-sponsored industry or event, as provided in subdivision (3)(a) of this section.

(3)(a) Each statement shall disclose the aggregate expenses for entertainment, admissions, and gifts for each of the following categories of elected officials: Members of the Legislature; and officials in the executive branch of the state. Such disclosures shall be in addition to the entertainment expenses reported under subdivision (2)(a)(ii) of this section, admissions reported under subdivision (2)(a)(vii) of this section, and gifts reported under subdivision (2)(c) of this section.

(b) For purposes of reporting aggregate expenses for entertainment for members of the Legislature and officials in the executive branch of the state as required by subdivision (3)(a) of this section, the reported amount shall include the actual amounts attributable to entertaining members of the Legislature and officials in the executive branch of the state. When the nature of an event at which members of the Legislature are entertained makes it impractical to determine the actual cost, the cost of entertainment shall be the average cost per person multiplied by the number of members of the Legislature in attendance. When the nature of an event at which officials in the executive branch of the state are entertained makes it impractical to determine the actual cost, the cost of entertainment shall be the average cost per person multiplied by the number of officials in the executive branch of the state in attendance. For purposes of this subdivision, the average cost per person means the cost of the event divided by the number of persons expected to attend the event.

(4) The lobbyist shall also file any changes or corrections to the information set forth in the registration required pursuant to section 49-1480 so as to reflect the correctness of such information as of the end of each calendar quarter for which such statement is required by this section.

(5) If a lobbyist does not expect to receive lobbying receipts from or does not expect to make lobbying expenditures for a principal, the quarterly statements required by this section as to such principal need not be filed by the lobbyist if the principal and lobbyist both certify such facts in writing to the Clerk of the Legislature. A lobbyist exempt from filing quarterly statements pursuant to this section shall (a) file a statement of activity pursuant to section 49-1488 and (b) resume or commence filing quarterly statements with regard to such principal starting with the quarterly period the lobbyist receives lobbying receipts or makes lobbying expenditures for such principal.

(6) If a principal does not expect to receive lobbying receipts or does not expect to make lobbying expenditures, the quarterly statements required pursuant to this section need not be filed by the principal if the principal and lobbyist both certify such facts in writing to the Clerk of the Legislature. A principal exempt from filing quarterly statements pursuant to this section shall commence or resume filing quarterly statements starting with the quarterly period the principal receives lobbying receipts or makes lobbying expenditures.

(7) A principal shall report the name and address of every person from whom it has received more than one hundred dollars in any one month for lobbying purposes.

(8) For purposes of sections 49-1480 to 49-1492.01, calendar quarter shall mean the first day of January through the thirty-first day of March, the first day of April through the thirtieth day of June, the first day of July through the thirtieth day of September, and the first day of October through the thirty-first day of December.

**Source:** Laws 1976, LB 987, § 83; Laws 1979, LB 162, § 4; Laws 1983, LB 479, § 2; Laws 1991, LB 232, § 4; Laws 1994, LB 872, § 4; Laws 1994, LB 1243, § 5; Laws 2000, LB 1021, § 5; Laws 2001, LB 242, § 8; Laws 2005, LB 242, § 33.

**49-1483.01 Repealed. Laws 2005, LB 242, § 70.**

**49-1483.02 Statement; exemption from filing.**

By rule and regulation, the commission may provide for other criteria for an exemption from the filing of the quarterly statement by lobbyists and principals, pursuant to section 49-1483, if the commission finds all of the following: (1) That strict adherence to the Nebraska Political Accountability and Disclosure Act would result in duplicative reporting; (2) that the exemption would not result in information on lobbyists' or principals' receipts or expenditures being withheld from the public; and (3) that the exemption will not frustrate the purposes of the act.

**Source:** Laws 1991, LB 232, § 8; Laws 1994, LB 872, § 6; Laws 1994, LB 1243, § 7.

**49-1483.03 Lobbyist or principal; special report required; when; late filing fee.**

(1) Any lobbyist or principal who receives or expends more than five thousand dollars for lobbying purposes during any calendar month in which the Legislature is in session shall, within fifteen days after the end of such calendar month, file a special report disclosing for that calendar month all information required by section 49-1483. All information disclosed in a special report shall also be disclosed in the next quarterly report required to be filed. The requirement to file a special report shall not apply to a receipt or expenditure for lobbyist fees for lobbying services which have otherwise been disclosed in the lobbyist's application for registration.

(2) Any lobbyist who fails to file a special report required by this section with the Clerk of the Legislature or the commission shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such lobbyist shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the receipts and expenditures which were required to be reported, not to exceed ten percent of the amount of the receipts and expenditures which were required to be reported.

**Source:** Laws 1994, LB 872, § 5; Laws 1994, LB 1243, § 6; Laws 1996, LB 1263, § 6; Laws 1999, LB 416, § 17; Laws 2007, LB434, § 4.

**49-1483.04 Repealed. Laws 1999, LB 7, § 1.**

**49-1484 Clerk of the Legislature; refer statements to commission; additional details.**

The Clerk of the Legislature shall promptly refer all such statements to the commission which may require the lobbyist or the principal to furnish additional details with respect to the matters which are or should be included in such statements. The Legislature itself may at any time require the furnishing of such additional details.

**Source:** Laws 1976, LB 987, § 84; Laws 1994, LB 872, § 7; Laws 1994, LB 1243, § 8.

**49-1485 Clerk of the Legislature; furnish summary of lobbyist and principal statements to Legislature and press; public records.**

The Clerk of the Legislature shall prepare a summary of the statements filed pursuant to section 49-1483 and, upon request, furnish any member of the Legislature and any member of the press registered with the Legislature a copy of any summary. Each statement shall be public information. The clerk shall furnish a copy of any statement, upon request, to any member of the Legislature and to any member of the press registered with the Legislature.

**Source:** Laws 1976, LB 987, § 85; Laws 1991, LB 220, § 1; Laws 1994, LB 872, § 8; Laws 1994, LB 1243, § 9.

**49-1486 Registration of lobbyists; period valid.**

The registration of a lobbyist shall be valid for a period commencing with the filing of any registration as required by section 49-1480 and ending at the end of the calendar year for which the lobbyist registered unless the registration is renewed as provided by section 49-1480.01 or the registration is terminated prior to the end of the calendar year in the manner prescribed by rules and regulations adopted and promulgated by the commission.

**Source:** Laws 1976, LB 987, § 86; Laws 1977, LB 4, § 2; Laws 1994, LB 872, § 9; Laws 1994, LB 1243, § 10; Laws 2005, LB 242, § 34.

**49-1487 Repealed. Laws 1979, LB 162, § 8.**

**49-1488 Registered lobbyist; statement of activity during regular or special session; when filed.**

Within forty-five days of the completion of every regular or special session of the Legislature, each registered lobbyist shall submit to the Clerk of the Legislature a statement listing the legislation upon which the lobbyist acted, including identification by number of any bill or resolution and the position taken by the lobbyist.

**Source:** Laws 1976, LB 987, § 88; Laws 1991, LB 232, § 5; Laws 1994, LB 872, § 10; Laws 1994, LB 1243, § 11.

**49-1488.01 Statements; late filing fee; reduction or waiver; when.**

(1) Every lobbyist who fails to file a quarterly statement or a statement of activity with the Clerk of the Legislature, pursuant to sections 49-1483 and 49-1488, shall pay to the commission a late filing fee of twenty-five dollars for each day any of such statements are not filed in violation of such sections but not to exceed seven hundred fifty dollars per statement.

(2) A lobbyist required to pay a late filing fee pursuant to subsection (1) of this section may apply to the commission for relief. The commission by order

may reduce the amount of the late filing fee imposed upon such lobbyist if he or she shows the commission that (a) the circumstances indicate no intent to file late, (b) the lobbyist has not been required to pay a late filing fee for two years prior to the time the filing of the statement was due, (c) the late filing of the statement shows that less than five thousand dollars was raised, received, or expended during the reporting period, and (d) a reduction of the late fee would not frustrate the purposes of the Nebraska Political Accountability and Disclosure Act.

(3) A lobbyist required to pay a late filing fee pursuant to subsection (1) of this section who qualifies for an exemption to the filing of quarterly statements pursuant to subsection (5) of section 49-1483 may apply to the commission for relief. The commission by order may reduce or waive the late filing fee and the person shall not be required to make a showing as provided by subsection (2) of this section.

**Source:** Laws 1991, LB 232, § 7; Laws 1994, LB 872, § 11; Laws 1994, LB 1243, § 12; Laws 1998, LB 632, § 6; Laws 1999, LB 416, § 18; Laws 2005, LB 242, § 35.

**49-1489 Lobbyist; records and documents; preservation required; available to commission; exception.**

Each lobbyist shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the statements required to be made pursuant to section 49-1483 for three years after the report containing those items is filed. These records shall be made available for inspection upon request by the commission after reasonable notice. Nothing in this section shall require that a receipt for any food and drink expenditure be kept if such expenditure is in an amount of less than twenty-five dollars.

**Source:** Laws 1976, LB 987, § 89; Laws 1977, LB 4, § 3.

**49-1490 Principal or lobbyist; prohibited acts relating to gifts; penalty.**

(1) No principal, lobbyist, or person acting on behalf of either shall within one calendar month give any gifts with an aggregate value of more than fifty dollars to the following:

- (a) An official or a member of the official's staff in the executive branch of state government;
- (b) An official or a member of the official's staff in the legislative branch of state government; or
- (c) A member of the immediate family of an official in the executive or legislative branch of state government.

(2) No official or member of the official's staff in the executive or legislative branch of state government or member of the official's immediate family shall within one calendar month accept from a principal, lobbyist, or person acting on behalf of either any gifts with an aggregate value of more than fifty dollars.

(3) An admission to a state-owned facility or a state-sponsored industry or event may be given by any sponsoring agency, political subdivision, or publicly funded postsecondary educational institution and accepted regardless of value.

(4) Any person who knowingly and intentionally violates this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 90; Laws 1977, LB 41, § 53; Laws 1979, LB 162, § 5; Laws 1981, LB 134, § 4; Laws 1988, LB 1174, § 2; Laws 1991, LB 232, § 6; Laws 2000, LB 1021, § 6.

**49-1491 Principal, lobbyist, or person acting on behalf of either; false or misleading statements to public officials; prohibited.**

A principal, lobbyist, or anyone acting on behalf of either, shall not knowingly or willfully make any false or misleading statement or misrepresentation of fact to any public official in the executive or legislative branch of state government.

**Source:** Laws 1976, LB 987, § 91; Laws 1979, LB 162, § 7.

**49-1492 Lobbying; prohibited practices; violation; penalty.**

(1) No person shall be employed as a lobbyist for compensation contingent in any manner upon the outcome of an administrative or legislative action.

(2) No person shall instigate the introduction of legislation for the purpose of obtaining employment in opposition thereto.

(3) No person shall attempt to influence the vote of the legislators on any matters pending or to be proposed by the promise of financial support or the financing of opposition to his candidacy at any future election.

(4) No person shall engage in practices which reflect discredit on the practice of lobbying or on the Legislature.

(5) Any person violating the provisions of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 92; Laws 1977, LB 41, § 54.

**49-1492.01 Agency, political subdivision, or publicly funded postsecondary educational institution; gifts; reporting requirements; violations; penalty.**

(1) Any agency, political subdivision, or publicly funded postsecondary educational institution which gives a gift of an admission to a state-owned facility or a state-sponsored industry or event to a public official, a member of a public official's staff, or a member of the immediate family of a public official shall report the gift on a form prescribed by the commission.

(2) The report shall be filed with the Clerk of the Legislature within fifteen days after the end of the calendar quarter in which the gift is given. The report shall include the following:

(a) The identity of the agency, political subdivision, or publicly funded postsecondary educational institution;

(b) A description of the gift;

(c) The value of the gift; and

(d) The name of the recipient of the gift and the following:

(i) If the recipient is an official in the executive or legislative branch of state government, the office held by the official and the branch he or she serves;

(ii) If the recipient is a member of an official's staff in the executive or legislative branch of state government, his or her job title and the name of the official; or

(iii) If the recipient is a member of the immediate family of an official in the executive or legislative branch of state government, his or her relationship to the official and the name of the official.

(3) For purposes of this section, public official does not include an elected or appointed official of a political subdivision or school board.

(4) Any person who knowingly and intentionally violates this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 2000, LB 1021, § 7.

(d) CONFLICTS OF INTEREST

**49-1493 Individuals required to file a statement of financial interests.**

The individuals listed in subdivisions (1) through (13) of this section shall file with the commission a statement of financial interests as provided in sections 49-1496 and 49-1497 for the preceding calendar year on or before April 1 of each year in which such individual holds such a position. An individual who leaves office shall, within thirty days after leaving office, file a statement covering the period since the previous statement was filed. Disclosure of the interest named in sections 49-1496 to 49-1498 shall be made by:

(1) An individual holding a state executive office as provided in Article IV of the Constitution of Nebraska, including the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, Tax Commissioner, and heads of such other executive departments as set forth in the Constitution or as may be established by law;

(2) An individual holding the office of Commissioner of Education, member of the State Board of Education, member of the Board of Regents of the University of Nebraska with the exception of student members, or member of the Coordinating Commission for Postsecondary Education;

(3) A member of the Board of Parole;

(4) A member of the Public Service Commission;

(5) A member of the Legislature;

(6) A member of the board of directors or an officer of a district organized under the provisions of Chapter 70;

(7) A member of any board or commission of the state or any county which examines or licenses a business or which determines rates for or otherwise regulates a business;

(8) A member of a land-use planning commission, zoning commission, or authority of the state or any county with a population of more than one hundred thousand inhabitants;

(9) An elected official of a city of the primary or metropolitan class;

(10) An elected county official;

(11) A member of the Nebraska Environmental Trust Board;

(12) An individual employed at the University of Nebraska-Lincoln in the position of Head Football Coach, Men's Basketball Coach, or Women's Basketball Coach; and

(13) An official or employee of the state designated by rules and regulations of the commission who is responsible for taking or recommending official action of a nonministerial nature with regard to:

- (a) Contracting or procurement;
- (b) Administering or monitoring grants or subsidies;
- (c) Land-use planning or zoning;
- (d) Inspecting, licensing, regulating, or auditing any person; or
- (e) Any similar action.

**Source:** Laws 1976, LB 987, § 93; Laws 1983, LB 214, § 2; Laws 1991, LB 663, § 35; Laws 1999, LB 417, § 1; Laws 2001, LB 242, § 9; Laws 2002, LB 1003, § 35.

**49-1494 Candidates for elective office; statement of financial interest; filing; time; where; effect; supplementary statements.**

(1) An individual who files to appear on the ballot for election to an elective office specified in section 49-1493 shall:

(a) File a statement of financial interests for the preceding calendar year at the same time and with the same official with whom the individual files for office; and

(b) File a copy of the statement with the commission within five days after filing for office.

(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 fifteen days after becoming a candidate or being appointed to that elective office.

(3) A filing to appear on the ballot shall not be accepted by a filing official unless a statement is properly filed.

(4) A statement of financial interests shall be preserved for a period of not less than five years by the commission and not less than eighteen months by the officials other than the commission with whom it is filed.

(5) This section does not apply to a person who has already filed a statement for the preceding calendar year.

(6) If the candidate for an elective office specified in section 49-1493 files to appear on the ballot for election prior to January 1 of the year in which the election is held, the candidate shall file supplementary statements with the appropriate filing officials on or before April 1 of the year in which the election is held covering the preceding calendar year.

**Source:** Laws 1976, LB 987, § 94; Laws 1983, LB 479, § 3; Laws 2001, LB 242, § 10; Laws 2005, LB 242, § 36.

**49-1495 Individuals appointed to office; statement of financial interests; filing; time; where; public information.**

An individual appointed to an office specified in section 49-1493 shall, before assuming duties, file a statement for the preceding calendar year with the commission. When confirmation is required, the individual shall file a statement of financial interests for the preceding calendar year with the commission

prior to the confirmation hearing or prior to assuming his or her duties, whichever comes first.

**Source:** Laws 1976, LB 987, § 95; Laws 1989, LB 815, § 2; Laws 1990, LB 534, § 1; Laws 2001, LB 242, § 11; Laws 2003, LB 349, § 2.

**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 the 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.

**49-1497 Financial institution, defined; irrevocable trust; how treated.**

(1) For purposes of section 49-1496, financial institution means:

- (a) A bank or banking corporation as defined in section 8-101;
- (b) A federal bank or branch bank;
- (c) An insurance company providing a loan on an insurance policy;
- (d) A small loan company;
- (e) A state or federal savings and loan association or credit union; or
- (f) The federal government or any political subdivision thereof.

(2) The res or the income of an irrevocable trust of a member of the individual's immediate family is not required to be reported pursuant to section 49-1496.

**Source:** Laws 1976, LB 987, § 97; Laws 2005, LB 242, § 38.

**49-1498 Members of a nonelective governmental body or of a committee or subcommittee of a governmental body; no financial interest in matters before body; exception.**

Unless otherwise provided by law, the majority of the members of a nonelective governmental body, or of a committee or subcommittee of a governmental body, whether that body is elective or not, shall not have a financial interest, either personally or through a member of their immediate family or a business with which they are associated, other than an interest of a de minimis nature or an interest that is not distinct from that of the general public, in matters subject to the jurisdiction of the body or committee or subcommittee.

**Source:** Laws 1976, LB 987, § 98.

**49-1499 Legislature; discharge of official duties; potential conflict; actions required.**

(1) A member of the Legislature who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(a) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict, and if he or she will not abstain from voting, deliberating, or taking other action on the matter, the statement shall state why, despite the potential conflict, he or she intends to vote or otherwise participate; and

(b) Deliver a copy of the statement to the commission and to the Speaker of the Legislature who shall cause the statement to be filed with the Clerk of the Legislature to be held as a matter of public record.

(2) Nothing in this section shall prohibit any member of the Legislature from voting, deliberating, or taking other action on any matter that comes before the Legislature.

(3) The member of the Legislature may abstain from voting, deliberating, or taking other action on the matter on which the potential conflict exists. He or she may have the reasons for the abstention recorded in the Legislative Journal.

**Source:** Laws 1976, LB 987, § 99; Laws 1981, LB 134, § 8; Laws 1992, LB 556, § 11; Laws 1995, LB 434, § 9; Laws 2001, LB 242, § 12; Laws 2005, LB 242, § 39.

**49-1499.01 Repealed. Laws 2009, LB 322, § 6.**

**49-1499.02 Executive branch; discharge of official duties; potential conflict; actions required.**

(1) An official or employee of the executive branch of state government who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(a) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and

(b) Deliver a copy of the statement to the commission and to his or her immediate superior, if any, who shall assign the matter to another. If the immediate superior does not assign the matter to another or if there is no immediate superior, the official or employee shall take such action as the commission shall advise or prescribe to remove himself or herself from influence over the action or decision on the matter.

(2) This section does not prevent such a person from (a) making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made or (b) making or participating in the making of a governmental decision if the potential conflict of interest is based upon a business association and the business association exists only as the result of his or her position on a commodity board. A person acting pursuant to subdivision (a) of this subsection shall report the occurrence to the commission.

(3) For purposes of this section, commodity board means only the following:

(a) Corn Development, Utilization, and Marketing Board;

(b) Nebraska Dairy Industry Development Board;

(c) Grain Sorghum Development, Utilization, and Marketing Board;

(d) Nebraska Wheat Development, Utilization, and Marketing Board;

(e) Dry Bean Commission;

(f) Nebraska Potato Development Committee; and

(g) Nebraska Poultry and Egg Development, Utilization, and Marketing Committee.

**Source:** Laws 2001, LB 242, § 13; Laws 2005, LB 242, § 41.

**49-1499.03 Political subdivision personnel; school board; discharge of official duties; potential conflict; actions required; nepotism; restrictions on supervision of family members.**

(1)(a) An official of a political subdivision designated in section 49-1493 who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and

(ii) Deliver a copy of the statement to the commission and to the person in charge of keeping records for the political subdivision who shall enter the statement onto the public records of the subdivision.

(b) The official shall take such action as the commission shall advise or prescribe to remove himself or herself from influence over the action or decision on the matter.

(c) This subsection does not prevent such a person from making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made. A person acting pursuant to this subdivision shall report the occurrence to the commission.

(2)(a) Any person holding an elective office of a city or village not designated in section 49-1493 and any person holding an elective office of a school district who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict;

(ii) Deliver a copy of the statement to the person in charge of keeping records for the city, village, or school district who shall enter the statement onto the public records of the city, village, or school district; and

(iii) Abstain from participating or voting on the matter in which the person holding elective office has a conflict of interest.

(b) The person holding elective office may apply to the commission for an opinion as to whether the person has a conflict of interest.

(3) Matters involving an interest in a contract are governed either by sections 49-14,102 and 49-14,103 or by sections 49-14,103.01 to 49-14,103.06. Matters involving the hiring of an immediate family member are governed by section 49-1499.04. Matters involving nepotism or the supervision of a family member by an official or employee in the executive branch of state government are governed by section 49-1499.07.

**Source:** Laws 2001, LB 242, § 14; Laws 2005, LB 242, § 42; Laws 2009, LB322, § 3.

**49-1499.04 Political subdivision; employment of family member; when; exception.**

(1) An official or employee of a political subdivision may employ or recommend or supervise the employment of an immediate family member if (a) he or she does not abuse his or her official position as described in section 49-1499.05, (b) he or she makes a full disclosure on the record to the governing body of the political subdivision and a written disclosure to the person in charge of keeping records for the governing body, and (c) the governing body of the political subdivision approves the employment or supervisory position.

(2) No official or employee shall employ an immediate family member (a) without first having made a reasonable solicitation and consideration of applications for such employment, (b) who is not qualified for and able to perform the duties of the position, (c) for any unreasonably high salary, or (d) who is not required to perform the duties of the position.

(3) No official or employee of a political subdivision shall terminate the employment of another employee so as to make funds or a position available for the purpose of hiring an immediate family member.

(4) This section does not apply to an immediate family member of an official or employee who (a) was previously employed in a position subject to this section prior to the election or appointment of the official or employee or (b) was employed in a position subject to provisions similar to this section prior to September 1, 2001.

(5) Prior to, upon, or as soon as reasonably possible after the official date of taking office, a newly elected or appointed official or employee shall make a full disclosure of any immediate family member employed in a position subject to subdivision (4)(a) or (b) of this section.

**Source:** Laws 2001, LB 242, § 16; Laws 2005, LB 242, § 43.

**49-1499.05 Official or employee; abuse of official position.**

An official or employee shall not abuse his or her official position. Abuse of an official position includes, but is not limited to, employing an immediate family member (1) who is not qualified for and able to perform the duties of the position, (2) for any unreasonably high salary, or (3) who is not required to perform the duties of the position.

**Source:** Laws 2001, LB 242, § 17.

**49-1499.06 Nebraska Environmental Trust Board; abstention; when.**

Any member of the Nebraska Environmental Trust Board who is also a director of a state agency shall abstain from voting on applications pursuant to

the Nebraska Environmental Trust Act which would provide funding primarily to his or her agency.

**Source:** Laws 2002, LB 1003, § 36.

**Cross References**

Nebraska Environmental Trust Act, see section 81-15,167.

**49-1499.07 Executive branch; nepotism prohibited; restrictions on supervisors; legislative intent for legislative branch and judicial branch.**

(1) For purposes of this section:

(a) Family member means an individual who is the spouse, child, parent, brother, sister, grandchild, or grandparent, by blood, marriage, or adoption, of an official or employee in the executive branch of state government;

(b) Nepotism means the act of hiring, promoting, or advancing a family member in state government or recommending the hiring, promotion, or advancement of a family member in state government, including initial appointment and transfer to other positions in state government; and

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

(2) Except as authorized in subsection (5) of this section, an official or employee in the executive branch of state government shall not engage in nepotism.

(3) Except as authorized in subsection (5) of this section, an official or employee in the executive branch of state government shall not act as a supervisor to his or her family member.

(4) In addition to the other penalties authorized under the Nebraska Political Accountability and Disclosure Act, any person violating this section may be subject to disciplinary action.

(5)(a) The head of an agency may, upon a written showing of good cause, grant an exception to subsection (2) or (3) of this section. The written showing of good cause shall be filed with the commission and shall be considered a public record.

(b) An official or employee in the executive branch of state government who becomes a supervisor to his or her family member other than by means of nepotism shall notify the head of the agency within seven days of becoming aware of such situation and may continue to act as a supervisor until the head of the agency remedies the situation. The head of the agency shall act as soon as practicable.

(6) It is the intent of the Legislature that the legislative branch and the judicial branch of state government develop and implement internal policies prohibiting nepotism and the supervision of a family member.

**Source:** Laws 2009, LB322, § 2.

**49-14,100 Advisory opinions; application; effect.**

Any person who is in doubt as to the propriety of action proposed to be taken by him may apply to the commission for an advisory opinion relating thereto, and the commission shall have authority to render such opinions. When an advisory opinion is issued pursuant to a complete and accurate request, such opinion shall be a complete defense to any charge of violation of sections 49-1493 to 49-14,104 as to any action taken strictly subject to the terms of such opinion.

**Source:** Laws 1976, LB 987, § 100.

**49-14,101 Public official, employee, candidate, and other individuals; prohibited acts; penalty.**

(1) No person shall offer or give to the following persons anything of value, including a gift, loan, contribution, reward, or promise of future employment, based on an agreement that the vote, official action, or judgment of any public official, public employee, or candidate would be influenced thereby:

- (a) A public official, public employee, or candidate;
- (b) A member of the immediate family of an individual listed in subdivision (a) of this subsection; or
- (c) A business with which an individual listed under subdivision (a) or (b) of this subsection is associated.

(2) No person listed in subsection (1) of this section shall solicit or accept anything of value, including a gift, loan, contribution, reward, or promise of future employment based on an agreement that the vote, official action, or judgment of the public official, public employee, or candidate would be influenced thereby.

(3) Except as provided in section 23-3113, any person violating this section shall be guilty of a Class III misdemeanor, except that no vote by any member of the Legislature shall subject such member to any criminal sanction under this section.

**Source:** Laws 1976, LB 987, § 101; Laws 1977, LB 41, § 55; Laws 1983, LB 370, § 22; Laws 1986, LB 548, § 14; Laws 1994, LB 1243, § 13; Laws 2001, LB 242, § 18.

This section has not been impliedly repealed by section 28-917. State v. Null, 247 Neb. 192, 526 N.W.2d 220 (1995).

**49-14,101.01 Financial gain; gift of travel or lodging; prohibited acts; violation; penalty; permissible activities and uses.**

(1) A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.

(2) A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.

(3) Unless otherwise restricted by an employment contract, a collective-bargaining agreement, or a written agreement or policy approved by a govern-

ment body, a public official or public employee may use a telecommunication system, a cellular telephone, an electronic handheld device, or a computer under the control of a government body for email, text messaging, a local call, or a long-distance call to a child at home, a teacher, a doctor, a day care center, a baby-sitter, a family member, or any other person to inform any such person of an unexpected schedule change or for other essential personal business. Any such communication shall be kept to a minimum and shall not interfere with the conduct of public business. A public official or public employee shall be responsible for payment or reimbursement of charges, if any, that directly result from any such communication. An agency or government body may establish procedures for reimbursement of charges pursuant to this subsection.

(4) A public official shall not accept a gift of travel or lodging or a gift of reimbursement for travel or lodging if the gift is made so that a member of the public official's immediate family can accompany the public official in the performance of his or her official duties.

(5) A member of the immediate family of a public official shall not accept a gift of travel or lodging or a gift of reimbursement for travel or lodging if the gift is made so that a member of the public official's immediate family can accompany the public official in the performance of his or her official duties.

(6) This section does not prohibit the Executive Board of the Legislative Council from adopting policies that allow a member of the Legislature to install and use with private funds a telephone line, telephone, and telefax machine in his or her public office for private purposes.

(7) Except as provided in section 23-3113, any person violating this section shall be guilty of a Class III misdemeanor, except that no vote by any member of the Legislature shall subject such member to any criminal sanction under this section.

**Source:** Laws 2001, LB 242, § 19; Laws 2002, LB 1086, § 4; Laws 2005, LB 242, § 44; Laws 2009, LB626, § 4.

**49-14,101.02 Public official or public employee; use of public resources or funds; prohibited acts; exceptions.**

(1) For purposes of this section, public resources means personnel, property, resources, or funds under the official care and control of a public official or public employee.

(2) Except as otherwise provided in this section, a public official or public employee shall not use or authorize the use of public resources for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.

(3) This section does not prohibit a public official or public employee from making government facilities available to a person for campaign purposes if the identity of the candidate or the support for or opposition to the ballot question is not a factor in making the government facility available or a factor in determining the cost or conditions of use.

(4) This section does not prohibit a governing body from discussing and voting upon a resolution supporting or opposing a ballot question or a public corporation organized under Chapter 70 from otherwise supporting or opposing a ballot question concerning the sale or purchase of its assets.

(5) This section does not prohibit a public official or a public employee under the direct supervision of a public official from responding to specific inquiries by the press or the public as to his or her opinion regarding a ballot question or from providing information in response to a request for information.

(6) This section does not prohibit a member of the Legislature from making use of public resources in expressing his or her opinion regarding a candidate or a ballot question or from communicating that opinion. A member is not authorized by this section to utilize mass mailings or other mass communications at public expense for the purpose of campaigning for or against the nomination or election of a candidate. A member is not authorized by this section to utilize mass mailings at public expense for the purpose of qualifying, supporting, or opposing a ballot question.

(7) This subsection applies to public officials other than members of the Legislature provided for in subsection (6) of this section. This section does not prohibit, in the normal course of his or her duties, a public official or a public employee under the direct supervision of a public official from using public resources to research and prepare materials to assist the government body for which the individual is a public official or public employee in determining the effect of the ballot question on the government body. This section does not authorize mass mailings, mass duplication, or other mass communications at public expense for the purpose of qualifying, supporting, or opposing a ballot question. Mass communications shall not include placing public records demonstrating the consequences of the passage or defeat of a ballot question affecting the government body for which the individual is a public official or public employee on existing web sites of such government body.

(8) Nothing in this section prohibits a public official from campaigning for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate when no public resources are used.

(9) Nothing in this section prohibits a public employee from campaigning for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate when no public resources are used. Except as otherwise provided in this section, a public employee shall not engage in campaign activity for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate while on government work time or when otherwise engaged in his or her official duties.

(10) This section does not prohibit an employee of the Legislature from using public resources consistent with this section for the purpose of researching or campaigning for or against the qualification, passage, or defeat of a ballot question if the employee is under the direction and supervision of a member of the Legislature.

(11) Nothing in this section prohibits a public official or public employee from identifying himself or herself by his or her official title.

**Source:** Laws 2001, LB 242, § 20; Laws 2005, LB 242, § 45; Laws 2009, LB626, § 5.

The filming of a city council member in his city office for the purpose of creating a video advertisement for his reelection campaign was not a "use" of resources in violation of this section. *Vokal v. Nebraska Acct. & Disclosure Comm.*, 276 Neb. 988, 759 N.W.2d 75 (2009).

This section is penal in nature and must be strictly construed in the context of the object sought to be accomplished, the evils and mischiefs sought to be remedied, and the purpose sought to be served. *Vokal v. Nebraska Acct. & Disclosure Comm.*, 276 Neb. 988, 759 N.W.2d 75 (2009).

**49-14,101.03 Public official or public employee; incidental or de minimis use of public resources; permissible activities and uses.**

(1) Any use of public resources by a public official or public employee which is incidental or de minimis shall not constitute a violation of section 49-14,101.01 or 49-14,101.02.

(2) For purposes of sections 49-14,101.01 and 49-14,101.02, a resource of government, including a vehicle, shall not be considered a public resource and personal use shall not be prohibited if (a) the use of the resource for personal purposes is part of the public official's or public employee's compensation provided in an employment contract or a written policy approved by a government body and (b) the personal use of the resource as compensation is reported in accordance with the Internal Revenue Code of 1986, as amended, and taxes, if any, are paid. If authorized by the contract or policy, the resource may be used whether or not the public official or public employee is engaged in the duties of his or her public office or public employment.

(3) Use of a government vehicle by a public official or public employee to travel to a designated location or the home of the public official or public employee is permissible when the primary purpose of the travel serves a government purpose and the use is pursuant to a written policy approved by a government body.

(4) Pursuant to a collective-bargaining agreement, a public facility may be used by a bargaining unit to meet regarding activities of the union or bargaining unit. This section shall not authorize the use of public resources for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.

(5) Nothing in the Nebraska Political Accountability and Disclosure Act prohibits a public official or public employee from using his or her personal cellular telephone, electronic handheld device, or computer to access a wireless network to which access is provided to the public by a government body.

**Source:** Laws 2009, LB626, § 3.

**49-14,102 Contracts with government bodies; procedure; purpose.**

(1) Except as otherwise provided by law, no public official or public employee, a member of that individual's immediate family, or business with which the individual is associated shall enter into a contract valued at two thousand dollars or more, in any one year, with a government body unless the contract is awarded through an open and public process.

(2) For purposes of this section, an open and public process includes prior public notice and subsequent availability for public inspection during the regular office hours of the contracting government body of the proposals considered and the contract awarded.

(3) No contract may be divided for the purpose of evading the requirements of this section.

(4) This section shall not apply to a contract when the public official or public employee does not in any way represent either party in the transaction.

(5) This section prohibits public officials and public employees from engaging in certain activities under circumstances creating a substantial conflict of interest. This section is not intended to penalize innocent persons, and a contract shall not be absolutely void by reason of this section.

**Source:** Laws 1976, LB 987, § 102; Laws 2005, LB 242, § 46.

**49-14,103 Contract; conflict of interest; voidable; decree.**

(1) A contract involving a prohibited conflict of interest under section 49-14,102 shall be voidable only by decree of a court of proper jurisdiction in an action brought by any citizen of this state as to any person that entered into the contract or took assignment thereof, with actual knowledge of the prohibited conflict. In the case of a person other than an individual, the actual knowledge must be that of an individual or body finally approving the contract for the person.

(2) An action to void any contract shall be brought within one year after discovery of circumstances suggesting the existence of a violation.

(3) Any such decree voiding such contract may, to meet the ends of justice, provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the state or political subdivision has benefited thereby.

(4) Sections 49-14,102 and 49-14,103 shall not apply to a contract for labor which is negotiated or is being negotiated pursuant to the laws of this state.

**Source:** Laws 1976, LB 987, § 103; Laws 2005, LB 242, § 47.

**49-14,103.01 Officer, defined; interest in contract prohibited; when.**

(1) For purposes of sections 49-14,103.01 to 49-14,103.06, unless the context otherwise requires, officer means (a) a member of the board of directors of a natural resources district, (b) a member of any board or commission of any county, school district, city, or village which spends and administers its own funds, who is dealing with a contract made by such board or commission, (c) any elected county, school district, educational service unit, city, or village official, and (d) a member of any board of directors or trustees of a hospital district as provided by the Nebraska Local Hospital District Act or a county hospital as provided by sections 23-3501 to 23-3519. Officer does not mean volunteer firefighters or ambulance drivers with respect to their duties as firefighters or ambulance drivers.

(2) Except as provided in section 49-1499.04 or 70-624.04, no officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party. The existence of such an interest in any contract shall render the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment of such contract with actual knowledge of the prohibited conflict.

(3) An action to have a contract declared void under this section may be brought by the county attorney, the governing body, or any resident within the jurisdiction of the governing body and shall be brought within one year after the contract is signed or assigned. The decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the governing body has benefited thereby.

(4) The prohibition in this section shall apply only when the officer or his or her parent, spouse, or child (a) has a business association as defined in section 49-1408 with the business involved in the contract or (b) will receive a direct pecuniary fee or commission as a result of the contract.

(5) The prohibition in this section does not apply if the contract is an agenda item approved at a board meeting and the interested officer:

(a) Makes a declaration on the record to the governing body responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;

(b) Does not vote on the matters of granting the contract, making payments pursuant to the contract, or accepting performance of work under the contract, or similar matters relating to the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matters; and

(c) Does not act for the governing body which is party to the contract as to inspection or performance under the contract in which he or she has an interest.

(6) An officer who (a) has no business association as defined in section 49-1408 with the business involved in the contract or (b) will not receive a direct pecuniary fee or commission as a result of the contract shall not be deemed to have an interest within the meaning of this section.

(7) The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of any such governing body by a financial institution shall not be considered a contract for purposes of this section. The ownership of less than five percent of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section.

(8) If an officer's parent, spouse, or child is an employee of his or her governing body, the officer may vote on all issues of the contract which are generally applicable to (a) all employees or (b) all employees within a classification and do not single out his or her parent, spouse, or child for special action.

(9) Section 49-14,102 does not apply to contracts covered by sections 49-14,103.01 to 49-14,103.06.

(10)(a) This section does not prohibit a director of a natural resources district from acting as a participant in any of the conservation or other general district programs which are available for like participation to other residents and landowners of the district or from granting, selling, or otherwise transferring to such district any interest in real property necessary for the exercise of its powers and authorities if the cost of acquisition thereof is equal to or less than that established by a board of three credentialed real property appraisers or by a court of competent jurisdiction in an eminent domain proceeding.

(b) District payments to a director of a natural resources district of the market value for real property owned by him or her and needed for district projects, or for cost sharing for conservation work on such director's land or land in which a director may have an interest, shall not be deemed subject to this section.

**Source:** Laws 1986, LB 548, § 2; Laws 1987, LB 134, § 8; Laws 1987, LB 688, § 10; Laws 1990, LB 1153, § 55; Laws 1991, LB 203, § 2; Laws 1994, LB 1107, § 2; Laws 2001, LB 242, § 21; Laws 2005, LB 242, § 48; Laws 2006, LB 778, § 5.

**Cross References**

Nebraska Local Hospital District Act, see section 23-3528.

**49-14,103.02 Contract with officer; information required; ledger maintained.**

(1) The person charged with keeping records for each governing body shall maintain separately from other records a ledger containing the information listed in subdivisions (1)(a) through (e) of this section about every contract entered into by the governing body in which an officer of the body has an interest and for which disclosure is made pursuant to section 49-14,103.01. Such information shall be kept in the ledger for five years from the date of the officer's last day in office and shall include the:

- (a) Names of the contracting parties;
- (b) Nature of the interest of the officer in question;
- (c) Date that the contract was approved by the governing body;
- (d) Amount of the contract; and
- (e) Basic terms of the contract.

(2) The information supplied relative to the contract shall be provided no later than ten days after the contract has been signed by both parties. The ledger kept pursuant to this section shall be available for public inspection during the normal working hours of the office in which it is kept.

**Source:** Laws 1986, LB 548, § 3; Laws 2001, LB 242, § 22; Laws 2005, LB 242, § 49.

#### **49-14,103.03 Open account with officer; how treated.**

(1) An open account established for the benefit of any governing body with a business in which an officer has an interest shall be deemed a contract subject to sections 49-14,103.01 to 49-14,103.06.

(2) The statement required to be filed by section 49-14,103.02 shall be filed within ten days after such account is opened. Thereafter, the person charged with keeping records for such governing body shall maintain a running account of amounts purchased on the open account.

(3) Purchases made from petty cash or a petty cash fund shall not be subject to sections 49-14,103.01 to 49-14,103.06.

**Source:** Laws 1986, LB 548, § 4; Laws 2005, LB 242, § 50.

#### **49-14,103.04 Violations; penalties.**

(1) Any officer who knowingly violates sections 49-14,103.01 to 49-14,103.03 shall be guilty of a Class III misdemeanor.

(2) Any officer who negligently violates sections 49-14,103.01 to 49-14,103.03 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1986, LB 548, § 5; Laws 2005, LB 242, § 51.

#### **49-14,103.05 Governing body; prohibit certain contracts.**

Notwithstanding sections 49-14,103.01 to 49-14,103.03, any governing body may prohibit contracts over a specific dollar amount in which an officer of such body may have an interest.

**Source:** Laws 1986, LB 548, § 6.

#### **49-14,103.06 Governing body; exempt certain contracts.**

Any governing body may exempt from sections 49-14,103.01 to 49-14,103.03 contracts involving one hundred dollars or less in which an officer of such body may have an interest.

**Source:** Laws 1986, LB 548, § 7.

**49-14,103.07 Filing of potential conflict of interest statement not required; when.**

Individuals required to make disclosures pursuant to section 49-1499.04 or sections 49-14,103.01 to 49-14,103.06 shall not be required to file potential conflict of interest statements pursuant to section 49-1499.03.

**Source:** Laws 1986, LB 548, § 8; Laws 2001, LB 242, § 23.

**49-14,104 Official or full-time employee of executive branch; not to represent a person or act as an expert witness; when; violation; penalty.**

(1) An official or full-time employee of the executive branch of state government shall not represent a person or act as an expert witness for compensation before a government body when the action or nonaction of the government body is of a nonministerial nature, except in a matter of public record in a court of law.

(2) This prohibition shall not apply to an official or employee acting in an official capacity.

(3) Any person violating this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 104; Laws 1977, LB 41, § 56; Laws 2005, LB 242, § 52.

(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

**49-14,105 Nebraska Accountability and Disclosure Commission; established; members; appointment; procedure.**

There is hereby established the Nebraska Accountability and Disclosure Commission. The commission shall be composed of nine members, including the Secretary of State. The eight appointed members shall be appointed, subject to the provisions of section 49-14,110, as follows:

(1) Four members shall be appointed by the Governor in the following manner:

(a) One member from each of two lists submitted by the Legislature. Each list shall contain at least five individuals who are qualified to serve pursuant to section 49-14,106 and subsection (2) of section 49-14,111; and

(b) Two members from the citizenry of the state at large; and

(2) Four members shall be appointed by the Secretary of State in the following manner:

(a) One member from a list of at least five individuals who are qualified to serve pursuant to section 49-14,106 and subsection (2) of section 49-14,111 submitted by the Democrat state chairperson;

(b) One member from a list of at least five individuals who are qualified to serve pursuant to section 49-14,106 and subsection (2) of section 49-14,111 submitted by the Republican state chairperson; and

(c) Two members from the citizenry of the state at large.

**Source:** Laws 1976, LB 987, § 105; Laws 1979, LB 54, § 1; Laws 1990, LB 534, § 2.

**49-14,106 Commission members; appointment.**

The Governor and Secretary of State shall make their appointments in such a manner as to assure that not more than four of the eight appointed members of the commission shall be from the same political party and at least one member shall be registered as an independent and such person shall have been so registered for at least two years prior to his appointment. The appointments provided for in subdivisions (1)(a), (2)(a), and (2)(b) of section 49-14,105 shall be made prior to any other appointments. The appointment provided for in subdivision (1)(b) of section 49-14,105 shall precede the appointment provided for in subdivision (2)(c) of section 49-14,105.

**Source:** Laws 1976, LB 987, § 106; Laws 1979, LB 54, § 2.

**49-14,107 Memberships on commission; increased; when; manner.**

If a political party other than a legally recognized party shall receive at least five percent of the entire vote of the state at a general election, the membership of the commission shall be increased by one. The additional member shall be appointed by the Governor from a list of at least five individuals who are qualified to serve pursuant to section 49-14,106 and subsection (2) of section 49-14,111 submitted by the state chairperson of the political party receiving such five percent vote and shall be subject to confirmation by the Legislature in the same manner as the other appointed commissioners are selected and confirmed. If two or more of the individuals whose names appear on such list submitted to the Governor are unwilling to withdraw from activities or resign from positions as required by section 49-14,114, the Governor shall follow the procedure prescribed in section 49-14,112. Should any political party fail to poll at least five percent of the entire vote of the state at a general election, the position of that party shall be terminated, except that any person serving as a member may serve to the end of that person's term.

**Source:** Laws 1976, LB 987, § 107; Laws 1990, LB 534, § 3.

**49-14,108 Commission; members; file a statement of financial interests; when.**

Each person appointed to the commission by the Governor or the Secretary of State shall file with the commission a statement of financial interests, pursuant to sections 49-14,93 to 49-14,104, prior to assuming his or her duties or prior to the legislative confirmation hearing, whichever occurs first.

**Source:** Laws 1976, LB 987, § 108; Laws 1990, LB 534, § 4.

**49-14,109 Legislative committee; conduct open hearings of persons appointed to the commission.**

The appropriate legislative committee, to be determined under the rules of the Legislature, shall conduct open hearings with respect to the qualifications of each person appointed to the commission and submitted for approval by the Governor or the Secretary of State, and under no circumstances may such hearings be closed to the public. Hearings need not be held regarding a person

who has, in a written letter to the Governor, withdrawn his or her name from consideration.

**Source:** Laws 1976, LB 987, § 109; Laws 1979, LB 54, § 3.

**49-14,110 Commission; appointments; legislative approval.**

All appointments whether initial or subsequent shall be subject to the approval of a majority of the members of the Legislature, if the Legislature is in session. If the Legislature is not in session, any appointment 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.

**Source:** Laws 1976, LB 987, § 110; Laws 1979, LB 54, § 4; Laws 1990, LB 534, § 5.

**49-14,111 Commission; members; terms.**

(1) The appointed members of the commission shall serve for terms of six years, except that, of the members first appointed:

(a) The Governor shall designate (i) one individual from a list submitted by the Legislature to serve a term of one year; (ii) the individual appointed at large to serve a term of three years; (iii) one individual from a list submitted by the Legislature to serve a term of five years; and (iv) an additional individual appointed at large to serve a term of six years; and

(b) The Secretary of State shall designate (i) the individual from the list submitted by the Democrat state chairperson to serve a term of two years; (ii) the individual appointed at large to serve a term of four years; (iii) the individual from the list submitted by the Republican state chairperson to serve a term of six years; and (iv) the additional individual appointed at large to serve a term of six years.

(2) All succeeding appointments to the commission shall be made in the same manner as the original appointments are made and succeeding appointees shall have the same qualifications as their predecessors. Each such appointment shall be made in such a manner so that by succeeding appointments the appointed membership of the commission consists of not more than three members from any one congressional district.

**Source:** Laws 1976, LB 987, § 111; Laws 1979, LB 54, § 5.

**49-14,112 Commission; members; vacancy; how filled.**

(1) When a vacancy occurs by expiration of a term of office or otherwise, which vacancy is subject to an appointment from a list pursuant to the provisions of section 49-14,105, such list shall be submitted to the Governor or the Secretary of State not later than thirty days after such vacancy occurs.

(2) If the appointment is subject to a list pursuant to subdivision (1)(a) of section 49-14,105, and the Legislature is not in session, such list may be submitted by the Executive Board of the Legislative Council.

(3) The Governor or the Secretary of State shall make his or her appointment within thirty days of receiving the list provided for in section 49-14,105 unless two or more of the individuals whose names appear on the list are unwilling to withdraw from activities or resign from positions as required by section 49-14,114. If such individuals are unwilling to so withdraw or resign, the Governor or the Secretary of State shall notify the provider of the list. Within

thirty days after such notification is received, a new list of names of at least five individuals shall be submitted to the Governor or Secretary of State. Such new list shall not include the individuals included in the initial list who were unwilling to withdraw from activities or resign from positions as required by section 49-14,114.

(4) The Governor or Secretary of State shall appoint an individual from the new list within thirty days of receipt unless two or more of the individuals whose names appear on the second list are unwilling to withdraw from activities or resign from positions as required by section 49-14,114. In such event, the Governor or Secretary of State shall appoint an individual of his or her own choosing within thirty days after the receipt of the new list.

(5) If the Governor or Secretary of State does not receive the initial list within thirty days of a vacancy, the Governor or Secretary of State may make an appointment of his or her own choosing. If the Governor or Secretary of State does not receive the second list within thirty days after notification to the provider of the list, the Governor or Secretary of State may make an appointment of his or her own choosing.

(6) All appointments of the Governor or Secretary of State shall be subject to sections 49-14,106 and 49-14,110 and subsection (2) of section 49-14,111.

(7) No individual appointed to the commission shall serve more than one full six-year term on the commission.

**Source:** Laws 1976, LB 987, § 112; Laws 1979, LB 54, § 6; Laws 1990, LB 534, § 6; Laws 2005, LB 242, § 53.

**49-14,113 Individual appointed to fill a vacancy; term.**

An individual appointed to fill a vacancy, occurring other than by the expiration of a term of office, shall be appointed for the unexpired term of the member such individual succeeds and shall be eligible for appointment to one full six-year term thereafter.

**Source:** Laws 1976, LB 987, § 113; Laws 1991, LB 232, § 9.

**49-14,114 Commission; appointed members; prohibited acts; resignation required; when.**

(1) No appointed individual, while a member of the commission, shall engage in any activity or hold any position or office which is regulated by the commission as follows: (a) Lobbying; (b) being a public official, a public employee, or a state elective official; (c) campaigning for the election or appointment of himself or herself to an elective public office; or (d) holding an office in any political party or political committee.

(2) An appointed individual shall withdraw from any activity and resign from any position or office regulated by the commission prior to beginning his or her term on the commission.

(3) Nothing in this section shall be construed to limit an appointed individual's right to vote in any election or to limit his or her right to make contributions.

**Source:** Laws 1976, LB 987, § 114; Laws 1990, LB 534, § 7.

**49-14,115 Member or employee of commission; confidential information; disclosure, when; violation; penalty.**

No member or employee of the commission shall disclose or discuss any statements, reports, records, testimony, or other information or material deemed confidential by the Nebraska Political Accountability and Disclosure Act unless ordered by a court or except as necessary in the proper performance of such member's or employee's duties under the act. Any member who violates this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 115; Laws 1977, LB 41, § 57; Laws 2005, LB 242, § 54.

**49-14,116 Commission; members; removal; procedure.**

Members may be removed by the Governor for inefficiency, neglect of duty, misconduct in office, mental or physical disability, or for taking part in activities prohibited by section 49-14,114 or 49-14,115, but only after delivering to the member a copy of the charges and affording him an opportunity to be publicly heard in person, or by counsel, in his own defense, upon not less than ten days' notice. Such hearing shall be held before the Governor.

**Source:** Laws 1976, LB 987, § 116.

**49-14,117 Commission; officers; duties.**

The commission shall organize by selecting a chairperson, a vice-chairperson, and a secretary from among its members, who shall hold office at the pleasure of the commission. The vice-chairperson shall act as chairperson in the absence of the chairperson or in the event of a vacancy in that position. The secretary shall keep all records of meetings and actions taken by the commission.

**Source:** Laws 1976, LB 987, § 117.

**49-14,118 Commission; quorum.**

Five members of the commission shall constitute a quorum and the concurrence of five members of the commission shall be required for any action or recommendation of the commission or any sanction which may be imposed pursuant to section 49-14,126.

**Source:** Laws 1976, LB 987, § 118; Laws 1990, LB 534, § 8.

**49-14,119 Commission; meetings; records; notice.**

The commission shall meet at such times and places as shall be determined by the commission and shall keep a record of its proceedings. Special meetings may be called by the chairperson. Such special meetings shall be called by such chairperson upon receipt of a written request signed by three or more members of the commission. Written notice of the time and place of all meetings shall be mailed in advance to each member of the commission by the secretary.

**Source:** Laws 1976, LB 987, § 119.

**49-14,120 Commission; members; compensation.**

The Secretary of State shall receive no compensation for services as a commission member other than any salary allowed by law, but shall be reimbursed for actual and necessary expenses. The appointed members shall be paid a per diem of fifty dollars for each day actually and necessarily engaged in the performance of their duties as members of such commission in addition to

such expense allowance. Reimbursement for expenses shall be as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1976, LB 987, § 120; Laws 1981, LB 204, § 88; Laws 2005, LB 242, § 55.

**49-14,121 Commission; personnel; executive director; duties; assistance from other agencies; exempt from personnel system.**

The commission shall employ an executive director and may employ a general counsel and such other staff as are necessary to carry out its duties pursuant to the Nebraska Political Accountability and Disclosure Act. The executive director shall serve at the pleasure of the commission and shall be solely responsible to it. The executive director shall be responsible for the administrative operations of the commission and shall perform such other duties as may be delegated or assigned to him or her by the commission, except that the commission shall not delegate the making of regulations to the executive director. The commission may obtain the services of experts and consultants as necessary to carry out its duties pursuant to the act. Unless prohibited by law, the Tax Commissioner, the Auditor of Public Accounts, the Attorney General, and the county attorneys shall make available to the commission such personnel, facilities, and other assistance as the commission may request. Members of the commission shall be exempted from the provisions of Chapter 81, article 13, except that they may be covered by the State Personnel System through specific agreement between the commission and the personnel division of the Department of Administrative Services.

**Source:** Laws 1976, LB 987, § 121; Laws 1980, LB 535, § 18; Laws 1983, LB 479, § 4; Laws 1992, Third Spec. Sess., LB 14, § 4.

**49-14,122 Commission; field investigations and audits; purpose.**

The commission shall make random field investigations and audits with respect to campaign statements and activity reports filed with the commission under the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act. Except for audits conducted pursuant to the Campaign Finance Limitation Act, any audit or investigation conducted of a candidate's campaign statements during a campaign shall include an audit or investigation of the statements of his or her opponent or opponents as well. The commission may also carry out field investigations or audits with respect to any campaign statement, registration, report, or other statement filed under the Nebraska Political Accountability and Disclosure Act if the commission or the executive director deems such investigations or audits necessary to carry out the purposes of the act.

**Source:** Laws 1976, LB 987, § 122; Laws 1993, LB 587, § 18.

**Cross References**

Campaign Finance Limitation Act, see section 32-1601.

**49-14,123 Commission; duties.**

In addition to any other duties prescribed by law, the commission shall:

(1) Prescribe and publish, after notice and opportunity for public comment, rules and regulations to carry out the Campaign Finance Limitation Act and the

Nebraska Political Accountability and Disclosure Act pursuant to the Administrative Procedure Act;

(2) Prescribe forms for statements and reports required to be filed pursuant to the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act and furnish such forms to persons required to file such statements and reports;

(3) Prepare and publish one or more manuals explaining the duties of all persons and other entities required to file statements and reports by the acts and setting forth recommended uniform methods of accounting and reporting for such filings;

(4) Accept and file any reasonable amount of information voluntarily supplied that exceeds the requirements of the acts;

(5) Make statements and reports filed with the commission available for public inspection and copying during regular office hours and make copying facilities available at a cost of not more than fifty cents per page;

(6) Compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements;

(7) Prepare and publish summaries of statements and reports filed with the commission and special reports and technical studies to further the purposes of the acts;

(8) Review all statements and reports filed with the commission in order to ascertain whether any person has failed to file a required statement or has filed a deficient statement;

(9) Preserve statements and reports filed with the commission for a period of not less than five years from the date of receipt;

(10) Issue and publish advisory opinions on the requirements of the acts upon the request of a person or government body directly covered or affected by the acts. Any such opinion rendered by the commission, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person or government body who requested the opinion and who acted in reliance on it in good faith unless material facts were omitted or misstated by the person or government body in the request for the opinion;

(11) Act as the primary civil enforcement agency for violations of the Nebraska Political Accountability and Disclosure Act and the rules or regulations promulgated thereunder and act as the primary civil enforcement agency for violations of the Campaign Finance Limitation Act and the rules or regulations promulgated thereunder;

(12) Receive all late filing fees, civil penalties, and interest imposed pursuant to the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act, seek the return of any amount as provided in section 32-1606, and seek the repayment of any amount as provided in section 32-1607 and remit all such funds to the State Treasurer for credit to the Campaign Finance Limitation Cash Fund; and

(13) Prepare and distribute to the appropriate local officials statements of financial interest, campaign committee organization forms, filing instructions and forms, and such other forms as the commission may deem appropriate.

**Source:** Laws 1976, LB 987, § 123; Laws 1981, LB 134, § 9; Laws 1981, LB 545, § 13; Laws 1983, LB 479, § 5; Laws 1992, LB 556, § 12;

Laws 1994, LB 872, § 12; Laws 1994, LB 1243, § 14; Laws 1997, LB 420, § 20; Laws 1997, LB 758, § 3; Laws 2000, LB 438, § 10; Laws 2005, LB 242, § 56; Laws 2007, LB464, § 3.

**Cross References**

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

**Campaign Finance Limitation Act**, see section 32-1601.

The Nebraska Accountability and Disclosure Commission is required to prescribe forms for statements and reports that are required to be filed under both the Nebraska Political Accountability and Disclosure Act and the Campaign Finance Limitation

Act and furnish such forms to persons required to file such statements and reports, as well as to distribute these forms to the appropriate local officials. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

**49-14,123.01 Commission; duty to provide information.**

The commission shall provide copies of statements, reports, parts of reports, advisory opinions, and public information prepared by the commission to any person on request at a reasonable cost to be determined by the commission.

**Source:** Laws 1989, LB 815, § 3.

**49-14,123.02 Repealed. Laws 2005, LB 242, § 70.****49-14,124 Alleged violation; preliminary investigation by commission; powers; notice.**

(1) The commission shall, by way of preliminary investigation, investigate any alleged violation of the Nebraska Political Accountability and Disclosure Act, or any rule or regulation adopted and promulgated thereunder, upon:

(a) The receipt of a complaint signed under oath which contains at least a reasonable belief that a violation has occurred;

(b) The recommendation of the executive director; or

(c) The commission's own motion.

(2) The commission shall, by way of preliminary investigation, investigate any alleged violation of the Campaign Finance Limitation Act, or any rule or regulation promulgated thereunder, upon:

(a) The recommendation of the executive director; or

(b) The commission's own motion.

(3) For purposes of conducting preliminary investigations under either the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act, the commission shall have the powers possessed by the courts of this state to issue subpoenas, and the district court shall have jurisdiction to enforce such subpoenas.

(4) The executive director shall notify any person under investigation by the commission of the investigation and of the nature of the alleged violation within five days after the commencement of the investigation.

(5) Within fifteen days after the filing of a sworn complaint by a person alleging a violation, and every thirty days thereafter until the matter is terminated, the executive director shall notify the complainant and the alleged violator of the action taken to date by the commission together with the reasons for such action or for nonaction.

(6) Each governing body shall cooperate with the commission in the conduct of its investigations.

**Source:** Laws 1976, LB 987, § 124; Laws 1997, LB 49, § 10; Laws 1997, LB 420, § 21; Laws 1999, LB 578, § 1; Laws 2005, LB 242, § 57; Laws 2006, LB 188, § 16.

**Cross References**

**Campaign Finance Limitation Act**, see section 32-1601.

**49-14,124.01 Preliminary investigation; confidential; exception.**

All commission proceedings and records relating to preliminary investigations shall be confidential until a final determination is made by the commission unless the person alleged to be in violation of the Nebraska Political Accountability and Disclosure Act or the Campaign Finance Limitation Act requests that the proceedings be public. If the commission determines that there was no violation of either act or any rule or regulation adopted and promulgated under either act, the records and actions relative to the investigation and determination shall remain confidential unless the alleged violator requests that the records and actions be made public. If the commission determines that there was a violation, the records and actions shall be made public as soon as practicable after the determination is made.

**Source:** Laws 2005, LB 242, § 58.

**Cross References**

**Campaign Finance Limitation Act**, see section 32-1601.

**49-14,124.02 Commission; possible criminal violation; referral to Attorney General; duties of Attorney General.**

At any time after the commencement of a preliminary investigation, the commission may refer the matter of a possible criminal violation of the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act to the Attorney General for consideration of criminal prosecution. The fact of the referral shall not be subject to the confidentiality provisions of section 49-14,124.01. The Attorney General shall determine if a matter referred by the commission will be criminally prosecuted. If the Attorney General determines that a matter will be criminally prosecuted, he or she shall advise the commission in writing of the determination. If the Attorney General determines that a matter will not be criminally prosecuted, he or she shall advise the commission in writing of the determination. The fact of the declination to criminally prosecute shall not be subject to the confidentiality provisions of section 49-14,124.01.

**Source:** Laws 2007, LB464, § 4.

**Cross References**

**Campaign Finance Limitation Act**, see section 32-1601.

**49-14,125 Preliminary investigation; terminated, when; violation; effect; powers of commission; subsequent proceedings; records.**

(1) If, after a preliminary investigation, it is determined by a majority vote of the commission that there is no probable cause for belief that a person has violated the Nebraska Political Accountability and Disclosure Act or the Campaign Finance Limitation Act or any rule or regulation adopted and promulgat-

ed thereunder or if the commission determines that there is insufficient evidence to reasonably believe that the person could be found to have violated either act, the commission shall terminate the investigation and so notify the complainant and the person who had been under investigation.

(2) If, after a preliminary investigation, it is determined by a majority vote of the commission that there is probable cause for belief that the Nebraska Political Accountability and Disclosure Act or the Campaign Finance Limitation Act or a rule or regulation adopted and promulgated thereunder has been violated and if the commission determines that there is sufficient evidence to reasonably believe that the person could be found to have violated either act, the commission shall initiate appropriate proceedings to determine whether there has in fact been a violation. The commission may appoint a hearing officer to preside over the proceedings.

(3) All proceedings of the commission pursuant to this section shall be by closed session attended only by those persons necessary to the investigation of the alleged violation, unless the person alleged to be in violation of either act or any rule or regulation adopted and promulgated thereunder requests an open session.

(4) The commission shall have the powers possessed by the courts of this state to issue subpoenas in connection with proceedings under this section, and the district court shall have jurisdiction to enforce such subpoenas.

(5) All testimony shall be under oath which shall be administered by a member of the commission, the hearing officer, or any other person authorized by law to administer oaths and affirmations.

(6) Any person who appears before the commission shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts of this state.

(7) All witnesses summoned before the commission shall receive reimbursement as paid in like circumstances in the district court.

(8) Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby shall be notified and may appear personally before the commission on that person's own behalf or file a written statement for incorporation into the record of the proceeding.

(9) The commission shall cause a record to be made of all proceedings pursuant to this section.

(10) At the conclusion of proceedings concerning an alleged violation, the commission shall deliberate on the evidence and determine whether there has been a violation of the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act.

**Source:** Laws 1976, LB 987, § 125; Laws 1981, LB 134, § 10; Laws 1997, LB 420, § 22; Laws 1999, LB 578, § 2; Laws 2005, LB 242, § 59; Laws 2006, LB 188, § 17.

**Cross References**

Campaign Finance Limitation Act, see section 32-1601.

**49-14,126 Commission; violation; orders; civil penalty.**

(1) The commission, upon finding that there has been a violation of the Nebraska Political Accountability and Disclosure Act or any rule or regulation

promulgated thereunder, may issue an order requiring the violator to do one or more of the following:

- (a) Cease and desist violation;
- (b) File any report, statement, or other information as required; or
- (c) Pay a civil penalty of not more than two thousand dollars for each violation of the act, rule, or regulation.

(2) If the commission finds a violation of the Campaign Finance Limitation Act, the commission shall assess a civil penalty as required under section 32-1604, 32-1606.01, or 32-1612.

**Source:** Laws 1976, LB 987, § 126; Laws 1981, LB 134, § 11; Laws 1997, LB 420, § 23; Laws 1999, LB 416, § 19; Laws 2006, LB 188, § 18; Laws 2007, LB464, § 5.

**Cross References**

**Campaign Finance Limitation Act**, see section 32-1601.

**49-14,127 Mandamus to compel civil action; when.**

Any individual who believes that a violation of the Nebraska Political Accountability and Disclosure Act has occurred may, after exhausting the administrative remedies provided by the act, bring a civil action to compel the commission to fulfill its responsibilities under the act, or may bring a civil action against any person or persons to compel compliance with the act.

**Source:** Laws 1976, LB 987, § 127; Laws 2005, LB 242, § 60.

**49-14,128 Reasonable attorney's fees; court order.**

The court may order payment of reasonable attorney fees and court costs to a successful plaintiff in a suit brought pursuant to section 49-14,127. If the court finds that an action was brought without reasonable cause, the court may order the plaintiff to pay reasonable attorney fees and court costs incurred by the defendant.

**Source:** Laws 1976, LB 987, § 128.

**49-14,129 Commission; suspend or modify reporting requirements; conditions.**

The commission, by order, may suspend or modify any of the reporting requirements of the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act, in a particular case, for good cause shown, or if it finds that literal application of such acts works a manifestly unreasonable hardship and if it also finds that such suspension or modification will not frustrate the purposes of such acts. Any such suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required by this section.

**Source:** Laws 1976, LB 987, § 129; Laws 1980, LB 535, § 19; Laws 1993, LB 587, § 19.

**Cross References**

**Campaign Finance Limitation Act**, see section 32-1601.

**49-14,130 Repealed. Laws 2005, LB 242, § 70.****49-14,131 Appeal; procedure.**

Any final decision by the commission in a contested case or a declaratory ruling made pursuant to the Nebraska Political Accountability and Disclosure Act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1976, LB 987, § 131; Laws 1988, LB 352, § 91; Laws 1991, LB 232, § 10.

**Cross References**

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

**49-14,132 Filings; limitation of use.**

Information copied from campaign statements, registration forms, activity reports, statements of financial interest, and other filings required by the Nebraska Political Accountability and Disclosure Act shall not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, except that (1) the name and address of any political committee, corporation, labor organization, or industry, trade, or professional association may be used for soliciting contributions from such committee, corporation, organization, or association and (2) the use of information copied or otherwise obtained from statements, forms, reports, and other filings required by the act in newspapers, magazines, books, or other similar communications is permissible as long as the principal purpose of using such information is not to communicate any contributor information listed thereon for the purpose of soliciting contributions or for other commercial purposes.

**Source:** Laws 1976, LB 987, § 132; Laws 1981, LB 134, § 12; Laws 2005, LB 242, § 61.

Prohibition by this section of use of public information for "other political campaign purposes", as applied in this case, placed an impermissible burden on protected speech and is struck down for being overbroad. Provision in this statute which

prohibits use of information for harassment purposes is held to be so vague as to be constitutionally infirm and is therefore struck down. *Fowler v. Neb. Account. and Disclosure Comm.*, 213 Neb. 462, 330 N.W.2d 136 (1983).

**49-14,133 Criminal prosecution; Attorney General; concurrent jurisdiction with county attorney.**

The Attorney General has jurisdiction to enforce the criminal provisions of the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act. The county attorney of the county in which a violation of the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act occurs shall have concurrent jurisdiction.

**Source:** Laws 1976, LB 987, § 133; Laws 1981, LB 134, § 13; Laws 1997, LB 758, § 4; Laws 2007, LB464, § 6.

**Cross References**

**Campaign Finance Limitation Act**, see section 32-1601.

**49-14,134 False statement or report; unlawful; penalty.**

In addition to penalties otherwise provided in the Nebraska Political Accountability and Disclosure Act, any person who files a statement or report required under the act knowing that information contained in the statement or

report is false or that the verification statement required on the document is false shall be guilty of a Class IV felony.

**Source:** Laws 1976, LB 987, § 134; Laws 1977, LB 41, § 58; Laws 1999, LB 581, § 4.

**49-14,135 Violation of confidentiality; perjury; penalty.**

(1) Except as otherwise provided in the Nebraska Political Accountability and Disclosure Act, any person who violates the confidentiality of a commission proceeding pursuant to the act shall be guilty of a Class III misdemeanor.

(2) A person who willfully affirms or swears falsely in regard to any material matter before a commission proceeding pursuant to the act shall be guilty of a Class IV felony.

**Source:** Laws 1976, LB 987, § 135; Laws 1977, LB 41, § 59; Laws 2005, LB 242, § 62.

**49-14,136 Statute of limitations.**

Prosecution for violation of the Nebraska Political Accountability and Disclosure Act shall be commenced within three years after the date on which the violation occurred.

**Source:** Laws 1976, LB 987, § 136; Laws 2005, LB 242, § 63.

**49-14,137 Discipline of public officials or employees; effect of act.**

The penalties prescribed in the Nebraska Political Accountability and Disclosure Act do not limit the power of the Legislature to discipline its own members or impeach a public official and do not limit the power of agencies or commissions to discipline officials or employees.

**Source:** Laws 1976, LB 987, § 137; Laws 2005, LB 242, § 64.

**49-14,138 Local laws of political subdivisions; effect of act.**

No political subdivision or municipality within the State of Nebraska in which candidates for their elective offices or elected officials are subject to the requirements of the Nebraska Political Accountability and Disclosure Act shall require compliance with local provisions governing campaign receipts and expenditures or financial disclosures which are different from those established by the act.

**Source:** Laws 1976, LB 987, § 138; Laws 2005, LB 242, § 65.

**49-14,139 Forms; distribution.**

The county clerk or election commissioner in each county shall distribute forms prepared by the commission to any person required to file any statement or report pursuant to the Nebraska Political Accountability and Disclosure Act other than forms or statements under sections 49-1480 to 49-1492.01. Such forms shall include, but not be limited to, filing forms and instructions, statements of financial interest, and campaign committee organization forms.

**Source:** Laws 1983, LB 479, § 6; Laws 2005, LB 242, § 66.

**49-14,140 Nebraska Accountability and Disclosure Commission Cash Fund; created; use; investment.**

The Nebraska Accountability and Disclosure Commission Cash Fund is hereby created. The fund shall consist of funds received by the commission pursuant to sections 49-1449.01, 49-1470, 49-1480.01, 49-1482, 49-1495, 49-14,123, and 49-14,123.01. The fund shall not include late filing fees or civil penalties assessed and collected by the commission. The fund shall be used by the commission in administering the Nebraska Political Accountability and Disclosure Act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. Any money in the Nebraska Accountability and Disclosure Commission Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1989, LB 815, § 4; Laws 1994, LB 872, § 13; Laws 1994, LB 1066, § 40; Laws 1994, LB 1243, § 15; Laws 2007, LB527, § 5; Laws 2009, First Spec. Sess., LB3, § 25.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(f) DIGITAL AND ELECTRONIC FILING

**49-14,141 Digital and electronic filing; procedures.**

The commission may adopt procedures for the digital and electronic filing of any report or statement required by the Nebraska Political Accountability and Disclosure Act. Any procedures for digital filing shall comply with the provisions of section 86-611. The commission may adopt authentication procedures to be used as a verification process for statements or reports filed digitally or electronically. Compliance with authentication procedures adopted by the commission shall have the same validity as a signature on any report, statement, or verification statement.

**Source:** Laws 1999, LB 581, § 3; Laws 2002, LB 1105, § 438.

**ARTICLE 15**

**NEBRASKA SHORT FORM ACT**

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## Section

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**49-1501 Act, how cited.**

Sections 49-1501 to 49-1562 shall be known and may be cited as the Nebraska Short Form Act.

**Source:** Laws 1988, LB 475, § 1; Laws 2010, LB712, § 41.

**49-1502 Act, how construed.**

The Nebraska Short Form Act shall be liberally construed and applied to promote its underlying policies and purposes to simplify and standardize the routine use of certain expressions and forms in certain commonly occurring and recurring situations and transactions and, in the absence of permitted intentional modification, to promote the uniform operation, substantive content, and effect of such expressions and forms.

**Source:** Laws 1988, LB 475, § 2.

**49-1503 Law and equity; supplemental to act.**

Unless displaced by the particular provisions of the Nebraska Short Form Act, the principles of law and equity shall supplement its provisions.

**Source:** Laws 1988, LB 475, § 3.

**49-1504 Terms, defined.**

As used in the Nebraska Short Form Act, unless the context otherwise requires:

(1) Acknowledgment shall mean an act or procedure by or for a described or designated person comporting with the expression, acknowledged before me, as defined in section 64-205;

(2) Document shall mean any statutory short form prescribed by the act or any other printed, typed, written, or otherwise prepared or produced form or instrument;

(3) Execution shall mean an act or procedure by or for a described or designated person by which a document is signed (a) by an individual while competent in a described or indicated personal capacity as such person by means of the regularly used autographic signature made by such individual or by means of the regularly adopted and used personal signatory mark affixed by or at the express direction of such individual or (b) by each of one or more individuals while competent in a described or indicated and lawfully authorized or empowered representative capacity or capacities on behalf of such person by means of the regularly used autographic signature made by any or each of such individuals, by means of the regularly adopted and used personal signatory mark affixed by or at the express direction of any or each of such individuals, or by means of some combination thereof for all of such individuals collectively;

(4) Full expression shall mean any stipulated expanded or otherwise lengthened formulation of words inclusive, if so stipulated, of a similarly expanded formulation of each of all other short form expressions included in such lengthened formulation specified by the act and required by the act to be construed and interpreted as equivalent in content and substance to a particular short form expression or combination of short form expressions;

(5) Short form expression shall mean any particular contracted or otherwise shortened formulation of words specified by the act and required by the act to be construed and interpreted as equivalent in content and substance to and further to be effectuated in a manner identical to the effectuation of a stipulated full expression;

(6) Statutory short form shall mean any particular contracted or otherwise shortened form specified by the act as equivalent in operation to a stipulated form; and

(7) Verification shall mean an act or procedure by or for a described or designated person congruent with and similar to that of acknowledgment by which the individual verifying appears before the person taking the verification and, being duly put on affirmation or oath, affirms or swears in a personal or representative capacity to the truth of described or specified factual assertions or statements at least to the best of the belief, information, and knowledge of such individual in such capacity.

**Source:** Laws 1988, LB 475, § 4.

**49-1505 Application of act; general principles.**

The following general principles shall in part govern the application of the Nebraska Short Form Act:

(1) Without regard to the policies and purposes of the act, the stipulation of statutory short forms under the act shall not compel the use of any one or more of them for effectuation of any particular purpose or purposes and shall not preclude the use of any different form or forms or any other document or documents of different or similar composition, content, or format for effectuation of any purpose or purposes partly or wholly identical to that or those of any such statutory short form or forms;

(2) Any statutory short form prescribed by the act and permitted or required to be executed by or for a described or designated person shall be sufficiently so executed if and when it is subjected to execution by each of one or more persons while competent;

(3) Any statutory short form prescribed by the act and permitted or required to be acknowledged by or for a described or designated person shall be sufficiently so acknowledged if and when it is subjected to acknowledgment by each of one or more persons while competent;

(4) Any statutory short form prescribed by the act and permitted or required to be verified by or for a described or designated person shall be sufficiently so verified if and when it is subjected to verification by each of one or more persons while competent;

(5) No statutory short form prescribed by the act and permitted or required to be executed by or for a described or designated person shall be required to be sealed by any corporate, private, or other seal of such person or be affected by the absence or presence of any such seal;

(6) Except for statutory short form acknowledgments and verifications, each printed or otherwise reproduced version of a statutory short form prescribed by the act which is intended for public sale or other public circulation or distribution shall bear and prominently display in or near the right top margin of the obverse of such form, in clearly discernible and easily legible format, the following notice in the identical indicated words and not in any other formulation of words:

NOTICE: CONSULT YOUR LAWYER TO DETERMINE THE LEGAL EFFECT OF THE USE OF THIS NEBRASKA STATUTORY SHORT FORM. No statutory short form prescribed by the act and required to bear such notice shall be affected by the absence of such notice; and

(7) Any short form expression prescribed by the act the equivalent full expression of which is amended, deleted, or otherwise modified after July 9, 1988, and which is meanwhile incorporated into or otherwise used in any statutory short form prescribed by the act or any other document shall be so incorporated or so used with reference to such equivalent full expression as and if it exists, with or without such amendment or modification, on the date of execution of such statutory short form or other document. Any statutory short form prescribed by the act which is amended, deleted, or otherwise modified after July 9, 1988, or the rules of effectuation and operation of which are amended, deleted, or otherwise modified after July 9, 1988, and which is meanwhile completed, executed, and delivered or otherwise used shall be effective and operative as and if it exists subject to such rules, with or without

such amendment or modification, on the date of execution of such statutory short form.

**Source:** Laws 1988, LB 475, § 5.

**49-1506 Acknowledgment; requirements.**

An appropriate version of the Statutory Short Forms of Acknowledgment as prescribed by section 64-206 shall suffice for acknowledgment of any statutory short form prescribed by the Nebraska Short Form Act which is permitted or required to be acknowledged. An appropriate version of the Statutory Short Forms of Acknowledgment as prescribed by section 64-206 with the expression, the foregoing instrument was verified, substituted in place of the expression, the foregoing instrument was acknowledged, shall suffice for verification of any statutory short form prescribed by the act or for verification of any other document all or any part or parts of the contents of which is or are permitted or required to be verified.

**Source:** Laws 1988, LB 475, § 6.

**49-1507 Meanings of listed expressions, where found.**

As used in sections 49-1508 to 49-1561, unless altered or otherwise affected by the context of a particular instance of use, the listed expressions in sections 49-1508 to 49-1521 shall have the meanings provided in such sections.

**Source:** Laws 1988, LB 475, § 7.

**49-1508 Agent, defined.**

Agent shall mean all, any one or more, or each of the one or more corporate fiduciaries or other persons designated by any principal as the agent under any statutory short form or other version of a power of attorney.

**Source:** Laws 1988, LB 475, § 8.

**49-1509 Conservator, defined.**

Conservator shall mean the conservator of the property of any principal as authorized and empowered by applicable provisions of the Nebraska Probate Code or any similarly involuntarily or voluntarily constituted fiduciary of the estate and property of any principal.

**Source:** Laws 1988, LB 475, § 9.

**Cross References**

Nebraska Probate Code, see section 30-2201.

**49-1510 Contingency, defined.**

Contingency shall mean the occurrence of incompetence of the principal under any contingent durable power of attorney or present durable power of attorney or the occurrence of any other event or other combination of events either exclusive or inclusive of incompetence of the principal specified by the principal under any contingent durable power of attorney or present durable power of attorney as a condition concurrent with or precedent to its complete operativeness.

**Source:** Laws 1988, LB 475, § 10.

**49-1511 Contingent durable power of attorney, defined.**

Contingent durable power of attorney shall mean a power of attorney not affected by, but made operative only upon, the occurrence of incompetence of the principal or some other contingency without regard to any concurrent or later occurrence of incompetence of the principal or uncertainty as to the death of the principal as permitted by the Uniform Durable Power of Attorney Act or any other applicable provisions of the Nebraska Probate Code.

**Source:** Laws 1988, LB 475, § 11.

**Cross References**

Nebraska Probate Code, see section 30-2201.

Uniform Durable Power of Attorney Act, see section 30-2664.

**49-1512 General power, defined.**

General power shall mean any one of the separate general aggregations of related authorities and powers defined by any short form expression specified by the Nebraska Short Form Act.

**Source:** Laws 1988, LB 475, § 12.

**49-1513 Incompetence, defined.**

Incompetence shall mean disability or incapacity of any principal as ascertained, determined, or established by applicable provisions of the Nebraska Probate Code or by applicable provisions of a contingent durable power of attorney or a present durable power of attorney.

**Source:** Laws 1988, LB 475, § 13.

**Cross References**

Nebraska Probate Code, see section 30-2201.

**49-1514 Nondurable power of attorney, defined.**

Nondurable power of attorney shall mean any power of attorney which is not a contingent durable power of attorney or a present durable power of attorney.

**Source:** Laws 1988, LB 475, § 14.

**49-1515 Plenary power, defined.**

Plenary power shall mean the general and universal aggregation of authorities and powers defined by the short form expression specified by the Nebraska Short Form Act.

**Source:** Laws 1988, LB 475, § 15.

**49-1516 Plenary power subject to limitations, defined.**

Plenary power subject to limitations shall mean the general and universal aggregation of authorities and powers with restrictions defined by the short form expression specified by the Nebraska Short Form Act.

**Source:** Laws 1988, LB 475, § 16.

**49-1517 Power of attorney, defined.**

Power of attorney shall mean any statutory short form effectuated under and specified by the Nebraska Short Form Act as and for a statutory short form

power of attorney and shall also mean any other document of like import otherwise effective to create and establish a similar agency relationship between a principal and an agent.

**Source:** Laws 1988, LB 475, § 17.

**49-1518 Present durable power of attorney, defined.**

Present durable power of attorney shall mean a power of attorney not affected by, but continued and made operative from its inception without regard to, the later occurrence of incompetence of the principal or uncertainty as to the death of the principal as permitted by the Uniform Durable Power of Attorney Act or any other applicable provisions of the Nebraska Probate Code.

**Source:** Laws 1988, LB 475, § 18.

**Cross References**

Nebraska Probate Code, see section 30-2201.

Uniform Durable Power of Attorney Act, see section 30-2664.

**49-1519 Principal, defined.**

Principal shall mean any person accepted by the agent as the principal under any statutory short form or other version of a power of attorney.

**Source:** Laws 1988, LB 475, § 19.

**49-1520 Revocation of power of attorney, defined.**

Revocation of power of attorney shall mean any statutory short form effectuated under and specified by the Nebraska Short Form Act as and for a form of revocation of power of attorney and shall also mean any other document otherwise effective to terminate an agency relationship between a principal and an agent.

**Source:** Laws 1988, LB 475, § 20.

**49-1521 Specific authority, defined.**

Specific authority shall mean any one of the dependent or independent specific aggregations of related authorities and powers defined by any short form expression specified by the Nebraska Short Form Act.

**Source:** Laws 1988, LB 475, § 21.

**49-1522 Power of attorney; statutory short form.**

The following statutory short form, when reproduced and used in the identical indicated words or in substantially the same or more similar than dissimilar formulation of words by means of printing, typing, writing, or other method of reproduction and use or when appropriately adapted to particular circumstances, shall be and constitute a statutory short form power of attorney and, when completed by adoption by check or other clear mark of each included provision desired and permitted to be adopted and made operative, by deletion by line or other clear obliteration of each included provision desired and permitted to be deleted and made inoperative, by inclusion by printing, typing, writing, or other clear presentation of each provision not included but desired and permitted to be included and made operative, and by insertion by printing, typing, writing, or other clear presentation of all additional data and information required to be included and when effectuated by execution by or for the

principal, by acknowledgment by or for the principal, and by delivery by or at the express direction of the principal to and acceptance by the agent of at least one so completed, executed, and acknowledged form, shall create and establish an agency relationship under a power of attorney in accordance with the Nebraska Short Form Act.

POWER OF ATTORNEY

....., a domiciliary of ..... County, Nebraska, Principal, desiring and intending to establish a Power of Attorney operative under the Nebraska Short Form Act, does hereby appoint, constitute, and designate ....., a ..... of or with an office in ..... County, Nebraska, and ....., a ..... of or with an office in ..... County, Nebraska, Agent, the lawful and true Agent and attorney in fact for Principal; and Principal does hereby further provide and stipulate in connection therewith as follows:

1. This Power of Attorney is, as marked, a

- Durable Power of Attorney and a
  - Contingent Durable Power of Attorney, upon the contingency of,
    - Incompetence of Principal, or
    - Other Contingency: ....., or
  - Present Durable Power of Attorney
- Nondurable Power of Attorney.

2. By this Power of Attorney, Principal confers upon and grants to Agent plenary power, plenary power subject to limitations, or all and each of the listed general powers as individually marked:

- Plenary Power; or
- Plenary Power Subject to Limitations, exclusive of General Powers for Domestic and Personal Concerns and for Fiduciary Relationships and
- No Other Restrictions, or
- Other Restrictions: .....; or
- General Power for Bank and Financial Transactions.
- General Power for Business Interests.
- General Power for Chattels and Goods.
- General Power for Disputes and Litigation.
- General Power for Domestic and Personal Concerns.
- General Power for Fiduciary Relationships.
- General Power for Governmental and Other Benefits.
- General Power for Insurance Coverages and Policies.
- General Power for Proprietary Interests and Materials.
- General Power for Real Estate.
- General Power for Securities.
- General Power for Records, Reports, and Statements.

3. By this Power of Attorney, Principal makes the following additional provision or provisions:

.....  
.....  
.....



(6) The principal under a statutory short form power of attorney shall be entitled to modify the content and substance of such power of attorney by inclusion of any provision or provisions for general or specific delegation by or substitution for the agent or for general or specific succession to the agent without disruption of the continuity of such power of attorney;

(7) If the principal has effectuated a statutory short form power of attorney effective either as a contingent durable power of attorney or as a present durable power of attorney, it shall be and operate as a power of attorney without regard to later incompetence, if any, of the principal or later uncertainty, if any, as to the death of the principal as prescribed by the Uniform Durable Power of Attorney Act or any other applicable provisions of the Nebraska Probate Code;

(8) If the principal has effectuated a statutory short form power of attorney, it shall be and operate as a nondurable power of attorney unless expressly designated by the principal to be and to constitute a durable power of attorney either as a contingent durable power of attorney or as a present durable power of attorney. If the principal has effectuated a statutory short form power of attorney as a contingent durable power of attorney or a present durable power of attorney, the agent shall be continuously and immediately entitled at any time before its revocation to determine and to resolve conclusively by affidavit or other verified document all questions as to the efficacy of such power of attorney related to the death of the principal, the commencement, continuation, or termination of incompetence of the principal, and the occurrence and other particulars of any contingency;

(9) If the principal has effectuated a statutory short form power of attorney but has erroneously or inconsistently designated it to be and to constitute both a contingent durable power of attorney or present durable power of attorney and also a nondurable power of attorney, it shall be and operate only as a nondurable power of attorney. If the principal has effectuated a statutory short form power of attorney but has erroneously or inconsistently designated it to be and to constitute both a contingent durable power of attorney and also a present durable power of attorney or to be and to constitute a contingent durable power of attorney upon both the contingency of incompetence of the principal and also some other specified contingency not also involving incompetence of the principal, it shall be and operate as a contingent durable power of attorney only upon the contingency of incompetence of the principal;

(10) If the principal has effectuated a statutory short form power of attorney but has erroneously or inconsistently designated it to entail the grant of both plenary power and plenary power subject to limitations, it shall be and operate as the grant of plenary power subject to limitations;

(11) If the principal has effectuated a statutory short form power of attorney but has erroneously or inconsistently designated it to entail the grant of both plenary power and also any one or more general powers, it shall be and operate as the grant of plenary power. If the principal has effectuated a statutory short form power of attorney but has erroneously or inconsistently designated it to entail the grant of both plenary power subject to limitations and also any one or more general powers, either exclusive or inclusive of general power for domestic and personal concerns and general power for fiduciary relationships, it shall be and operate as the grant of plenary power subject to limitations;

(12) If the principal has effectuated a statutory short form power of attorney but has erroneously or inconsistently designated it to entail the grant of plenary power subject to limitations and to involve both no other restrictions and also other restrictions or to involve neither no other restrictions nor other restrictions, it shall be and operate as the grant of plenary power subject to limitations upon each of all, if any, specifically included further restrictions, except that if no such further restriction has been specifically included, it shall be and operate as the grant of plenary power subject to limitations upon no other restrictions; and

(13) The first to occur of death or incompetence of the principal who has effectuated a statutory short form power of attorney operative as a nondurable power of attorney shall revoke such power of attorney and terminate all agency relationship with the agent under such power of attorney except to the extent provided otherwise by applicable provisions of the Uniform Durable Power of Attorney Act or the Nebraska Probate Code. The acquisition by the agent of knowledge or notice of the death of the principal who has effectuated a statutory short form power of attorney operative as a contingent durable power of attorney or a present durable power of attorney shall revoke such power of attorney and terminate all agency relationship with the agent under such power of attorney except to the extent otherwise provided by applicable provisions of the Uniform Durable Power of Attorney Act or the Nebraska Probate Code.

**Source:** Laws 1988, LB 475, § 23.

**Cross References**

Nebraska Probate Code, see section 30-2201.

Uniform Durable Power of Attorney Act, see section 30-2664.

**49-1524 Content and substance of forms; general principles.**

The following general principles shall in part govern the content and substance of a statutory short form or other version of a power of attorney:

(1) Reference to or other use in a statutory short form or other version of a power of attorney, in the identical indicated words and not in any other formulation of words, of the exact short form expression, durable power of attorney, shall be equivalent to the use of, shall be construed and interpreted with the force and effect of, and shall be deemed to incorporate at length and in full the provisions of the full expression and shall mean that the principal, as permitted and prescribed by the Uniform Durable Power of Attorney Act intends the authority conferred upon the agent to be or to become exercisable without regard to subsequent disability or incapacity of the principal and that the power of attorney either shall not be affected by subsequent disability or incapacity of the principal or shall become effective upon the disability or incapacity of the principal;

(2) Incorporation into or any other use as part of any other short form expression or reference to or other use in a statutory short form or other version of a power of attorney, in the identical indicated words or in substantially the same or more similar than dissimilar formulation of words, of any one or more of each of the respectively indicated short form expressions set out in sections 49-1525 to 49-1544 shall be equivalent to the use of, shall be construed and interpreted with the force and to the effect of, and shall be deemed to incorporate at length and in full the respective provisions of each of the respectively indicated full expressions; and

(3) Incorporation into or any other use as part of any other short form expression or reference to or other use in a statutory short form or other version of a power of attorney, in the identical indicated words or in substantially the same or more similar than dissimilar formulation of words, of any one or more of each of the respectively indicated short form expressions set out in sections 49-1545 to 49-1556 shall be equivalent to the use of, shall be construed and interpreted with the force and to the effect of, and shall be deemed to incorporate at length and in full the respective provisions of each of the respectively indicated full expressions, as further expanded by any additional incorporation required by reference to or use of other provisions of the Nebraska Short Form Act to be effected.

**Source:** Laws 1988, LB 475, § 24.

**Cross References**

Uniform Durable Power of Attorney Act, see section 30-2664.

**49-1525 Specific Authority for Acquisitions, defined.**

The short form expression, Specific Authority for Acquisitions, shall mean that the principal generally authorizes and empowers the agent to accept as a gift in part or whole, as compromise payment, satisfaction, or security for a loan, or otherwise, to barter, exchange, or trade, to buy in installments, outright, or otherwise, to claim or demand, to lease, rent, or sublease from any person on oral, written, or other arrangement, to perfect or preserve interest in or title to or otherwise render merchantable or negotiable, to receive, and otherwise to acquire any property.

**Source:** Laws 1988, LB 475, § 25.

**49-1526 Specific Authority for Ancillary Matters, defined.**

The short form expression, Specific Authority for Ancillary Matters, shall mean that the principal generally authorizes and empowers the agent to omit or take any action and to make any decision appropriate, convenient, or necessary for effectuation of, and otherwise to do or refrain from anything reasonably ancillary to, any other specific authority or general power granted to the agent by the principal.

**Source:** Laws 1988, LB 475, § 26.

**49-1527 Specific Authority for Assistants, defined.**

The short form expression, Specific Authority for Assistants, shall mean that the principal generally authorizes and empowers the agent to compensate and reimburse the expenses of, to employ, engage, or hire, and to discharge or terminate the services of any accountant, advisor, attorney, doctor, expert, or other nonprofessional or professional assistant or consultant appropriate, convenient, or necessary for effectuation of, and otherwise to secure through any assistant any advice or help reasonably useful in the discharge of, any other specific authority or general power granted to the agent by the principal.

**Source:** Laws 1988, LB 475, § 27.

**49-1528 Specific Authority for Claims, defined.**

The short form expression, Specific Authority for Claims, shall mean that the principal generally authorizes and empowers the agent to accept or reject

arbitration of, to assert or prosecute, to compromise, to defend, to intervene in any action or other proceeding involved with, to settle, and otherwise to contest, pursue, or resolve any claim.

**Source:** Laws 1988, LB 475, § 28.

**49-1529 Specific Authority for Compensation, defined.**

The short form expression, Specific Authority for Compensation, shall mean that the principal generally authorizes and empowers the agent to pay, prepay, or otherwise satisfy the fees, salaries, wages, or other remuneration for labor or services of the agent or any other person appropriate, convenient, or necessary for effectuation of, and otherwise to arrange and make adequate compensation for work reasonably required pursuant to, any other specific authority or general power granted to the agent by the principal.

**Source:** Laws 1988, LB 475, § 29.

**49-1530 Specific Authority for Contracts, defined.**

The short form expression, Specific Authority for Contracts, shall mean that the principal generally authorizes and empowers the agent to alter, amend, enter into, modify, or supplement, to breach or perform, to reform, to release, and to rescind any oral, written, or other contract or other agreement appropriate, convenient, or necessary for effectuation of, and otherwise to agree or contract with any person for any consideration, in any manner, and upon any terms reasonably connected with, any other specific authority or general power granted to the agent by the principal.

**Source:** Laws 1988, LB 475, § 30.

**49-1531 Specific Authority for Disclosure, Names, and Signatures, defined.**

The short form expression, Specific Authority for Disclosure, Names, and Signatures, shall mean that the principal generally authorizes and empowers the agent to disclose or withhold disclosure of the existence of the agency, of the identity of the principal, or of both or make other disclosure, to effectuate any condition, omit or take any action, or make any decision in the name of the principal or of the agent alone or in both names jointly, successively, or otherwise, and to use a form of signature comprised of the name of the principal immediately followed by the autographic signature of the agent and the designation, agent, or of the autographic signature of the agent alone or other form appropriate, convenient, or necessary for effectuation of, and otherwise to make or withhold any such disclosure and use any such name or signature reasonably required pursuant to, any other specific authority or general power granted to the agent by the principal.

**Source:** Laws 1988, LB 475, § 31.

**49-1532 Specific Authority for Dispositions, defined.**

The short form expression, Specific Authority for Dispositions, shall mean that the principal generally authorizes and empowers the agent to abandon, demolish, destroy, disclaim, refuse, reject, or renounce, to barter, exchange, or trade, to consent to partition, divide, partition, or subdivide, to convert, to convey or transfer with or without covenants, easements, guarantees, reservations, warranties, or other conditions or terms, to create, modify, or revoke any

trust to dispose of, exploit, or hold, to donate or give, to encumber, mortgage, or pledge, to grant and make options for acquisition or disposition of, to lease, rent, or sublease to any person on oral, written, or other arrangement, to quitclaim, to release, to surrender, and otherwise to dispose of any property.

**Source:** Laws 1988, LB 475, § 32.

**49-1533 Specific Authority for Documents, defined.**

The short form expression, Specific Authority for Documents, shall mean that the principal generally authorizes and empowers the agent to acknowledge, deliver, execute, file, receive, record, seal, sign, verify, or witness any admission, agreement, application, assignment, bill, check, certificate, consent, contract, deed, demand, draft, form, indenture, lease, letter, mortgage, notice, petition, pledge, receipt, registration, release, report, return, stock power, waiver, warrant, or other instrument appropriate, convenient, or necessary for effectuation of, and otherwise to participate in or secure documentation of any condition, property, or transaction pursuant to, any other specific authority or general power granted to the agent by the principal.

**Source:** Laws 1988, LB 475, § 33.

**49-1534 Specific Authority for Encumbrances, defined.**

The short form expression, Specific Authority for Encumbrances, shall mean that the principal generally authorizes and empowers the agent to assign, compromise, grant, make, release, satisfy, or subordinate in part or whole, to defend against or enforce by initiation of, intervention in, or other response to any foreclosure of or other action or litigation as to, and otherwise to deal with any assignment, claim, judgment, lien, mortgage, pledge, security interest, or other encumbrance of any property.

**Source:** Laws 1988, LB 475, § 34.

**49-1535 Specific Authority for Improvements, defined.**

The short form expression, Specific Authority for Improvements, shall mean that the principal generally authorizes and empowers the agent to alter, better, diminish, enhance, enlarge, preserve, protect, repair, restore, and otherwise improve any property.

**Source:** Laws 1988, LB 475, § 35.

**49-1536 Specific Authority for Insolvency Proceedings, defined.**

The short form expression, Specific Authority for Insolvency Proceedings, shall mean that the principal generally authorizes the agent to consent to, join in, oppose, settle, or otherwise participate in, to demand, enforce recovery of, obtain, or receive any dividend, payment, settlement, or other distribution as to, to exercise, sell, waive, or otherwise dispose of or use any conversion rights, options, warrants, or other securities as to, to form, join, make deposits with, negotiate with, or otherwise deal with or participate in the activities and transactions of any committee or other organization of debtors, creditors, security holders, or other persons commonly or disparately interested in, to negotiate, perform, or otherwise effectuate any arrangement, assignment, composition, trust, or other plan for or with debtors or creditors, and otherwise to initiate, intervene in, maintain, or take other part in any involuntary or

voluntary bankruptcy or other insolvency proceedings under federal or state law.

**Source:** Laws 1988, LB 475, § 36.

**49-1537 Specific Authority for Investments, defined.**

The short form expression, Specific Authority for Investments, shall mean that the principal generally authorizes and empowers the agent to acquire, dispose of, or retain any real estate, securities, or other investment property, to borrow against, buy long or short, encumber, endorse, hypothecate, sell long or short, transfer, and otherwise deal with any bonds, stocks, or other securities, to close, maintain, or open any account for cash or on margin with any stockbroker, to invest and reinvest any cash, funds, or other property at long term or short term for the enhancement or preservation of principal, the enhancement or production of income, or the attainment of any combination of such objectives, to retain cash or other funds in readily accessible form or without investment, and otherwise to conduct, manage, or operate any investments.

**Source:** Laws 1988, LB 475, § 37.

**49-1538 Specific Authority for Maintenance, defined.**

The short form expression, Specific Authority for Maintenance, shall mean that the principal generally authorizes and empowers the agent to conserve, manage, or preserve, to demand, enforce, obtain, or regain possession of, to hire labor or services and provide equipment or supplies for, to protect or safeguard, to repair, to replace in part or whole, and otherwise to maintain any property.

**Source:** Laws 1988, LB 475, § 38.

**49-1539 Specific Authority for Proceeds, defined.**

The short form expression, Specific Authority for Proceeds, shall mean that the principal generally authorizes and empowers the agent to demand, enforce recovery of, obtain, or receive any condemnation award for or insurance coverage of, to disburse, invest, preserve, or otherwise use any property received as to, and otherwise to acquire, dispose of, or retain the proceeds of any property or its disposition or of any other transaction.

**Source:** Laws 1988, LB 475, § 39.

**49-1540 Specific Authority for Reimbursements, defined.**

The short form expression, Specific Authority for Reimbursements, shall mean that the principal generally authorizes and empowers the agent to exonerate, indemnify, pay, prepay, repay, or otherwise settle with the agent or any other person for any cost, disbursement, expense, or other expenditure appropriate, convenient, or necessary for effectuation of, and otherwise to arrange and make complete reimbursement for or of any amount reasonably expended pursuant to, any other specific authority or general power granted to the agent by the principal.

**Source:** Laws 1988, LB 475, § 40.

**49-1541 Specific Authority for Reorganizations, defined.**

The short form expression, Specific Authority for Reorganizations, shall mean that the principal generally authorizes and empowers the agent to consent to, join in, oppose, settle, or otherwise participate in, to demand, enforce recovery of, obtain, or receive any dividend, payment, or other distribution as to, to exercise, sell, waive, or otherwise dispose of or use any conversion rights, options, warrants, or other securities as to, to form, join, make deposits with, negotiate with, or otherwise deal with or participate in the activities and transactions of any committee or other organization of creditors, security holders, or other persons commonly or disparately interested in, and otherwise to take part in any consolidation, liquidation, merger, recapitalization, reformation, revival, syndication, or other organic or substantive change in the character of, the financial structure of, the operations of, or the relative priorities, privileges, or rights of any interest in or any other involuntary or voluntary reorganization of any corporate or other business, governmental, or private entity.

**Source:** Laws 1988, LB 475, § 41.

**49-1542 Specific Authority for Reports, defined.**

The short form expression, Specific Authority for Reports, shall mean that the principal generally authorizes and empowers the agent to acknowledge, deliver, execute, file, prepare, receive, record, seal, sign, verify, or witness and otherwise to make, omit, or take other action as to, or otherwise dispose of, any form, notification, return, or other report from or to any corporate entity, any other business, governmental, or private entity, or any other person.

**Source:** Laws 1988, LB 475, § 42.

**49-1543 Specific Authority for Taxes, defined.**

The short form expression, Specific Authority for Taxes, shall mean that the principal generally authorizes and empowers the agent to apply for or demand, enforce recovery of, obtain, or receive any refund in part or whole of, to compromise the amount of, liability for, or other incidence of, to contest, to pay, and otherwise to deal with or respond to any consumption, death, estate, excise, distribution, gift, income, inheritance, membership, ownership, property, sales, succession, transfer, use, value, or other taxes or assessments, together with fines, interest, penalties, or other additions or supplements, claimed, exacted, or otherwise involuntarily or voluntarily imposed by any business, governmental, or private entity or other person as to any condition, property, or transaction.

**Source:** Laws 1988, LB 475, § 43.

**49-1544 Specific Authority for Trusts, defined.**

Subject to the provisions of subsection (a) of section 30-3837, the short form expression, Specific Authority for Trusts, shall mean that the principal generally authorizes and empowers the agent to alter, create, establish, make, or terminate with any corporate or other fiduciary any irrevocable or revocable disposition in trust for the benefit of any person or persons upon any conditions or other terms with or without any retained interest and otherwise to continue, modify, originate, or terminate any trust arrangement.

**Source:** Laws 1988, LB 475, § 44; Laws 2003, LB 130, § 137.

**49-1545 General Power for Bank and Financial Transactions, defined.**

The short form expression, General Power for Bank and Financial Transactions, shall mean that the principal, in connection with or with respect to any account, any bank or financial institution, any custodial or protective facility, or any financial instrument, whether or not any of them is specifically described or named, generally authorizes and empowers the agent to have and to exercise collectively or singly and concurrently or consecutively any one or more in combination or otherwise of each of Specific Authority for Acquisitions, Specific Authority for Ancillary Matters, Specific Authority for Assistants, Specific Authority for Claims, Specific Authority for Compensation, Specific Authority for Contracts, Specific Authority for Disclosure, Names, and Signatures, Specific Authority for Dispositions, Specific Authority for Documents, Specific Authority for Insolvency Proceedings, Specific Authority for Proceeds, Specific Authority for Reimbursements, Specific Authority for Reorganizations, Specific Authority for Reports, Specific Authority for Taxes, and Specific Authority for Trusts, and that the principal also generally authorizes and empowers the agent to accept, assign, cash, collect, deliver, discount, draw, endorse, extend, guarantee, honor, make, negotiate, pay, postpone, present, protest, receive, renew, sign, or omit or take any other action as to any bill, check, coupon, draft, receipt, voucher, warrant, or other financial instrument, to acquire, surrender, or use any letters of credit or travelers checks issued by any bank or financial institution, to borrow from, give indemnity, security, or both to, lend to, take indemnity, security, or both from, or omit or take any other action as to any borrower, lender, or financial institution, to close, continue, deposit in, maintain, modify, open, terminate, or withdraw from any check, deposit, savings, or other account or any other arrangement with any bank or other financial institution, to exercise access to, rent, use, or vacate any safety deposit box, protective or security facility, or vault space in any bank, financial institution, or other entity, to receive, respond to, or make any other use of any bank statement, canceled check, deposit slip, draft, notice, voucher, or other document given, issued, or produced by any bank or other financial institution, and otherwise generally to act or decide as to any bank or financial transaction or related circumstance, condition, interest, matter, property, question, or transaction as the principal might do or omit to do in person and while competent.

**Source:** Laws 1988, LB 475, § 45.

**49-1546 General Power for Business Interests, defined.**

The short form expression, General Power for Business Interests, shall mean that the principal, in connection with or with respect to any corporate or other bond, stock, warrant, or other security, any general, limited, or other partnership interest, any limited liability company interest, or any sole proprietorship or similar endeavor or enterprise, whether or not any of them is specifically described or named, generally authorizes and empowers the agent to have and to exercise collectively or singly and concurrently or consecutively any one or more in combination or otherwise of each of Specific Authority for Acquisitions, Specific Authority for Ancillary Matters, Specific Authority for Assistants, Specific Authority for Claims, Specific Authority for Compensation, Specific Authority for Contracts, Specific Authority for Disclosure, Names, and Signatures, Specific Authority for Dispositions, Specific Authority for Documents, Specific Authority for Encumbrances, Specific Authority for Improvements, Specific Authority for Insolvency Proceedings, Specific Authority for Invest-

ments, Specific Authority for Proceeds, Specific Authority for Reimbursements, Specific Authority for Reorganizations, Specific Authority for Reports, Specific Authority for Taxes, and Specific Authority for Trusts, and that the principal also generally authorizes and empowers the agent to acquire, act as director, officer, member, partner, or otherwise of, enforce or make terms of agreement or other contract for, participate financially or otherwise in, or terminate in part or whole any participation in any corporation, partnership, limited liability company, or other business or investment entity, to alter in part or whole, contract, expand, initiate, operate, organize, reorganize, or terminate in part or whole and change, determine, and effectuate business, employment, financial, investment, and other policies and procedures of any sole proprietorship or similar business or investment endeavor or enterprise, to exercise in person, by limited or unrestricted proxy, or otherwise, any voting right or other power, privilege, right, or other concession of any corporation, fund, partnership, or other business or investment entity, and otherwise generally to act or decide as to any business interest or related circumstances, condition, interest, matter, property, question, or transaction as the principal might do or omit to do in person and while competent.

**Source:** Laws 1988, LB 475, § 46; Laws 1993, LB 121, § 308.

**49-1547 General Power for Chattels and Goods, defined.**

The short form expression, General Power for Chattels and Goods, shall mean that the principal, in connection with or with respect to ownership or possession of any claim to or interest in any chattels, goods, or other tangible personalty, whether or not any of them is specifically described or named, generally authorizes and empowers the agent to have and to exercise collectively or singly and concurrently or consecutively any one or more in combination or otherwise of each of Specific Authority for Acquisitions, Specific Authority for Ancillary Matters, Specific Authority for Assistants, Specific Authority for Claims, Specific Authority for Compensation, Specific Authority for Contracts, Specific Authority for Disclosure, Names, and Signatures, Specific Authority for Dispositions, Specific Authority for Documents, Specific Authority for Encumbrances, Specific Authority for Improvements, Specific Authority for Investments, Specific Authority for Maintenance, Specific Authority for Proceeds, Specific Authority for Reimbursements, Specific Authority for Reports, Specific Authority for Taxes, and Specific Authority for Trusts, and that the principal also generally authorizes and empowers the agent to acquire, hold, or dispose of ownership or possession of any claim to or interest in any tangible personalty in concurrent, joint, sole, successive, or other form or mode, and otherwise generally to act or decide as to any chattels or goods or related circumstance, condition, interest, matter, property, question, or transaction as the principal might do or omit to do in person and while competent.

**Source:** Laws 1988, LB 475, § 47.

**49-1548 General Power for Disputes and Litigation, defined.**

The short form expression, General Power for Disputes and Litigation, shall mean that the principal, in connection with or with respect to any administrative, judicial, or legislative, civil or equitable or legal, or other action, contest, controversy, determination, hearing, negotiations, proceedings, question, trial, or other adversarial or nonadversarial resolution process before any adminis-

trator, agency, commission, court, judge, magistrate, official, tribunal, or other body or person or between or with any person or persons, whether or not any of them is specifically described or named, generally authorizes and empowers the agent to have and to exercise collectively or singly and concurrently or consecutively any one or more in combination or otherwise of each of Specific Authority for Acquisitions, Specific Authority for Ancillary Matters, Specific Authority for Assistants, Specific Authority for Claims, Specific Authority for Compensation, Specific Authority for Contracts, Specific Authority for Disclosure, Names, and Signatures, Specific Authority for Dispositions, Specific Authority for Documents, Specific Authority for Insolvency Proceedings, Specific Authority for Proceeds, Specific Authority for Reimbursements, Specific Authority for Reports, Specific Authority for Taxes, and Specific Authority for Trusts, and that the principal also generally authorizes and empowers the agent to accept or waive service of process, to appeal, assert, compromise, conduct, control, defend, intervene in, oppose, plead, prosecute, resist, resolve, settle, otherwise initiate, pursue, or terminate any accounting, action, application, charge, claim, complaint, counterclaim, defense, indemnity, petition, offset, request, surcharge, or other cause or proceeding against or by any person or persons by appellate review, arbitration, hearing, litigation, negotiation, trial with or without jury, retrial, or other private or public controversy or question resolution process, to appear before any administrative, judicial, or other examiner, judge, magistrate, officer, agency, board, body, commission, court, or other official or tribunal and represent any person or persons, to assess, collect, and disperse evidence, to compromise, oppose, or procure any arrest, attachment, execution, foreclosure, garnishment, libel, seizure, or other final, intermediate, preliminary, or provisional relief, satisfaction of judgment, or other anticipatory or final and permanent or temporary relief or satisfaction, to compromise, oppose, or propose any statement of facts, stipulation, or other judicial submission, to compromise, oppose, propound, or respond to any interrogatory or request for admission, to compromise, oppose, or pursue any appeal or other judicial or nonjudicial review, to compromise, oppose, or respond to or request any production of documents or other things, to compromise, oppose, or secure any declaration, permanent, temporary, or other injunction, permanent, temporary, or other mandatory or restraining decree, judgment, order, or other equitable or legal decision or relief, to compromise, oppose, or undertake discovery, to consult with or engage any expert, professional, or other advisor or witness, to submit to or take depositions, to prepare, receive, sign, submit, or verify any pleading, statement, or other document, to provide any indemnity or surety bond, and generally to act or decide as to any dispute or litigation or related circumstance, condition, interest, matter, property, question, or transaction as the principal might do or omit to do in person and while competent.

**Source:** Laws 1988, LB 475, § 48.

**49-1549 General Power for Domestic and Personal Concerns, defined.**

The short form expression, General Power for Domestic and Personal Concerns, shall mean that the principal, in connection with or with respect to any domestic or personal need, requirement, or want of any child, dependent, friend, parent, relative, spouse, or other person, whether or not any of them is specifically described or named, generally authorizes and empowers the agent to have and to exercise collectively or singly and concurrently or consecutively

any one or more in combination or otherwise of each of Specific Authority for Acquisitions, Specific Authority for Ancillary Matters, Specific Authority for Assistants, Specific Authority for Claims, Specific Authority for Compensation, Specific Authority for Contracts, Specific Authority for Disclosure, Names, and Signatures, Specific Authority for Dispositions, Specific Authority for Documents, Specific Authority for Proceeds, Specific Authority for Reimbursements, Specific Authority for Reports, Specific Authority for Taxes, and Specific Authority for Trusts, and that the principal also generally authorizes and empowers the agent to apply for, give bond or other security for, take affirmation or oath for, or seek discharge from and termination of and nominate and procure appointment of any person to seek discharge, removal, or replacement of any person in the office of guardian or similar custodian of the person of any child, parent, spouse, or other person established by administrative or judicial process, to assume, continue, diminish, eliminate, enhance, maintain, or support the customary standard of living of any child, dependent, friend, relative, spouse, or other person by initiation, payment, or termination of any charge or credit account, by maintenance, resumption, or termination of any affiliation with or membership in any association, church, club, group, lodge, order, organization, school, society, or other private or public academic, political, recreational, religious, scientific, social, or other body, by provision of any allowance, amenity, automobile, clothing, education, equipment, fixture, food, furniture, furnishing, goods, housing, jewelry, rent, shelter, training, utility, vehicle, or other item of comfort, maintenance, necessity, or support, or by provision of any custodial, dental, medical, or surgical care or hospital confinement, to consent to or permit any dental, medical, or surgical operation or treatment or other mental or physical analysis, examination, observation, procedure, test, or treatment, to deal with any matter of alimony, adoption, birth, divorce, illegitimacy, maintenance, marriage, property division, support, or other family or personal concern, to disclaim or perform any duty or service customarily or reasonably extended to or undertaken for any friend, parent, relative, or other person, and otherwise generally to act or decide as to any domestic or personal concerns or related circumstance, condition, interest, matter, property, question, or transaction as the principal might do or omit to do in person and while competent.

**Source:** Laws 1988, LB 475, § 49.

**49-1550 General Power for Fiduciary Relationships, defined.**

The short form expression, General Power for Fiduciary Relationships, shall mean that the principal, in connection with or with respect to any absentee, beneficiary, bequest, conservatorship, decedent, devise, estate, gift, guardianship, incompetent, infant, inheritance, intestacy, trust, trustee, will, or other fiduciary matter or subject, whether or not any of them is specifically described or named, generally authorizes and empowers the agent to have and to exercise collectively or singly and concurrently or consecutively any one or more in combination or otherwise of each of Specific Authority for Ancillary Matters, Specific Authority for Assistants, Specific Authority for Claims, Specific Authority for Compensation, Specific Authority for Contracts, Specific Authority for Disclosure, Names, and Signatures, Specific Authority for Documents, Specific Authority for Proceeds, Specific Authority for Reimbursements, Specific Authority for Reports, Specific Authority for Taxes, and Specific Authority for Trusts, and that the principal also generally authorizes and empowers the agent

to accept or waive service of process in any fiduciary matter, to appeal, assert, compromise, conduct, control, defend, disclaim, intervene in, oppose, plead, prosecute, renounce, relinquish, resist, resolve, settle, sue, or otherwise initiate, pursue, or terminate any accounting, action, application, charge, claim, complaint, conservation, construction, counterclaim, defense, distribution, indemnity, instruction, petition, investment, payment, offset, recoupment, request, surcharge, transfer, or other fiduciary cause, or interest, or proceeding against or by any person by appellate review, arbitration, hearing, litigation, negotiation, trial with or without jury, retrial, or other private or public fiduciary controversy or question resolution process, to apply for, give bond or other security for, take affirmation or oath for, or seek discharge from and termination of and nominate and procure appointment of any person to or seek discharge, removal, or replacement of any person in the office of conservator or similar custodian of the property of any child, parent, spouse, or other person established by administrative or judicial process, to apply for, give bond or other security for, take affirmation or oath for, or seek discharge from and termination of any letters of administration, conservatorship, guardianship, personal representative, or trusteeship, or other documentation of fiduciary office or relationship established by administrative or judicial process, and otherwise generally to act or decide as to any fiduciary relationship or related circumstance, condition, interest, matter, property, question, or transaction as the principal might do or omit to do in person and while competent, but that the principal does not authorize or empower the agent to exercise any fiduciary authority, duty, liability, power, privilege, or right granted to, imposed upon, or possessed by the principal as trustee of any irrevocable trust created, declared, or established by the agent as grantor.

**Source:** Laws 1988, LB 475, § 50.

**49-1551 General Power for Governmental and Other Benefits, defined.**

The short form expression, General Power for Governmental and Other Benefits, shall mean that the principal, in connection with or with respect to any accommodation, allotment, allowance, compensation, distribution, payment, pension, rebate, reimbursement, shipment, storage, subsidy, transfer, transportation, or other benefit or service provided by or through any current or former employer, any federal, local, or state agency, program, or other civilian or military governmental arrangement, or any other private or public provider or scheme, whether or not any of them is specifically described or named, generally authorizes and empowers the agent to have and to exercise collectively or singly and concurrently or consecutively any one or more in combination or otherwise of each of Specific Authority for Acquisitions, Specific Authority for Ancillary Matters, Specific Authority for Assistants, Specific Authority for Claims, Specific Authority for Compensation, Specific Authority for Contracts, Specific Authority for Disclosure, Names, and Signatures, Specific Authority for Dispositions, Specific Authority for Documents, Specific Authority for Insolvency Proceedings, Specific Authority for Reimbursements, Specific Authority for Reorganizations, Specific Authority for Reports, Specific Authority for Taxes, and Specific Authority for Trusts, and that the principal also generally authorizes and empowers the agent to alter, continue, contribute to, draw from, initiate, participate in, suspend, or terminate any benefit or service program or scheme for any child, parent, spouse, or other person, to designate and alter designation of any successor or successors to any benefit or

service program or scheme, to participate in or withdraw from any purchase, shipment, storage, transfer, or other benefit or service program or scheme for any commodities, effects, goods, or other property, and otherwise generally to act or decide as to any governmental and other benefits or related circumstance, condition, interest, matter, property, question, or transaction as the principal might do or omit to do in person and while competent.

**Source:** Laws 1988, LB 475, § 51.

**49-1552 General Power for Insurance Coverages and Policies, defined.**

The short form expression, General Power for Insurance Coverages and Policies, shall mean that the principal, in connection with or with respect to any insurable interest in health, life, performance, property, or other insurable subject matter or any bond or contract of insurance, whether or not any of them is specifically described or named, generally authorizes and empowers the agent to have and to exercise collectively or singly and concurrently or consecutively any one or more in combination or otherwise of each of Specific Authority for Acquisitions, Specific Authority for Ancillary Matters, Specific Authority for Assistants, Specific Authority for Claims, Specific Authority for Compensation, Specific Authority for Contracts, Specific Authority for Disclosure, Names, and Signatures, Specific Authority for Dispositions, Specific Authority for Documents, Specific Authority for Encumbrances, Specific Authority for Insolvency Proceedings, Specific Authority for Investments, Specific Authority for Proceeds, Specific Authority for Reimbursements, Specific Authority for Reorganizations, Specific Authority for Reports, Specific Authority for Taxes, and Specific Authority for Trusts, and that the principal also generally authorizes and empowers the agent to alter or elect the method of payment, change beneficiary or beneficiaries, or change ownership of any bond or contract of insurance, to apply for, continue, procure, receive, suspend, or terminate any governmental aid, guarantee, or other private or public assistance with the payment of premiums for any bond or contract of insurance, to assign, borrow upon, hypothecate, or pledge or make any other security arrangement with any contract of insurance, to cash, change, continue, extend, maintain, modify, pay assessments or premiums for, procure, release, rescind, substitute, surrender, or terminate any bond or contract of insurance for accident, appearance, bail, burglary, casualty, compensation, crop, disability, fidelity, fire, flood, hail, health, hurricane, liability, life, marine, performance, or other risk to any insurable interest in or of any person or persons or property for the benefit of such person or persons or any other person or persons, and otherwise generally to act or decide as to any insurance coverages or policies or related circumstance, condition, interest, matter, property, question, or transaction as the principal might do or omit to do in person and while competent, but that the principal does not authorize and empower the agent to alter ownership of, borrow against, change beneficiary designation of, or surrender or otherwise exercise any other incident of ownership of any policy of insurance upon the life of the agent owned by the principal.

**Source:** Laws 1988, LB 475, § 52.

**49-1553 General Power for Proprietary Interests and Materials, defined.**

The short form expression, General Power for Proprietary Interests and Materials, shall mean that the principal, in connection with or with respect to

any artistic, domestic, intellectual, literary, mechanical, scientific, or other proprietary interest or material, whether or not any of them is specifically described or named, generally authorizes and empowers the agent to have and to exercise collectively or singly and concurrently or consecutively any one or more in combination or otherwise of each of Specific Authority for Acquisitions, Specific Authority for Ancillary Matters, Specific Authority for Assistants, Specific Authority for Claims, Specific Authority for Compensation, Specific Authority for Contracts, Specific Authority for Disclosure, Names, and Signatures, Specific Authority for Dispositions, Specific Authority for Documents, Specific Authority for Encumbrances, Specific Authority for Improvements, Specific Authority for Insolvency Proceedings, Specific Authority for Investments, Specific Authority for Proceeds, Specific Authority for Reimbursements, Specific Authority for Reorganizations, Specific Authority for Reports, Specific Authority for Taxes, and Specific Authority for Trusts, and that the principal also generally authorizes and empowers the agent to abandon, apply for, extend, maintain, modify, receive, renew, secure, or terminate any protection by copyright, patent, registration, or other mechanism for any composition, design, device, discovery, formula, invention, mark, name, process, program, recipe, service mark, trademark, trade name, or other protectable intangible or tangible endeavor or work, to appeal from, compromise, conduct, defend, intervene in, participate in, prosecute, settle, or terminate any proceeding before any administrative, judicial, or other agency, board, body, commission, court, examiner, judge, magistrate, officer, or other official or tribunal with jurisdiction of any proprietary interest or material, to arrange or contract for payment or receipt of any charges, fees, royalties, or other payments for assignment, license, sale, transfer, use, or other exploitation of any proprietary interest or material, to deal in and with any business data, business or trade secret, business method, client or customer list, dealership, franchise, license, manufacturing process, or other proprietary interest or material, and otherwise generally to act or decide as to any proprietary interest or material or related circumstance, condition, interest, matter, property, question, or transaction as the principal might do or omit to do in person and while competent.

**Source:** Laws 1988, LB 475, § 53.

**49-1554 General Power for Real Estate, defined.**

The short form expression, General Power for Real Estate, shall mean that the principal, in connection with and with respect to ownership or possession of any claim to, estate in, or interest in any real estate or other realty, whether or not any of them is specifically described or named, generally authorizes and empowers the agent to have and to exercise collectively or singly and concurrently or consecutively any one or more in combination or otherwise of each of Specific Authority for Acquisitions, Specific Authority for Ancillary Matters, Specific Authority for Assistants, Specific Authority for Claims, Specific Authority for Compensation, Specific Authority for Contracts, Specific Authority for Disclosure, Names, and Signatures, Specific Authority for Dispositions, Specific Authority for Documents, Specific Authority for Encumbrances, Specific Authority for Improvements, Specific Authority for Insolvency Proceedings, Specific Authority for Investments, Specific Authority for Maintenance, Specific Authority for Proceeds, Specific Authority for Reimbursements, Specific Authority for Reorganizations, Specific Authority for Reports, Specific Authority for Taxes, and Specific Authority for Trusts, and that the principal also

generally authorizes and empowers the agent to allow, permit, or require any person or persons by contract, covenant, deed, easement, lease, license, or any other oral or written arrangement to abandon, demolish, develop, exploit, improve, manage, mine, sublease, or make or refrain from any other use of any property, to abandon, alter, erect, demolish, install, lease, manage, modify, remove, repair, or replace any fixture or structure upon or other elements or improvements on any property, to appropriate, divert, drill, explore for, extract, lease, mine, pump, or remove any gas, gravel, metal, oil, ore, sand, water, or other component part, deposit, mineral, or other material in, on, over, or under any property, to develop, divide, fill, grade, landscape, lease, manage, regrade, sell, or subdivide any property, to make any commercial, private, or other use of any property, to modify the appearance or topology of any property, and otherwise generally to act or decide as to any real property or related circumstance, condition, interest, matter, property, question, or transaction as the principal might do or omit to do in person and while competent.

**Source:** Laws 1988, LB 475, § 54.

**49-1555 General Power for Securities, defined.**

The short form expression, General Power for Securities, shall mean that the principal, in connection with and with respect to any bond, stock, or other security, whether or not any of them is specifically described or named, generally authorizes and empowers the agent to have and to exercise collectively or singly and concurrently or consecutively any one or more in combination or otherwise of each of Specific Authority for Acquisitions, Specific Authority for Ancillary Matters, Specific Authority for Assistants, Specific Authority for Claims, Specific Authority for Compensation, Specific Authority for Contracts, Specific Authority for Disclosure, Names, and Signatures, Specific Authority for Dispositions, Specific Authority for Documents, Specific Authority for Encumbrances, Specific Authority for Insolvency Proceedings, Specific Authority for Investments, Specific Authority for Proceeds, Specific Authority for Reimbursements, Specific Authority for Reorganizations, Specific Authority for Reports, Specific Authority for Taxes, and Specific Authority for Trusts, and that the principal also generally authorizes and empowers the agent to abandon, acquire, buy, dispose of, donate, encumber, exchange, finance, gift, grant, or receive any secured interest in, hypothecate, invest in, mortgage, pledge, receive, reinvest in, retain, sell, trade, or transfer any bill, bond, certificate, commodity contract, coupon, debenture, draft, general or limited partnership interest, investment certificate, investment commodity, note, option, stock, warrant, or other security, to change, close, maintain, or open any account with any agent, broker, dealer, or other person or persons, to deal and transact business with any agent, broker, dealer, or other person or persons, to hold or transfer any security in the name or names of any nominee or nominees, in registered or unregistered form, or in or through any other direct or indirect mode, and otherwise generally to act or decide as to any security or related circumstance, condition, interest, matter, property, question, or transaction as the principal might do or omit to do in person and while competent.

**Source:** Laws 1988, LB 475, § 55.

**49-1556 General Power for Records, Reports, and Statements, defined.**

The short form expression, General Power for Records, Reports, and Statements, shall mean that the principal, in connection with and with respect to any record, report, statement, or other document, whether or not any of them is specifically described or named, generally authorizes and empowers the agent to have and to exercise collectively or singly and concurrently or consecutively any one or more in combination or otherwise of each of Specific Authority for Ancillary Matters, Specific Authority for Assistants, Specific Authority for Claims, Specific Authority for Compensation, Specific Authority for Contracts, Specific Authority for Disclosure, Names, and Signatures, Specific Authority for Documents, Specific Authority for Reimbursements, Specific Authority for Reports, Specific Authority for Taxes, and Specific Authority for Trusts, and that the principal also generally authorizes and empowers the agent to destroy, make, preserve, or store any printed or other recorded material, to execute, file, prepare, record, report, or submit any application, form, letter, return, or other document permitted or required under any circumstances, to keep, maintain records of, and record all cash disbursements and receipts, all credits and debits, and all other transactions affecting assets, liabilities, and net equity or worth of any person or persons, to procure and substantiate the preparation of any printed or other recorded material, to maintain or procure the maintenance of books of account and financial records, and otherwise generally to act or decide as to any record, report, statement, or other documentation or related circumstance, condition, interest, matter, property, question, or transaction as the principal might do or omit to do in person and while competent.

**Source:** Laws 1988, LB 475, § 56.

**49-1557 Plenary power, how construed.**

Reference to or other use in a statutory short form or other version of a power of attorney, in the identical indicated words and not in any other formulation of words, of the exact short form expression, plenary power, shall be equivalent to the use of, shall be construed and interpreted with the force and to the effect of, and shall be deemed to incorporate at length and in full the provisions of the full expression, as further expanded by any additional incorporation required by reference to or use of other provisions of the Nebraska Short Form Act to be effected, and shall mean that the principal generally and universally authorizes and empowers the agent to have and to exercise collectively or singly and concurrently or consecutively any one or more in combination or otherwise of each of General Power for Bank and Financial Transactions, General Power for Business Interests, General Power for Chattels and Goods, General Power for Disputes and Litigation, General Power for Domestic and Personal Concerns, General Power for Fiduciary Relationships, General Power for Governmental and Other Benefits, General Power for Insurance Coverages and Policies, General Power for Proprietary Interests and Materials, General Power for Real Estate, General Power for Securities, and General Power for Records, Reports, and Statements, and that the principal generally and universally authorizes and empowers the agent to act as and to be an alter ego of the principal as to anything and everything not otherwise fully within the scope of such enumerated general powers and to the full extent permissible and practicable for any person as an agent to do or omit to do for, in place of, or on behalf of another person as a principal and without reservation or restriction as

to any circumstance, condition, interest, matter, property, question, or transaction as the principal might do or omit to do in person and while competent.

**Source:** Laws 1988, LB 475, § 57.

**49-1558 Plenary power subject to limitations, how construed.**

Reference to or other use in a statutory short form or other version of a power of attorney, in the identical indicated words and not in any other formulation of words, of the exact short form expression, plenary power subject to limitations, shall be equivalent to the use of, shall be construed and interpreted with the force and effect of, and shall be deemed to incorporate at length and in full the provisions of the full expression, as further expanded by any additional incorporation required by reference to or use of other provisions of the Nebraska Short Form Act to be effected, and shall mean that the principal confers upon the agent plenary power except for and exclusive of General Power for Domestic and Personal Concerns and General Power for Fiduciary Relationships, except for and exclusive of any one or more other general powers or specific authorities expressly indicated by the principal to be excluded, and subject to any one or more other restrictions expressly indicated by the principal to limit the scope of plenary power.

**Source:** Laws 1988, LB 475, § 58.

**49-1559 Revocation of power of attorney; statutory short form.**

The following statutory short form, when reproduced and used in the identical indicated words or in substantially the same or more similar than dissimilar formulation of words by means of printing, typing, writing, or other method of reproduction and use or when appropriately adapted to particular circumstances, shall be and constitute a statutory short form revocation of power of attorney and, when completed by deletion by line or other clear obliteration of each included provision desired and permitted to be deleted and made inoperative, by inclusion by printing, typing, writing, or other clear presentation of each provision not included but desired and permitted to be included and made operative, and by insertion by printing, typing, writing, or other clear presentation of all additional data and information required to be included and when effectuated by execution by or for the principal, by acknowledgment by or for the principal, and by delivery by or at the express direction of or on behalf of the principal to the agent of at least one so completed, executed, and acknowledged form, shall revoke and terminate an agency relationship under a revocation of power of attorney in accordance with the Nebraska Short Form Act.

REVOCATION OF POWER OF ATTORNEY

....., a domiciliary of ..... County, Nebraska, Principal, desiring and intending under the Nebraska Short Form Act to revoke a previously effectuated Power of Attorney heretofore granted to or to each of ....., a ..... of or with an office in ..... County, Nebraska, and ....., a ..... of or with an office in ..... County, Nebraska, Agent, does hereby effective on ....., 20...., effectuate Total Revocation of such Power of Attorney dated on ....., 20....

EXECUTED at ....., ..... County, Nebraska, on ....., 20....

.....  
Principal

STATE OF NEBRASKA    )  
                                  )    ss.  
COUNTY OF.....    )

The foregoing instrument was acknowledged before me on..... ,  
20....., by or for the Principal by .....

.....  
Notary Public

**Source:** Laws 1988, LB 475, § 59; Laws 2004, LB 813, § 22.

**49-1560 Effectuation and operation of revocation form; general principles.**

The following general principles shall in part govern the effectuation and operation of a statutory short form revocation of power of attorney:

(1) Any competent individual who has effectuated a statutory short form power of attorney or any similar or other document creating and establishing a revocable agency relationship shall be entitled at any time to revoke such power of attorney or such document, to terminate such agency relationship, and to effectuate a statutory short form revocation of power of attorney. The conservator of any principal who has effectuated any such statutory short form or document shall be entitled at any time on behalf of such principal while incompetent to revoke such statutory short form or document, to terminate such agency relationship, and to effectuate a statutory short form revocation of power of attorney on behalf of and for such principal;

(2) The principal or the conservator of any principal under a statutory short form revocation of power of attorney shall be entitled to modify the content and substance thereof by inclusion of any other appropriate, convenient, or necessary provision or provisions or by use of any other clear and explicit addition or additions;

(3) No effectuated revocation of power of attorney revoking a statutory short form power of attorney or any similar or other document creating and establishing a revocable agency relationship which has superseded and revoked a previous similar relationship shall be effective or operative to reinstate or revive any such document or any such superseded and revoked relationship. No effectuated revocation of power of attorney shall be subject to revocation so as to reinstate or revive any superseded and revoked power of attorney; and

(4) When the principal or the conservator of any principal has effectuated a statutory short form revocation of power of attorney revoking a statutory short form power of attorney or any similar or other document creating and establishing a revocable agency relationship which has been filed in or with any public office or otherwise made a matter of public record, the principal or such conservator shall so far as practicable similarly file or make such revocation of power of attorney a matter of public record.

**Source:** Laws 1988, LB 475, § 60.

**49-1561 Total revocation; use of expression, how construed.**

Reference to or other use in a statutory short form or other version of a revocation of power of attorney, in the identical indicated words and not in any

other formulation of words, of the exact short form expression, total revocation, shall be equivalent to the use of, shall be construed and interpreted with the force and to the effect of, and shall be deemed to incorporate at length and in full the provisions of the full expression and shall mean that the principal revokes the therein described previously effectuated power of attorney in its entirety and without reservation or restriction and terminates the agency relationship with the agent previously made operative by such power of attorney effective from and after the stipulated date of revocation.

**Source:** Laws 1988, LB 475, § 61.

**49-1562 Powers relating to rights of survivorship and beneficiary designations.**

An agent or attorney in fact under a power of attorney, whether the power of attorney is durable or nondurable, may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent or attorney in fact the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

- (1) Create or change rights of survivorship; or
- (2) Create or change a beneficiary designation.

**Source:** Laws 2010, LB712, § 42.

**ARTICLE 16**

**NEBRASKA CONSTITUTIONAL REVISION COMMISSION**

Section

49-1601. Repealed. Laws 2000, LB 887, § 1.

49-1602. Repealed. Laws 2000, LB 887, § 1.

49-1603. Repealed. Laws 2000, LB 887, § 1.

**49-1601 Repealed. Laws 2000, LB 887, § 1.**

**49-1602 Repealed. Laws 2000, LB 887, § 1.**

**49-1603 Repealed. Laws 2000, LB 887, § 1.**

**LEGISLATURE**

**CHAPTER 50  
LEGISLATURE**

Article.

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2. Expenses. 50-201 to 50-203.
3. Nebraska Futures Center. Repealed.
4. Legislative Council. 50-401 to 50-448.
5. Statewide Strategic Plan for Biotechnology. 50-501.
6. Nebraska Law Enforcement and Justice Advisory Committee. Repealed.
7. Performance Review and Audit Committee. Repealed.
8. Nebraska Postsecondary Education Advisory Committee. Repealed.
9. Retirement. Repealed.
10. Youth Leadership Academy. Repealed.
11. Legislative Districts. 50-1101 to 50-1152.
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**ARTICLE 1**

**GENERAL PROVISIONS**

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 50-126. Legislature; convening; failure of Secretary of State or Governor to act; penalty.  
 50-127. Repealed. Laws 1986, LB 993, § 1.  
 50-128. Legislature; make appropriations.  
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**50-101 Members; credentials; filing; officers pro tempore.**

The Clerk of the Legislature shall file the certificates presented by members, and make a roll of the members who thus appear to be elected. The persons thus appearing to be elected members shall proceed to elect such other officers as may be required for the time being.

**Source:** R.S.1866, c. 31, § 3, p. 249; R.S.1913, § 3742; C.S.1922, § 3135; C.S.1929, § 50-101; R.S.1943, § 50-101.

**50-102 Members; credentials committee; report; when waived.**

(1) When the Legislature is temporarily organized it shall elect a committee of five by ballot, which committee shall examine and report upon the credentials of those claiming to be elected members, and, when such report is made, those reported as elected shall proceed to the permanent organization of the Legislature. The Legislature shall be the sole judge of the election returns and qualifications of its own members.

(2) The Legislature may waive the requirements set forth in subsection (1) of this section whenever it is reasonably apparent to the members of the Legislature that there is not, or is not likely to be, a contest of any election result. If the provisions of subsection (1) are waived, the Legislature may, by rule, provide for the certification of members elected to the Legislature.

**Source:** R.S.1866, c. 31, § 4, p. 249; R.S.1913, § 3743; C.S.1922, § 3136; C.S.1929, § 50-102; R.S.1943, § 50-102; Laws 1977, LB 231, § 1.

**50-103 Oaths; members may administer.**

Any member may administer oaths in the Legislature, and while acting on a committee may administer oaths on the business of such committee.

**Source:** R.S.1866, c. 31, § 5, p. 249; R.S.1913, § 3744; C.S.1922, § 3137; C.S.1929, § 50-103; R.S.1943, § 50-103.

Although this section provides that any member of the Legislature "May administer oaths in the Legislature, and while acting on a committee may administer oaths on the business of

such committee" no Nebraska statute requires that an oath be administered to individuals testifying before a legislative committee. *State v. Douglas*, 222 Neb. 833, 388 N.W.2d 801 (1986).

**50-104 Speech; legislative privilege.**

No member of the Legislature shall be questioned in any other place for any speech or words spoken in debate in the Legislature.

**Source:** R.S.1866, c. 31, § 6, p. 249; R.S.1913, § 3745; C.S.1922, § 3138; C.S.1929, § 50-104; R.S.1943, § 50-104.

**50-105 Contempt, defined; punishment.**

The Legislature has power and authority to punish as a contempt by fine or imprisonment, or either of them, the offense of knowingly arresting a member in violation of his privilege; of assaulting or threatening to assault a member, or threatening to do him any harm, in person or property, for anything said or done as a member thereof; of attempting, by menace or other corrupt means, to control or influence a member in giving his vote, or to prevent his giving it; of disorderly or contemptuous conduct tending to disturb its proceedings; of refusing to attend or to be sworn or to be examined as a witness before the Legislature or a committee, when duly summoned; of assaulting or preventing any person going to the Legislature, or its committee, by order thereof, knowing the same; of rescuing or attempting to rescue any person arrested by order of the Legislature, knowing of such arrest; and of knowingly injuring any officer of the Legislature in the discharge of his duties as such.

**Source:** R.S.1866, c. 31, § 7, p. 250; R.S.1913, § 3746; C.S.1922, § 3139; C.S.1929, § 50-105; R.S.1943, § 50-105.

Although this section authorizes the Legislature to hold in contempt a person refusing to be sworn, when required by a committee of the Legislature pursuant to a rule of the Nebraska Unicameral, the statute does not explicitly require an oath to be administered to persons testifying before a committee. *State v. Douglas*, 222 Neb. 833, 388 N.W.2d 801 (1986).

**50-106 Contempt; imprisonment; maximum sentence.**

Imprisonment for contempt of the Legislature shall not be for more than six hours, and shall be in the jail of the county in which the Legislature may be sitting.

**Source:** R.S.1866, c. 31, § 8, p. 250; R.S.1913, § 3747; C.S.1922, § 3140; C.S.1929, § 50-106; R.S.1943, § 50-106.

**50-107 Contempt; maximum fine.**

Should a fine be imposed for any offense mentioned in section 50-105, it shall not exceed fifty dollars.

**Source:** R.S.1866, c. 31, § 9, p. 250; R.S.1913, § 3748; C.S.1922, § 3141; C.S.1929, § 50-107; R.S.1943, § 50-107.

**50-108 Contempt; fines and imprisonment; how effected.**

Fines and imprisonment shall be only by virtue of an order of the Legislature, entered on its journal stating the grounds therefor. Imprisonment shall be effected by a warrant, under the hand of the presiding officer for the time being, countersigned by the Clerk of the Legislature, running in the name of the state and directed to the sheriff of the proper county. Under such warrant, the officer of the Legislature, sheriff, and jailer will be authorized to arrest and detain the person.

**Source:** R.S.1866, c. 31, § 10, p. 250; R.S.1913, § 3749; C.S.1922, § 3142; C.S.1929, § 50-108; R.S.1943, § 50-108.

**50-109 Contempt; fines; collection.**

Fines shall be collected by virtue of a similar warrant, directed to any proper officer of the county in which the offender has property, and executed in the same manner as executions for fines issued by courts of justice, and the proceeds shall be paid into the state treasury.

**Source:** R.S.1866, c. 31, § 11, p. 250; R.S.1913, § 3750; C.S.1922, § 3143; C.S.1929, § 50-109; R.S.1943, § 50-109.

**50-110 Contempt; punishment; effect on other proceedings.**

Punishment for contempt, as provided in sections 50-105 to 50-109, is no bar to any other proceedings, civil or criminal, for the same offense.

**Source:** R.S.1866, c. 31, § 12, p. 251; R.S.1913, § 3751; C.S.1922, § 3144; C.S.1929, § 50-110; R.S.1943, § 50-110.

**50-111 Legislature; officers; how selected.**

The officers of the Legislature shall consist of a speaker, chief clerk, assistant clerk, sergeant at arms, and such other officers as may be deemed necessary for the proper transaction of business, to be elected by the Legislature upon the recommendation of the Executive Board of the Legislative Council, except that the board shall make no recommendation as to the speaker.

**Source:** Laws 1867, § 2, p. 85; Laws 1885, c. 61, § 2, p. 274; Laws 1889, c. 86, § 1, p. 572; R.S.1913, § 3753; C.S.1922, § 3146; C.S.1929, § 50-112; R.S.1943, § 50-111; Laws 1963, c. 304, § 1, p. 900; Laws 1967, c. 328, § 6, p. 870; Laws 1971, LB 37, § 1; Laws 1973, LB 485, § 1.

**50-112 Officers and employees; salaries; how fixed.**

There shall be paid to each of the several officers, except the speaker, named in section 50-111 for their official services such salaries as shall be fixed by the Executive Board of the Legislative Council, unless otherwise directed by the Legislature.

**Source:** Laws 1867, § 3, p. 85; R.S.1913, § 3754; Laws 1919, c. 118, § 1, p. 283; C.S.1922, § 3147; C.S.1929, § 50-113; Laws 1937, c. 116, § 1, p. 418; C.S.Supp.,1941, § 50-113; R.S.1943, § 50-112; Laws 1945, c. 120, § 1, p. 396; Laws 1947, c. 346, § 1, p. 1091; Laws 1951, c. 338, § 1, p. 1116; Laws 1953, c. 358, § 1, p. 1136; Laws 1955, c. 198, § 1, p. 563; Laws 1957, c. 220, § 1, p. 759; Laws 1959, c. 241, § 1, p. 829; Laws 1959, c. 425, § 2, p. 1428; Laws 1963, c. 304, § 2, p. 900; Laws 1967, c. 328, § 7, p. 871; Laws 1973, LB 82, § 1; Laws 1973, LB 485, § 2.

If additional employees of Legislature are desired, statute must be so framed as to authorize their employment. State ex rel. Squires v. Wallichs, 14 Neb. 439, 16 N.W. 481 (1883).

**50-112.01 Repealed. Laws 1959, c. 266, § 1.****50-112.02 Repealed. Laws 1961, c. 286, § 1.****50-113 Presiding officer; duties.**

It shall be the duty of the presiding officer of the Legislature to preside over the Legislature, to keep and maintain order during the session thereof, and to do and perform the duties devolving on him by general parliamentary usage, and the rules adopted by the Legislature.

**Source:** Laws 1867, § 4, p. 85; R.S.1913, § 3755; C.S.1922, § 3148; C.S.1929, § 50-114; Laws 1941, c. 101, § 1, p. 418; C.S.Supp.,1941, § 50-114; R.S.1943, § 50-113.

**50-114 Clerk; duties.**

It shall be the duty of the Clerk of the Legislature to attend the sessions of the Legislature, to call the roll, read the journals, bills, memorials, resolutions, petitions, and all other papers or documents necessary to be read in the Legislature, to keep a correct journal of the proceedings in the Legislature, and to do and perform such other duties as may be imposed upon him by the Legislature or by the Executive Board of the Legislative Council.

**Source:** Laws 1867, § 4, p. 85; R.S.1913, § 3755; C.S.1922, § 3148; C.S.1929, § 50-114; Laws 1941, c. 101, § 1, p. 418; C.S.Supp.,1941, § 50-114; R.S.1943, § 50-114; Laws 1967, c. 328, § 8, p. 871.

Entries found in legislative journals prevail over evidence furnished by enrolled bill. Webster v. City of Hastings, 59 Neb. 563, 81 N.W. 510 (1900).

Enrolled bill and journals of houses are the official records relative to enactment of law and are the only competent evidence. State v. Abbott, 59 Neb. 106, 80 N.W. 499 (1899).

**50-114.01 Clerk; daily journal; prepare; compile after session.**

The Clerk of the Legislature shall prepare a daily journal of the proceedings of the Legislature. The Legislative Journal shall be compiled by the clerk after each regular session of the Legislature.

**Source:** Laws 1973, LB 84, § 1; Laws 1976, LB 718, § 1.

**50-114.02 Clerk; charges; authorized.**

The Clerk of the Legislature shall be authorized to make such charges, subject to the approval of the Executive Board of the Legislative Council, to recover costs and expenses of (1) copying files and records in the clerk's possession, (2) preparing certificates, (3) handling and mailing individual bills and bill subscriptions, and (4) such publications as may be authorized by the Legislature or the Executive Board of the Legislative Council.

**Source:** Laws 1977, LB 231, § 2.

**50-114.03 Clerk; reports; list; distribution.**

(1) The Clerk of the Legislature shall periodically prepare and distribute to all members of the Legislature a list of all reports received from state agencies, boards, and commissions. Such lists shall be prepared and distributed to each legislator no less frequently than once during the first ten days of each legislative session. Upon request by a legislator, the clerk shall arrange for any legislator to receive a copy of any such report.

(2) A state agency, board, or commission or other public entity which is required to provide a report to the Legislature may present the report by electronic format through the gateway or electronic network established under section 84-1204 after notification of such type of delivery is given to the Clerk of the Legislature. Such report shall be listed by the clerk as provided in subsection (1) of this section, and a member of the Legislature may receive a paper copy of the report upon request to the clerk.

**Source:** Laws 1979, LB 322, § 79; Laws 2003, LB 114, § 1.

**50-114.04 Clerk; reports; period retained.**

The Clerk of the Legislature shall retain the reports received from state agencies, boards, and commissions for three years after the date of receipt of such reports after which time the clerk may dispose of such reports.

**Source:** Laws 1979, LB 322, § 81.

**50-114.05 Clerk of the Legislature Cash Fund; created; use; investment.**

The Clerk of the Legislature Cash Fund is hereby created. The fund shall consist of funds received by the Clerk of the Legislature pursuant to sections 49-1480.01 and 49-1482. The fund shall be used by the Clerk of the Legislature to perform the duties required by sections 49-1480 to 49-1492.01, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Clerk of the Legislature 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 1994, LB 872, § 14; Laws 1994, LB 1243, § 16; Laws 1995, LB 7, § 53; Laws 2005, LB 242, § 67; Laws 2009, First Spec. Sess., LB3, § 26.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**50-115 Assistant clerk; duties.**

The assistant clerk shall be under the control and direction of the Clerk of the Legislature, and shall assist him in the proper discharge of his duties, and shall do and perform such other service as may be directed by the Legislature or by the Executive Board of the Legislative Council.

**Source:** Laws 1867, § 4, p. 85; R.S.1913, § 3755; C.S.1922, § 3148; C.S.1929, § 50-114; Laws 1941, c. 101, § 1, p. 418; C.S.Supp.,1941, § 50-114; R.S.1943, § 50-115; Laws 1967, c. 328, § 9, p. 871.

**50-116 Sergeant at arms; duties; display of state banner.**

It shall be the duty of the sergeant at arms to enforce the attendance of absent members, when directed properly so to do; to arrest all members or other persons, when lawfully authorized so to do; to keep and preserve order during the sessions of the Legislature; to convey to the post office the mail matter sent by the respective members, and to receive from such office the mail matter for such members, and to deliver the same to them on each morning of the session; to obey and enforce the orders of the presiding officers of the Legislature; and to do and perform such other duties as may be enjoined on him by law and the Legislature. It shall also be the duty of the sergeant at arms to procure a banner of the State of Nebraska, as described in section 90-102, and to place the same on top of the State Capitol building, there to be kept during the time the Legislature shall be in session. The colors of the banner shall be fast colors and the cloth shall be of substantial material. The banner shall be so arranged on the staff or pole that it may be raised or lowered with ease.

**Source:** Laws 1867, § 4, p. 85; R.S.1913, § 3755; C.S.1922, § 3148; C.S.1929, § 50-114; Laws 1941, c. 101, § 1, p. 418; C.S.Supp.,1941, § 50-114; R.S.1943, § 50-116; Laws 1963, c. 305, § 1, p. 901.

**50-117 Repealed. Laws 1999, LB 10, § 1.****50-118 Repealed. Laws 1986, LB 993, § 1.**

**50-119 Repealed. Laws 1967, c. 328, § 14.**

**50-120 Repealed. Laws 1973, LB 82, § 2.**

**50-121 Repealed. Laws 1973, LB 82, § 2.**

**50-122 Repealed. Laws 1960, Seventy-first Spec. Sess., c. 1, § 3.**

**50-123 Repealed. Laws 1960, Seventy-first Spec. Sess., c. 1, § 3.**

**50-123.01 Members; salary.**

Each member of the Legislature shall receive a salary in an amount equal to the maximum authorized by the Constitution of Nebraska. Such salary shall be paid in equal monthly installments.

**Source:** Laws 1960, Seventy-first Spec. Sess., c. 1, § 1, p. 59; Laws 1968, Seventy-ninth Spec. Sess., c. 2, § 1, p. 3251; Laws 1988, First Spec. Sess., LB 1, § 1.

**50-123.02 Repealed. Laws 1963, c. 341, § 1.**

**50-123.03 Repealed. Laws 1971, LB 33, § 1.**

**50-124 Repealed. Laws 1971, LB 33, § 1.**

**50-125 Legislature; special session; how convened; notice.**

Whenever ten or more members of the Legislature shall lodge with the Secretary of State a positive statement in writing, over their signatures respectively, setting forth the purpose or purposes for which said Legislature is convened, requesting that the Legislature meet in special session, personally delivered or transmitted by either registered or certified mail, return card requested, the Secretary of State shall forthwith certify to each of the other members of the Legislature, transmitted by either registered or certified mail, return card requested, the fact that ten or more members have lodged such statements with him and the object or objects of calling such session. If within ten days thereafter an additional number of the members of the Legislature, sufficient to make two-thirds or more, shall lodge statements in like manner as aforementioned with the Secretary of State, requesting that the Legislature meet in special session, the Secretary of State shall forthwith certify to the Governor the fact that two-thirds or more of said members have lodged said statements with him and the object or objects of calling such session. Thereupon the Governor shall, by proclamation, stating therein the purpose or purposes for which it is called, convene the Legislature to meet in special session within five days after receipt of said certificate from the Secretary of State. The Legislature shall enter upon no business except that for which it was called together.

**Source:** Laws 1937, c. 117, § 2, p. 419; C.S.Supp.,1941, § 50-118; R.S. 1943, § 50-125; Laws 1957, c. 242, § 42, p. 854; Laws 1969, c. 430, § 1, p. 1452.

**50-126 Legislature; convening; failure of Secretary of State or Governor to act; penalty.**

Any Secretary of State or any Governor who shall refuse or neglect punctually to perform the duties enjoined upon them or either of them, by section

50-125, shall be deemed guilty of an act of malfeasance which works a forfeiture of office. Upon complaint of any legislator or elector of the state the Attorney General shall forthwith file an information in quo warranto against said officer as an original action in the Supreme Court of the state, without bond for costs. If it shall appear from the showing made that the officer so offending failed punctually to perform said duties, or any of them, a judgment shall be rendered that said officer so offending be ousted, and also that he pay the costs of the proceeding.

**Source:** Laws 1937, c. 117, § 3, p. 420; C.S.Supp.,1941, § 50-119; R.S. 1943, § 50-126.

**50-127 Repealed. Laws 1986, LB 993, § 1.**

**50-128 Legislature; make appropriations.**

Beginning in 1987, the Legislature shall make appropriations for the expenses of state government during the regular session held in each odd-numbered year for the biennium beginning July 1 of such year and ending June 30 of the next succeeding odd-numbered year.

**Source:** Laws 1986, LB 258, § 1.

**50-129 Repealed. Laws 1998, LB 902, § 1.**

**50-130 Repealed. Laws 1998, LB 902, § 1.**

**ARTICLE 2  
EXPENSES**

Section

50-201. Legislative findings.

50-202. Members; expenses allowed; when.

50-203. Expenses; Executive Board of the Legislative Council; powers and duties.

**50-201 Legislative findings.**

The Legislature hereby finds and declares (1) that the Constitution of Nebraska, by expressly providing for the legislative branch of government, implies the powers and the duty to provide the means, accessories, and instrumentalities to carry into effect the purposes for which the Legislature was created, (2) that items in the nature of expenses incidental to holding the office are not pay or perquisites within the meaning of Article III, section 7 of the Constitution of Nebraska, and (3) that the Constitution of Nebraska is construed to allow expenses to members of the Legislature, incidental to the performance of their duties as members of the Legislature, without contravening any constitutional provision as to pay, perquisites, or compensation.

**Source:** Laws 1981, LB 206, § 1.

Sections 50-201 and 50-202 are not in conflict with Article III, section 7, of the Nebraska Constitution. State ex rel. Douglas v. Beermann, 216 Neb. 849, 347 N.W.2d 297 (1984).

**50-202 Members; expenses allowed; when.**

Each member of the Legislature shall be allowed necessary expenses incurred while performing in the official capacity as a member of the Legislature.

**Source:** Laws 1981, LB 206, § 2.

**NEBRASKA FUTURES CENTER**

**§ 50-309**

Pursuant to Article III, section 7, of the Constitution of Nebraska and this section, the Legislature was authorized to adopt a policy which would reimburse the members of the Legislature for actual expenses they paid or incurred while performing their duties. *Jaksha v. Thomas*, 243 Neb. 794, 502 N.W.2d 827 (1993).

Sections 50-201 and 50-202 are not in conflict with Article III, section 7, of the Nebraska Constitution. *State ex rel. Douglas v. Beermann*, 216 Neb. 849, 347 N.W.2d 297 (1984).

**50-203 Expenses; Executive Board of the Legislative Council; powers and duties.**

The Executive Board of the Legislative Council shall adopt policies to carry out section 50-202. The policies shall allow each member of the Legislature to receive per diem expenses based upon ordinary and necessary business expenses as permitted by section 162 of the Internal Revenue Code which are incurred while performing in the official capacity as a member of the Legislature. The per diem expenses paid to a member shall be less than or equal to the amounts actually paid or incurred.

**Source:** Laws 1995, LB 508, § 1.

**ARTICLE 3**

**NEBRASKA FUTURES CENTER**

Section

- 50-301. Repealed. Laws 2004, LB 940, § 4.
- 50-302. Repealed. Laws 2004, LB 940, § 4.
- 50-303. Repealed. Laws 2004, LB 940, § 4.
- 50-304. Repealed. Laws 2004, LB 940, § 4.
- 50-305. Repealed. Laws 2004, LB 940, § 4.
- 50-306. Repealed. Laws 2004, LB 940, § 4.
- 50-307. Repealed. Laws 2004, LB 940, § 4.
- 50-308. Repealed. Laws 2004, LB 940, § 4.
- 50-309. Repealed. Laws 2004, LB 940, § 4.

**50-301 Repealed. Laws 2004, LB 940, § 4.**

**50-302 Repealed. Laws 2004, LB 940, § 4.**

**50-303 Repealed. Laws 2004, LB 940, § 4.**

**50-304 Repealed. Laws 2004, LB 940, § 4.**

**50-305 Repealed. Laws 2004, LB 940, § 4.**

**50-306 Repealed. Laws 2004, LB 940, § 4.**

**50-307 Repealed. Laws 2004, LB 940, § 4.**

**50-308 Repealed. Laws 2004, LB 940, § 4.**

**50-309 Repealed. Laws 2004, LB 940, § 4.**

**ARTICLE 4**

**LEGISLATIVE COUNCIL**

Section

- 50-401. Legislative Council; members; functions.
- 50-401.01. Legislative Council; executive board; members; selection; powers and duties.
- 50-401.02. Repealed. Laws 1986, LB 993, § 1.
- 50-401.03. Repealed. Laws 1986, LB 993, § 1.

## LEGISLATURE

- Section
- 50-401.04. Repealed. Laws 1995, LB 509, § 8.
- 50-401.05. Executive Board of the Legislative Council; policy regarding telephones and telefax machines; authorized.
- 50-402. Legislative Council; office; duties.
- 50-403. Repealed. Laws 1992, LB 898, § 5.
- 50-404. Legislative Council; executive board; special committees; civil or criminal actions; exempt; when.
- 50-405. Legislative Council; duties; investigations; studies.
- 50-406. Legislative Council; committees; oaths; subpoenas; books and records; examination.
- 50-407. Legislative Council; committees; subpoenas; enforcement; refusal to testify.
- 50-408. Legislative Council; committees; witnesses; fees.
- 50-409. Legislative Council; state and local governments; cooperation.
- 50-410. Legislative Council; meetings; quorum.
- 50-411. Legislative Council; message from Governor.
- 50-412. Legislative Council; library facilities; receipt and use of funds.
- 50-413. Legislative Council; minutes of meetings; reports.
- 50-414. Legislative Council; recommendations; publication.
- 50-415. Legislative Council; members; expenses.
- 50-416. Legislative Research; Director of Research.
- 50-416.01. Nebraska Retirement Systems Committee; members.
- 50-417. Nebraska Retirement Systems Committee; public retirement systems; existing or proposed; duties.
- 50-417.01. Repealed. Laws 2006, LB 1019, § 23.
- 50-417.02. Act, how cited.
- 50-417.03. Terms, defined.
- 50-417.04. Law enforcement officers retirement plans survey; purpose; report; actuarial survey.
- 50-417.05. Political subdivisions and state; provide information; confidentiality.
- 50-417.06. State and political subdivisions; liability.
- 50-418. Legislative Fiscal Analyst; office established; personnel; Appropriations Committee; duties.
- 50-419. Fiscal analyst; powers and duties.
- 50-419.01. Legislative Fiscal Analyst; present evaluation of state operations; when.
- 50-419.02. Repealed. Laws 1992, LB 988, § 19.
- 50-419.03. Repealed. Laws 1992, LB 988, § 19.
- 50-420. Fiscal analyst; officer, board, commission, and department of state government; furnish information.
- 50-421. Office of Legislative Audit; Legislative Auditor.
- 50-422. Health and Human Services Committee; behavioral health insurance parity study and actuarial analysis; report.
- 50-423. Transferred to section 81-126.
- 50-424. Repealed. Laws 1987, LB 511, § 1.
- 50-425. Repealed. Laws 1987, LB 511, § 1.
- 50-426. Repealed. Laws 1986, LB 993, § 1.
- 50-427. Repealed. Laws 1986, LB 993, § 1.
- 50-428. Repealed. Laws 1986, LB 993, § 1.
- 50-429. Repealed. Laws 1986, LB 993, § 1.
- 50-430. Repealed. Laws 1984, LB 637, § 1.
- 50-431. Repealed. Laws 1984, LB 637, § 1.
- 50-432. Repealed. Laws 1984, LB 637, § 1.
- 50-433. Repealed. Laws 1984, LB 637, § 1.
- 50-434. Repealed. Laws 1984, LB 637, § 1.
- 50-435. Repealed. Laws 1984, LB 637, § 1.
- 50-436. Repealed. Laws 1984, LB 637, § 1.
- 50-437. Nebraska Legislative Shared Information System Cash Fund; created; investment.
- 50-438. Legislative Council Retirement Study Fund; created; use; transfers; investment.
- 50-439. Repealed. Laws 2000, LB 890, § 1.
- 50-440. Repealed. Laws 2000, LB 890, § 1.

Section	
50-441.	Repealed. Laws 2000, LB 890, § 1.
50-442.	Repealed. Laws 2000, LB 890, § 1.
50-443.	Repealed. Laws 1999, LB 11, § 1.
50-444.	Central Interstate Low-Level Radioactive Waste Compact withdrawal; interim study; transfer of funds.
50-445.	State-Tribal Relations Committee; members.
50-446.	Corporate farming and ranching court rulings; legislative findings.
50-447.	Policy instruments advancing state interest in structure, development, and progress of agricultural production; study by Agriculture Committee; use of experts.
50-448.	Attorney General; duties; powers.

#### **50-401 Legislative Council; members; functions.**

There is hereby created a Legislative Council, hereinafter referred to as council, which shall consist of all of the members of the Legislature. It shall be the function of the Legislative Council to consider legislative policies between sessions of the Legislature and carry out the duties imposed by section 50-402.

**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. 413; R.S. 1943, § 50-401; Laws 1949, c. 168, § 1(1), p. 444.

#### **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, 2, 15, 21 to 30, 32, 34, and 46, two from legislative districts Nos. 3 to 14, 18, 20, 31, 39, and 45, and two from legislative districts Nos. 16, 17, 19, 33, 35 to 38, 40 to 44, and 47 to 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.

**50-401.02 Repealed. Laws 1986, LB 993, § 1.**

**50-401.03 Repealed. Laws 1986, LB 993, § 1.**

**50-401.04 Repealed. Laws 1995, LB 509, § 8.**

**50-401.05 Executive Board of the Legislative Council; policy regarding telephones and telefax machines; authorized.**

The Executive Board of the Legislative Council may adopt policies that allow a member of the Legislature to install and use with private funds a telephone line, telephone, and telefax machine in his or her public office for private purposes.

**Source:** Laws 1994, LB 1243, § 1.

**50-402 Legislative Council; office; duties.**

The Legislative Council shall occupy and maintain offices in the State Capitol.

It shall be the duty of the council:

(1) To collect information concerning the government and general welfare of the state;

(2) To examine the effects of previously enacted statutes and recommend amendments thereto;

(3) To deal with important issues of public policy and questions of statewide interest;

(4) To prepare a legislative program in the form of bills or otherwise as in its opinion the welfare of the state may require, to be presented at the next session of the Legislature;

(5) To study federal aid to the state and its political subdivisions and advise the Legislature of money, land, or buildings available from the federal government, matching funds necessary, grants and aids, and what new legislation will be needed;

(6) To establish and maintain a complete and efficient bill drafting service for the purpose of aiding and assisting members of the Legislature and the executive departments of the state in the preparation of bills, resolutions, and measures and in drafting the same in proper form, and for this purpose there shall be assigned to the council for such work, rooms in the State Capitol conveniently situated in reference to the legislative chamber;

(7) To provide, through the Revisor of Statutes, for the publication of supplements and replacement volumes of the statutes of Nebraska; and

(8) To set up subcommittees within the executive board to carry out functions such as investigation of any area which it may decide is in the public interest with power to employ such additional personnel as may be needed to carry out the intent and activities of the executive board or the Legislature.

**Source:** Laws 1937, c. 118, § 2, p. 422; Laws 1939, c. 60, § 2, p. 261; C.S.Supp.,1941, § 50-502; R.S.1943, § 50-402; Laws 1965, c. 311, § 1, p. 873; Laws 1965, c. 312, § 1, p. 874; Laws 1967, c. 328, § 11, p. 872; Laws 1972, LB 1129, § 2; Laws 1992, LB 898, § 2.

**50-403 Repealed. Laws 1992, LB 898, § 5.**

**50-404 Legislative Council; executive board; special committees; civil or criminal actions; exempt; when.**

The executive board shall have power and authority to appoint committees of the Legislative Council and assign subjects to them for study and reports. No member of the Legislature shall be liable in any civil or criminal action whatever for words spoken at an authorized committee meeting when conducting an investigation authorized by the executive board or for words spoken at meetings of standing or special committees of the Legislature.

**Source:** Laws 1937, c. 118, § 2, p. 422; Laws 1939, c. 60, § 2, p. 262; C.S.Supp.,1941, § 50-502; R.S.1943, § 50-404; Laws 1949, c. 168, § 2, p. 445; Laws 1973, LB 485, § 4.

**50-405 Legislative Council; duties; investigations; studies.**

It shall be the duty of the council (1) to investigate and study the possibilities for consolidation in state government for elimination of all unnecessary activities and of all duplication in office personnel and equipment and of the coordination of departmental activities or of methods of increasing efficiency and effecting economies, (2) to investigate and study the possibilities of reforming the system of local government with a view to simplifying the organization of government, (3) to study the merit system as it relates to state and local government personnel, (4) to cooperate with the administration in devising means of enforcing the law and improving the effectiveness of administrative methods, (5) to study and inquire into the financial administration of the state government and the subdivisions thereof, the problems of taxation including assessment and collection of taxes, and the distribution of the tax burden, and (6) to study and inquire into future planning of capital construction of the state and its governmental agencies as to location and sites for expansion, such

proposed planning to be submitted to the executive board for review and recommendation to the Legislature and the Appropriations Committee.

**Source:** Laws 1937, c. 118, § 3, p. 422; C.S.Supp.,1941, § 50-503; R.S. 1943, § 50-405; Laws 1969, c. 431, § 1, p. 1453; Laws 1986, LB 996, § 1.

**50-406 Legislative Council; committees; oaths; subpoenas; books and records; examination.**

In the discharge of any duty herein imposed the council, or any committee thereof, shall have authority to administer oaths, issue subpoenas upon approval of a majority of the council or committee, compel the attendance of witnesses, and the production of any papers, books, accounts, documents, and testimony, and to cause the depositions of witnesses either residing within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the district court.

**Source:** Laws 1937, c. 118, § 4, p. 422; C.S.Supp.,1941, § 50-504; R.S. 1943, § 50-406; Laws 1949, c. 168, § 3, p. 445; Laws 1965, c. 313, § 1, p. 875.

**50-407 Legislative Council; committees; subpoenas; enforcement; refusal to testify.**

In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council or any committee thereof or of the refusal of any witness to testify on any matters regarding which he or she may be lawfully interrogated, the district court for any county or the judge thereof, on application of a member of the council, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

If a witness refuses to testify before a special committee of the Legislature authorized pursuant to section 50-404 on the basis of the privilege against self-incrimination, the chairperson of the committee may request a court order pursuant to sections 29-2011.02 and 29-2011.03.

**Source:** Laws 1937, c. 118, § 4, p. 423; C.S.Supp.,1941, § 50-504; R.S. 1943, § 50-407; Laws 1949, c. 168, § 4, p. 445; Laws 1990, LB 1246, § 16.

**50-408 Legislative Council; committees; witnesses; fees.**

Each witness who appears before the council, or any committee thereof, by its order, other than a state officer or employee, shall receive for his or her attendance the fees provided for witnesses in civil cases in courts of record and mileage as provided in section 81-1176 for state employees, which shall be audited and paid upon the presentation of proper vouchers sworn to by such witness and approved by the secretary and chairperson of the council.

**Source:** Laws 1937, c. 118, § 4, p. 423; C.S.Supp.,1941, § 50-504; R.S. 1943, § 50-408; Laws 1949, c. 168, § 5, p. 445; Laws 1981, LB 204, § 89.

**50-409 Legislative Council; state and local governments; cooperation.**

Each officer, board, commission or department of state government or any local government shall make such studies for and furnish information to the council as it may require and as can be made within the limits of its appropriation.

**Source:** Laws 1937, c. 118, § 5, p. 423; C.S.Supp.,1941, § 50-505; R.S. 1943, § 50-409.

**50-410 Legislative Council; meetings; quorum.**

The council shall meet at least once in each biennium. One meeting of the entire council shall be held at the call of the chairman not less than thirty nor more than sixty days prior to the next regular session of the Legislature. Twenty-five members shall constitute a quorum, but a smaller number may meet and may compel the attendance of members in order to secure a quorum.

**Source:** Laws 1937, c. 118, § 6, p. 423; C.S.Supp.,1941, § 50-506; R.S. 1943, § 50-410; Laws 1949, c. 168, § 6, p. 446; Laws 1951, c. 169, § 2, p. 655; Laws 1965, c. 314, § 1, p. 876; Laws 1969, c. 430, § 2, p. 1453.

**50-411 Legislative Council; message from Governor.**

The Governor shall have the right to send a message to the session of the council convening next after the adjournment of each session of the Legislature, and may, from time to time, send additional messages containing his recommendations and explaining the policy of the administration.

**Source:** Laws 1937, c. 118, § 7, p. 423; C.S.Supp.,1941, § 50-507; R.S. 1943, § 50-411.

**50-412 Legislative Council; library facilities; receipt and use of funds.**

The Legislative Council and Legislature shall have access to all library reference facilities maintained by state agencies. The council is authorized to accept and use any funds made available to it through the terms of any cooperative agreement that it may make with any agency whatsoever for the accomplishment of the purposes of sections 50-401 to 50-415.

**Source:** Laws 1937, c. 118, § 8, p. 423; Laws 1939, c. 60, § 3, p. 262; C.S.Supp.,1941, § 50-508; R.S.1943, § 50-412; Laws 1992, LB 898, § 3.

**50-413 Legislative Council; minutes of meetings; reports.**

The council shall keep complete minutes of its meetings and shall make periodical reports to all members thereof.

**Source:** Laws 1937, c. 118, § 9, p. 424; C.S.Supp.,1941, § 50-509; R.S. 1943, § 50-413; Laws 1949, c. 168, § 7, p. 446.

**50-414 Legislative Council; recommendations; publication.**

The recommendations of the council shall be completed and made public at least thirty days prior to any regular session of the Legislature at which such recommendations are to be submitted. A copy of said recommendations shall be

mailed to the address of each member of the Legislature, to each elective state officer, and to the State Library.

**Source:** Laws 1937, c. 118, § 10, p. 424; C.S.Supp.,1941, § 50-510; R.S.1943, § 50-414.

**50-415 Legislative Council; members; expenses.**

The members of the council shall be compensated for actual expenses incurred while attending sessions of the council and the members of any committee of the council shall be compensated for actual expenses incurred while on business of the committee as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1937, c. 118, § 11, p. 424; C.S.Supp.,1941, § 50-511; R.S.1943, § 50-415; Laws 1951, c. 169, § 3, p. 655; Laws 1981, LB 204, § 90.

**50-416 Legislative Research; Director of Research.**

The office of Legislative Research is established within the Legislative Council. The office shall provide nonpartisan public policy and legal research for members of the Legislature and their staffs and maintain a legislative reference library for the use of members of the Legislature and their staffs. The Director of Research shall be responsible for hiring, firing, and supervising the research office staff.

**Source:** Laws 2009, LB620, § 2.

**50-416.01 Nebraska Retirement Systems Committee; members.**

The Legislature shall select five of its members who shall serve, together with the chairperson of the Appropriations Committee, as the Nebraska Retirement Systems Committee. The Nebraska Retirement Systems Committee shall be a standing committee of the Legislature. The chairperson and members shall be chosen in the same manner as chairpersons and members of the other standing committees of the Legislature.

**Source:** Laws 1989, LB 189, § 1.

**50-417 Nebraska Retirement Systems Committee; public retirement systems; existing or proposed; duties.**

The Nebraska Retirement Systems Committee shall study any legislative proposal, bill, or amendment, other than an amendment proposed by the Committee on Enrollment and Review, affecting any public retirement system, existing or proposed, established by the State of Nebraska or any political subdivision thereof and report the results of such study to the Legislature, which report shall, when applicable, include an actuarial analysis and cost estimate and the recommendation of the committee regarding passage of any bill or amendment. To assist it in the performance of such duties, the committee may consult with and utilize the services of any officer, department, or agency of the state and may from time to time engage the services of a qualified and experienced actuary. In the absence of any report from such committee, the Legislature shall consider requests from groups seeking to have retirement

plans established for them and such other proposed legislation as is pertinent to existing retirement systems.

**Source:** Laws 1959, c. 243, § 2, p. 832; Laws 1989, LB 189, § 2.

**50-417.01 Repealed. Laws 2006, LB 1019, § 23.**

**50-417.02 Act, how cited.**

Sections 50-417.02 to 50-417.06 shall be known and may be cited as the Law Enforcement Officers Retirement Survey Act.

**Source:** Laws 2007, LB328, § 12.

**50-417.03 Terms, defined.**

For purposes of the Law Enforcement Officers Retirement Survey Act:

(1) Committee means the Nebraska Retirement Systems Committee of the Legislature;

(2) Law enforcement officer means any police officer, sheriff, and deputy sheriff employed by a political subdivision and any conservation officer employed by the state;

(3) Political subdivision means any political subdivision of this state which employs police officers, sheriffs, or deputy sheriffs, but does not include a city of the metropolitan class, a city of the primary class, or a county containing a city of the metropolitan class; and

(4) Retirement system means the Nebraska Public Employees Retirement Systems.

**Source:** Laws 2007, LB328, § 13.

**50-417.04 Law enforcement officers retirement plans survey; purpose; report; actuarial survey.**

(1) The retirement system shall conduct a survey of the retirement plans currently in place for law enforcement officers throughout Nebraska. The retirement system shall conduct the survey and issue a report to the committee no later than October 1, 2007.

(2) At the time that the report is provided to the committee, information which supports the report shall be provided to any firm employed to conduct an actuarial survey from the information gathered by the retirement system upon the firm's request. The information provided shall not include any personal information such as the name or social security number of law enforcement officers.

(3) The survey shall include, but not be limited to, the following information:

(a) What types of retirement plans are in place for law enforcement officers; and

(b) Any other information which the retirement system or the committee deems necessary.

(4) The retirement system shall create, in consultation with the committee, a method to receive the materials required for the survey. The method shall utilize a unique identifier for each law enforcement officer, each political subdivision, and the state agency responding.

(5) The purpose of the survey is to conduct a review of the many retirement plans throughout Nebraska for law enforcement officers and to assist an actuarial firm in determining the cost to implement a defined benefit retirement plan with benefits capped at various levels between sixty and eighty percent of pay with costs separately determined for cities of the first class, cities of the second class, villages, counties, and the state.

**Source:** Laws 2007, LB328, § 14.

**50-417.05 Political subdivisions and state; provide information; confidentiality.**

Each political subdivision and the state shall provide the retirement system with such information as the retirement system deems necessary and appropriate to conduct the review required under section 50-417.04. The material to be obtained by the retirement system may include, but not be limited to, the following concerning law enforcement officers employed by the political subdivision or the state:

- (1) Names;
- (2) Dates of birth;
- (3) Dates of hire;
- (4) Taxable earnings for the prior fiscal year;
- (5) Years of service;
- (6) Gender;
- (7) Whether or not the law enforcement officer is enrolled in a retirement plan;
- (8) The type of plan the law enforcement officer is enrolled in, the required employee contribution percentage, and the employer contribution percentage, along with an indication if it is a fixed percentage or a variable contribution rate. If the law enforcement officer is enrolled in a defined contribution plan, the political subdivision or state shall also disclose the account balance attributable to employer contributions and employee contributions, excluding any balance due to rollovers from another qualified plan or attributable to voluntary employee contributions; and
- (9) Any other information that the retirement system or the committee deems important to the conduct of the survey.

Any material received by the retirement system shall be considered confidential and shall not be disclosed to a third party except as provided in subsection (2) of section 50-417.04.

**Source:** Laws 2007, LB328, § 15.

**50-417.06 State and political subdivisions; liability.**

Neither the state nor any political subdivision shall be held liable for providing information requested or be responsible for the payment of the actuarial survey under the Law Enforcement Officers Retirement Survey Act.

**Source:** Laws 2007, LB328, § 16.

**50-418 Legislative Fiscal Analyst; office established; personnel; Appropriations Committee; duties.**

There shall be established within the Legislative Council the office of Legislative Fiscal Analyst. The Legislative Fiscal Analyst, with the approval of the Executive Board of the Legislative Council, may employ necessary assistants.

The Appropriations Committee shall determine the budgeting and related needs of each agency of state government before and during each session of the Legislature for the use of the Legislature. The committee, under the direction of the Executive Board of the Legislative Council, shall secure sufficient personnel and funds for the operation of the staff to go physically into each agency of state government and by observation and contact be able to defend and substantiate its recommendation and to accomplish the objective stated in this section.

**Source:** Laws 1961, c. 253, § 1, p. 746; Laws 1967, c. 595, § 2, p. 2026; Laws 1986, LB 996, § 3; Laws 1992, LB 898, § 4.

**50-419 Fiscal analyst; powers and duties.**

(1) The Legislative Fiscal Analyst shall provide fiscal and budgetary information and assistance to the Legislature and the Appropriations Committee. During sessions of the Legislature he or she shall work under the direction of the Appropriations Committee of the Legislature. During the interim between legislative sessions he or she shall work under the direction of the Executive Board of the Legislative Council.

The Legislative Fiscal Analyst shall provide:

(a) Factual information and recommendations concerning the financial operations of state government;

(b) Evaluation of the requests for appropriations contained in the executive budget and recommendations thereon;

(c) Studies of capital outlay needs for the orderly and coordinated development of state institutions and institutional programs authorized, if not otherwise provided by law; and

(d) Plans for legislative appropriation and control of funds, with presession analysis of budgetary requirements.

(2) His or her duties shall also include examining or auditing functions or services authorized by the Legislature to determine if funds are expended according to legislative intent and whether improvements in organization and performance are possible. The examining function shall also include the appraisal of functions for needed reforms.

(3) His or her duties shall be to coordinate his or her activities with the budget officer of the Department of Administrative Services.

(4) All information and reports of the fiscal analyst and Appropriations Committee shall be available to any and all members of the Legislature.

(5) The Legislative Fiscal Analyst shall provide revenue-forecasting information and assistance to the Legislature, the Revenue Committee of the Legislature, and the Appropriations Committee of the Legislature. For the purposes of this subsection, he or she shall work under the direction of the Revenue Committee of the Legislature and the Appropriations Committee of the Legislature. The revenue-forecasting information provided under this subsection shall include:

(a) The estimated revenue receipts for each year of the following biennium;

(b) General Fund reserve requirements;

(c) A list of express obligations; and

(d) A summary of economic conditions affecting the State of Nebraska.

**Source:** Laws 1961, c. 253, § 2, p. 746; Laws 1967, c. 595, § 3, p. 2027; Laws 1977, LB 193, § 2; Laws 1984, LB 664, § 1; Laws 1986, LB 996, § 4; Laws 1992, LB 988, § 16.

**Cross References**

Nebraska Economic Forecasting Advisory Board, see sections 77-27,156 to 77-27,159.

**50-419.01 Legislative Fiscal Analyst; present evaluation of state operations; when.**

The Legislative Fiscal Analyst shall present to the Appropriations Committee, beginning the fifth legislative day, an evaluation of the operations of the state government including those issues, policies, and problems which have come to his or her attention or which resulted from analyses and in which improvement in performance and organization is possible. The Legislative Fiscal Analyst shall, if requested, recommend alternatives to the identified problems and related needs.

**Source:** Laws 1969, c. 429, § 3, p. 1451; Laws 1973, LB 291, § 1; Laws 1986, LB 996, § 5.

**50-419.02 Repealed. Laws 1992, LB 988, § 19.**

**50-419.03 Repealed. Laws 1992, LB 988, § 19.**

**50-420 Fiscal analyst; officer, board, commission, and department of state government; furnish information.**

Each officer, board, commission, and department of state government, including the Accounting Administrator of the Department of Administrative Services, shall furnish to the Legislative Fiscal Analyst, upon request, any information in its possession, including records received from other officers, boards, commissions, or departments of state government, whether such information is retained in computer files or otherwise, if such information is directly related to the performance of the official duties of the Legislative Fiscal Analyst under sections 50-418 to 50-420.

**Source:** Laws 1961, c. 253, § 3, p. 747; Laws 1979, LB 193, § 2.

**50-421 Office of Legislative Audit; Legislative Auditor.**

The office of Legislative Audit is established within the Legislative Council. The office shall conduct performance audits. The Legislative Auditor shall be responsible for hiring, firing, and supervising the performance audit staff.

**Source:** Laws 2006, LB 956, § 2; Laws 2009, LB620, § 1.

**50-422 Health and Human Services Committee; behavioral health insurance parity study and actuarial analysis; report.**

The Health and Human Services Committee of the Legislature shall provide for an independent study and actuarial analysis of the impact of behavioral health insurance parity legislation in the State of Nebraska. A report of such study and analysis shall be submitted to the Governor, the Health and Human

Services Committee of the Legislature, and the Banking, Commerce and Insurance Committee of the Legislature on or before December 1, 2006.

**Source:** Laws 2006, LB 1248, § 89.

**50-423 Transferred to section 81-126.**

**50-424 Repealed. Laws 1987, LB 511, § 1.**

**50-425 Repealed. Laws 1987, LB 511, § 1.**

**50-426 Repealed. Laws 1986, LB 993, § 1.**

**50-427 Repealed. Laws 1986, LB 993, § 1.**

**50-428 Repealed. Laws 1986, LB 993, § 1.**

**50-429 Repealed. Laws 1986, LB 993, § 1.**

**50-430 Repealed. Laws 1984, LB 637, § 1.**

**50-431 Repealed. Laws 1984, LB 637, § 1.**

**50-432 Repealed. Laws 1984, LB 637, § 1.**

**50-433 Repealed. Laws 1984, LB 637, § 1.**

**50-434 Repealed. Laws 1984, LB 637, § 1.**

**50-435 Repealed. Laws 1984, LB 637, § 1.**

**50-436 Repealed. Laws 1984, LB 637, § 1.**

**50-437 Nebraska Legislative Shared Information System Cash Fund; created; investment.**

There is hereby created the Nebraska Legislative Shared Information System Cash Fund, which fund shall consist of fees received from services provided by the Legislature. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Legislative Shared Information System Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1986, LB 599, § 2; Laws 1995, LB 7, § 54; Laws 2009, First Spec. Sess., LB3, § 27.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**50-438 Legislative Council Retirement Study Fund; created; use; transfers; investment.**

There is hereby created the Legislative Council Retirement Study Fund. The fund shall consist of money appropriated to it by the Legislature and transfers made pursuant to subdivision (2)(f) of section 84-1503. Money in the fund shall only be used for a comprehensive study of the retirement systems listed in subdivision (1)(a) of section 84-1503. Any money remaining in the fund eighteen months after the date of transfer shall be transferred by the State

Treasurer back to the retirement systems for credit to the various retirement funds. Any money in the Legislative Council Retirement Study Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1992, LB 672, § 34; Laws 1994, LB 1066, § 41; Laws 1998, LB 1191, § 42.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**50-439 Repealed. Laws 2000, LB 890, § 1.**

**50-440 Repealed. Laws 2000, LB 890, § 1.**

**50-441 Repealed. Laws 2000, LB 890, § 1.**

**50-442 Repealed. Laws 2000, LB 890, § 1.**

**50-443 Repealed. Laws 1999, LB 11, § 1.**

**50-444 Central Interstate Low-Level Radioactive Waste Compact withdrawal; interim study; transfer of funds.**

The Executive Board of the Legislative Council in conjunction with the Natural Resources Committee of the Legislature shall conduct an interim study on the legal consequences of withdrawing from the Central Interstate Low-Level Radioactive Waste Compact. It is the intent of the Legislature that \$150,000 of federal rebate funds appropriated to the Department of Environmental Quality for FY1998-99 shall be transferred to the Executive Board of the Legislative Council to hire legal counsel for advice on such issues.

**Source:** Laws 1998, LB 1174, § 3.

Cross References

Central Interstate Low-Level Radioactive Waste Compact, withdrawal from, see section 71-3522.

**50-445 State-Tribal Relations Committee; members.**

The State-Tribal Relations Committee is hereby established as a special legislative committee with the intent of fostering better relationships between the state and the federally recognized Indian tribes within the state. The Executive Board of the Legislative Council shall appoint seven members of the Legislature to the committee. The appointments shall be based on interest and knowledge. The chairperson and vice-chairperson of the State-Tribal Relations Committee shall also be designated by the executive board. 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. The committee shall meet as necessary to, among other things, consider, study, monitor, and review legislation that impacts state-tribal relations issues and to present draft legislation and policy recommendations to the appropriate standing committee of the Legislature.

**Source:** Laws 2007, LB34, § 1.

**50-446 Corporate farming and ranching court rulings; legislative findings.**

The Legislature finds that the ruling of the United States District Court for the District of Nebraska in *Jones v. Gale*, 405 F. Supp. 2d 1066, D. Neb. 2005, and subsequent rulings on appeal affirming such ruling holding Article XII, section 8, of the Constitution of Nebraska to be invalid, enjoined, or limited in application has significant implications for the future structure, development, and progress of agricultural production in Nebraska.

**Source:** Laws 2007, LB516, § 1.

**50-447 Policy instruments advancing state interest in structure, development, and progress of agricultural production; study by Agriculture Committee; use of experts.**

(1) It is the intent of the Legislature to support and facilitate a study by the Agriculture Committee of the Legislature to identify policy instruments available to the Legislature and the people of Nebraska, including, as appropriate, but not necessarily requiring or limited to, modification of Article XII, section 8, of the Constitution of Nebraska, in order to foster and enhance legal, social, and economic conditions in Nebraska consistent with and which advance those state interests that exist in the structure, development, and progress of agricultural production.

(2) Within the limits of funds appropriated for such purpose, the Executive Board of the Legislative Council may, in coordination and cooperation with the Agriculture Committee of the Legislature, commission experts in the fields of agricultural economics, agricultural law, commerce clause jurisprudence, and other areas of study and practice to provide assistance, specific research or reports, or presentations in order to assist the Agriculture Committee of the Legislature in carrying out the intent of the Legislature under this section.

**Source:** Laws 2007, LB516, § 2.

**50-448 Attorney General; duties; powers.**

(1) It is the intent of the Legislature that the Attorney General perform, acquire, and otherwise cause to be made available such research as may be appropriate to inform and assist the Agriculture Committee of the Legislature in identifying policy instruments available to the Legislature and the people of Nebraska, including, as appropriate, but not necessarily requiring or limited to, modification of Article XII, section 8, of the Constitution of Nebraska, in order to foster and enhance legal, social, and economic conditions in Nebraska consistent with and which advance those state interests that exist in the structure, development, and progress of agricultural production in Nebraska.

(2) The Attorney General may contract with experts in the fields of agricultural economics, agricultural law, commerce clause jurisprudence, and other areas of study and practice to assist the Attorney General in carrying out the intent of the Legislature under this section.

**Source:** Laws 2007, LB516, § 3.

**ARTICLE 5**

**STATEWIDE STRATEGIC PLAN FOR BIOTECHNOLOGY**

Section

50-501. Natural Resources Committee of the Legislature; development of statewide strategic plan for biotechnology; contents; Biotechnology Development Cash Fund; created; use; investment.

**50-501 Natural Resources Committee of the Legislature; development of statewide strategic plan for biotechnology; contents; Biotechnology Development Cash Fund; created; use; investment.**

(1) The Legislature recognizes the importance of biotechnology and the role that biotechnology plays in the economic well-being of the State of Nebraska. The Natural Resources Committee of the Legislature shall be responsible for the development of a statewide strategic plan for biotechnology in Nebraska. The plan shall include a baseline review and assessment of the potential in the biotechnology economy in Nebraska and a strategic plan for the state's efforts in creating wealth and jobs in the biotechnology economy. The plan shall address strategies for developing the biotechnology economy and shall include, but not be limited to, research, testing, agricultural feedstock and chemicals, drugs and other pharmaceuticals, medical materials, medical laboratories, and advanced biofuels. The plan shall estimate the wealth and the number of jobs that may be generated from expanding the biotechnology economy.

(2) The Natural Resources Committee of the Legislature, in consultation with the Executive Board of the Legislature, shall commission a nonprofit corporation to provide research, analysis, and recommendations to the committee for the development of the plan. The nonprofit corporation shall be incorporated pursuant to the Nebraska Nonprofit Corporation Act, shall be organized exclusively for nonprofit purposes within the meaning of section 501(c)(6) of the Internal Revenue Code as defined in section 49-801.01, shall be engaged in activities to facilitate and promote the growth of life sciences within Nebraska, shall be dedicated to the development and growth of the biotechnology economy, and shall agree to remit one hundred thousand dollars to the State Treasurer for credit to the Biotechnology Development Cash Fund for the research required by this section. The nonprofit corporation shall retain such consultation services as required for assistance in providing research, analysis, and recommendations. The nonprofit corporation shall present its research, analysis, and recommendations to the committee by September 30, 2010.

(3) The Natural Resources Committee shall prepare and present to the Legislature a statewide strategic plan for biotechnology during the One Hundred Second Legislature, First Session, for consideration by the Legislature. The committee shall prepare annual updates to the plan for consideration by the Legislature.

(4) The Biotechnology Development Cash Fund is created. The Natural Resources Committee shall use money in the fund to commission the nonprofit corporation and provide access to resources necessary for developing the plan. The fund may receive gifts, bequests, grants, or other contributions or donations from public or private entities. Within five days after the State Treasurer receives one hundred thousand dollars from the nonprofit corporation for credit to the fund, the State Treasurer shall transfer one hundred thousand dollars from the General Fund to the Biotechnology Development Cash Fund. It is the intent of the Legislature to appropriate two hundred thousand dollars to the fund for fiscal year 2009-10. 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) For purposes of this section:

(a) Biotechnology means the technological application that uses biological systems, living organisms, or derivatives of biological systems or living organisms to make or modify products or processes for specific use; and

(b) Biotechnology economy means economic activity derived from scientific and research activity focused on understanding mechanisms and processes at the genetic and molecular levels and the application of the mechanisms and processes to industrial processes.

**Source:** Laws 2009, LB246, § 1; Laws 2010, LB911, § 1.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska Nonprofit Corporation Act, see section 21-1901.

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

**ARTICLE 6**

**NEBRASKA LAW ENFORCEMENT AND  
JUSTICE ADVISORY COMMITTEE**

Section

50-601. Repealed. Laws 1985, LB 327, § 1.

50-602. Repealed. Laws 1985, LB 327, § 1.

**50-601 Repealed. Laws 1985, LB 327, § 1.**

**50-602 Repealed. Laws 1985, LB 327, § 1.**

**ARTICLE 7**

**PERFORMANCE REVIEW AND AUDIT COMMITTEE**

Section

50-701. Repealed. Laws 1977, LB 193, § 8.

50-701.01. Repealed. Laws 1992, LB 988, § 19.

50-701.02. Repealed. Laws 1992, LB 988, § 19.

50-702. Repealed. Laws 1992, LB 988, § 19.

**50-701 Repealed. Laws 1977, LB 193, § 8.**

**50-701.01 Repealed. Laws 1992, LB 988, § 19.**

**50-701.02 Repealed. Laws 1992, LB 988, § 19.**

**50-702 Repealed. Laws 1992, LB 988, § 19.**

**ARTICLE 8**

**NEBRASKA POSTSECONDARY EDUCATION ADVISORY COMMITTEE**

Section

50-801. Repealed. Laws 1985, LB 9, § 1.

50-802. Repealed. Laws 1985, LB 9, § 1.

50-803. Repealed. Laws 1985, LB 9, § 1.

50-804. Repealed. Laws 1985, LB 9, § 1.

50-805. Repealed. Laws 1985, LB 9, § 1.

50-806. Repealed. Laws 1985, LB 9, § 1.

50-807. Repealed. Laws 1985, LB 9, § 1.

50-808. Repealed. Laws 1985, LB 9, § 1.

- 50-801 Repealed. Laws 1985, LB 9, § 1.**
- 50-802 Repealed. Laws 1985, LB 9, § 1.**
- 50-803 Repealed. Laws 1985, LB 9, § 1.**
- 50-804 Repealed. Laws 1985, LB 9, § 1.**
- 50-805 Repealed. Laws 1985, LB 9, § 1.**
- 50-806 Repealed. Laws 1985, LB 9, § 1.**
- 50-807 Repealed. Laws 1985, LB 9, § 1.**
- 50-808 Repealed. Laws 1985, LB 9, § 1.**

**ARTICLE 9  
RETIREMENT**

Section

- 50-901. Repealed. Laws 1991, LB 549, § 75.
- 50-902. Repealed. Laws 1991, LB 549, § 75.
- 50-903. Repealed. Laws 1991, LB 549, § 75.
- 50-904. Repealed. Laws 1991, LB 549, § 75.
- 50-905. Repealed. Laws 1991, LB 549, § 75.
- 50-906. Repealed. Laws 1991, LB 549, § 75.
- 50-907. Repealed. Laws 1991, LB 549, § 75.
- 50-908. Repealed. Laws 1991, LB 549, § 75.
- 50-909. Repealed. Laws 1991, LB 549, § 75.
- 50-910. Repealed. Laws 1991, LB 549, § 75.
- 50-911. Repealed. Laws 1991, LB 549, § 75.
- 50-912. Repealed. Laws 1991, LB 549, § 75.
- 50-913. Repealed. Laws 1991, LB 549, § 75.
- 50-914. Repealed. Laws 1991, LB 549, § 75.
- 50-915. Repealed. Laws 1991, LB 549, § 75.
- 50-916. Repealed. Laws 1991, LB 549, § 75.
- 50-917. Repealed. Laws 1991, LB 549, § 75.
- 50-918. Repealed. Laws 1991, LB 549, § 75.
- 50-919. Repealed. Laws 1991, LB 549, § 75.

- 50-901 Repealed. Laws 1991, LB 549, § 75.**
- 50-902 Repealed. Laws 1991, LB 549, § 75.**
- 50-903 Repealed. Laws 1991, LB 549, § 75.**
- 50-904 Repealed. Laws 1991, LB 549, § 75.**
- 50-905 Repealed. Laws 1991, LB 549, § 75.**
- 50-906 Repealed. Laws 1991, LB 549, § 75.**
- 50-907 Repealed. Laws 1991, LB 549, § 75.**
- 50-908 Repealed. Laws 1991, LB 549, § 75.**
- 50-909 Repealed. Laws 1991, LB 549, § 75.**
- 50-910 Repealed. Laws 1991, LB 549, § 75.**
- 50-911 Repealed. Laws 1991, LB 549, § 75.**

- 50-912 Repealed. Laws 1991, LB 549, § 75.**
- 50-913 Repealed. Laws 1991, LB 549, § 75.**
- 50-914 Repealed. Laws 1991, LB 549, § 75.**
- 50-915 Repealed. Laws 1991, LB 549, § 75.**
- 50-916 Repealed. Laws 1991, LB 549, § 75.**
- 50-917 Repealed. Laws 1991, LB 549, § 75.**
- 50-918 Repealed. Laws 1991, LB 549, § 75.**
- 50-919 Repealed. Laws 1991, LB 549, § 75.**

**ARTICLE 10  
YOUTH LEADERSHIP ACADEMY**

Section

- 50-1001. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.
- 50-1002. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.
- 50-1003. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.
- 50-1004. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.
- 50-1005. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.
- 50-1006. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.
- 50-1007. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.
- 50-1008. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.
- 50-1009. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

- 50-1001 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.**
- 50-1002 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.**
- 50-1003 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.**
- 50-1004 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.**
- 50-1005 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.**
- 50-1006 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.**
- 50-1007 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.**
- 50-1008 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.**
- 50-1009 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.**

**ARTICLE 11  
LEGISLATIVE DISTRICTS**

Cross References

**Constitutional provisions**, see Article III, section 5, Constitution of Nebraska.

Section

- 50-1101. Legislative districts; division; basis.
- 50-1102. District No. 1, description.
- 50-1103. District No. 2, description.
- 50-1104. District No. 3, description.
- 50-1105. District No. 4, description.

Section	
50-1106	District No. 5, description.
50-1107	District No. 6, description.
50-1108	District No. 7, description.
50-1109	District No. 8, description.
50-1110	District No. 9, description.
50-1111	District No. 10, description.
50-1112	District No. 11, description.
50-1113	District No. 12, description.
50-1114	District No. 13, description.
50-1115	District No. 14, description.
50-1116	District No. 15, description.
50-1117	District No. 16, description.
50-1118	District No. 17, description.
50-1119.	Repealed. Laws 1992, Second Spec. Sess., LB 7, § 8.
50-1119.01	District No. 18, description.
50-1120	District No. 19, description.
50-1121	District No. 20, description.
50-1122	District No. 21, description.
50-1123	District No. 22, description.
50-1124	District No. 23, description.
50-1125	District No. 24, description.
50-1126	District No. 25, description.
50-1127	District No. 26, description.
50-1128	District No. 27, description.
50-1129	District No. 28, description.
50-1130	District No. 29, description.
50-1131	District No. 30, description.
50-1132	District No. 31, description.
50-1133	District No. 32, description.
50-1134	District No. 33, description.
50-1135	District No. 34, description.
50-1136	District No. 35, description.
50-1137	District No. 36, description.
50-1138	District No. 37, description.
50-1139	District No. 38, description.
50-1140	District No. 39, description.
50-1141.	Repealed. Laws 1992, Second Spec. Sess., LB 7, § 8.
50-1141.01	District No. 40, description.
50-1142	District No. 41, description.
50-1143	District No. 42, description.
50-1144	District No. 43, description.
50-1145	District No. 44, description.
50-1146	District No. 45, description.
50-1147	District No. 46, description.
50-1148	District No. 47, description.
50-1149	District No. 48, description.
50-1150	District No. 49, description.
50-1151.	Repealed. Laws 2001, LB 852, § 53.
50-1152.	Legislative districts; change; when operative.

**50-1101 Legislative districts; division; basis.**

The State of Nebraska is hereby divided into forty-nine legislative districts. Each district shall be entitled to one member in the Legislature. The descriptions of legislative districts in sections 50-1102 to 50-1150 are taken from the 2000 TIGER/Line files published by the United States Department of Commerce, Bureau of the Census.

**Source:** Laws 1981, LB 406, § 1; R.S.1943, (1987), § 5-201; Laws 1991, LB 614, § 1; Laws 1992, Second Spec. Sess., LB 7, § 1; Laws 2001, LB 852, § 1.

**50-1102 District No. 1, description.**

District No. 1 shall contain the counties of Nemaha, Pawnee, Richardson, and Johnson, that part of Otoe County which includes the precincts of Hendricks, South Branch, McWilliams, Rock Creek, Palmyra, Russell, South Syracuse, North Syracuse, Berlin, and Delaware, and that part of Cass County which includes that part of the precinct of Tipton not located within the corporate limits of the village of Alvo.

**Source:** Laws 1981, LB 406, § 2; R.S.1943, (1987), § 5-202; Laws 1991, LB 614, § 2; Laws 2001, LB 852, § 2.

**50-1103 District No. 2, description.**

District No. 2 shall contain that part of Cass County not included in legislative district 1, that part of Otoe County not included in legislative district 1, and that part of Sarpy County beginning at the intersection of the Sarpy-Cass County line and the western boundary of La Platte I Precinct, follow such boundary north to Platteview Road, west on Platteview Road to South 84th Street, south on South 84th Street to Platteview Road, west on Platteview Road to South 216th Street, north on South 216th Street to U.S. Highway 6, southwest on U.S. Highway 6 to the Sarpy-Saunders County line, southeast along the Sarpy-Saunders County line to the Sarpy-Cass County line, and east along the Sarpy-Cass County line to the point of beginning.

**Source:** Laws 1981, LB 406, § 3; R.S.1943, (1987), § 5-203; Laws 1991, LB 614, § 3; Laws 2001, LB 852, § 3.

**50-1104 District No. 3, description.**

District No. 3 shall contain that part of Sarpy County beginning at the intersection of the Sarpy-Cass County line and the western boundary of La Platte I Precinct, follow such boundary north to Platteview Road, west on Platteview Road to South 84th Street, south on South 84th Street to Platteview Road, west on Platteview Road to South 216th Street, north on South 216th Street to U.S. Highway 6, north on U.S. Highway 6 to Capehart Road, west on Capehart Road to South 234th Street, north on South 234th Street to Schram Road, east on Schram Road to South 234th Street, north on South 234th Street to West Angus Road, northeast on West Angus Road to South 232nd Street, follow South 232nd Street north to Lincoln Road, east on Lincoln Road to U.S. Highway 6, northeast on U.S. Highway 6 to South 204th Street, north on South 204th Street to Giles Road, east on Giles Road to the Burlington Northern Santa Fe Railroad right-of-way, east along the Burlington Northern Santa Fe Railroad right-of-way to South 144th Street, north on South 144th Street to Josephine Street, east on Josephine Street to South 139th Avenue, south on South 139th Avenue to Frederick Avenue, east on Frederick Avenue to South 137th Avenue, northeast on South 137th Avenue to South 136th Street, south on South 136th Street to Edna Street, east on Edna Street to South 132nd Avenue, north on South 132nd Avenue to Gertrude Street, east on Gertrude Street to South 132nd Street, north on South 132nd Street to the Douglas-Sarpy County line, east along the Douglas-Sarpy County line to the intersection of a north-south line extending north from South 120th Street, south along such line to South 120th Street, south on South 120th Street and continuing south along a north-south line extending south from South 120th Street to State Highway 370, east on State Highway 370 to South 60th Street, north on South

60th Street and continuing north along a north-south line extending north from South 60th Street to West Papillion Creek, east along West Papillion Creek to South 36th Street, south on South 36th Street to Bline Avenue, east on Bline Avenue to Golden Boulevard, east on Golden Boulevard to South 31st Street, south on South 31st Street to the intersection of an east-west line extending east from Sierra Street, east along such line to the intersection of a north-south line extending south from 28th Street, south along such line to the intersection of an east-west line extending east from Dacey Drive, east along such line to South 25th Street, south on South 25th Street to Capehart Road, east on Capehart Road to U.S. Highway 75, south on U.S. Highway 75 to the Sarpy-Cass County line, and west along the Sarpy-Cass County line to the point of beginning.

**Source:** Laws 1981, LB 406, § 4; R.S.1943, (1987), § 5-204; Laws 1991, LB 614, § 4; Laws 2001, LB 852, § 4.

**50-1105 District No. 4, description.**

District No. 4 shall contain that part of Douglas County beginning at the intersection of West Center Road and the Union Pacific Railroad right-of-way, northwest along the Union Pacific Railroad right-of-way to Pacific Street, east on Pacific Street to South 156th Street, north on South 156th Street to North 156th Street, north on North 156th Street to West Maple Road, east on West Maple Road to North 132nd Street, south on North 132nd Street to Blondo Street, east on Blondo Street to North 123rd Street, south on North 123rd Street to Decatur Street, west on Decatur Street to North 126th Street, south on North 126th Street to Charles Street, east on Charles Street to Rose Lane, follow Rose Lane south to North 122nd Street, south on North 122nd Street to Burt Street, west on Burt Street to Burt Plaza, west on Burt Plaza to North 124th Court, north on North 124th Court to Burt Court, west on Burt Court to Rose Lane, southwest on Rose Lane to Burt Street, west on Burt Street to the western boundary of Precinct 6-30, follow such boundary south to West Dodge Road, east on West Dodge Road to South 114th Street, south on South 114th Street to Hickory Road, southwest on Hickory Road to Crawford Road, northwest on Crawford Road to Skylark Drive, west on Skylark Drive to South 120th Street, south on South 120th Street to Shirley Street, west on Shirley Street to South 126th Street, south on South 126th Street to Marinda Street, west on Marinda Street to Royal Wood Drive, south on Royal Wood Drive to West Center Road, and west on West Center Road to the point of beginning.

**Source:** Laws 1981, LB 406, § 5; R.S.1943, (1987), § 5-205; Laws 1991, LB 614, § 5; Laws 2001, LB 852, § 5.

**50-1106 District No. 5, description.**

District No. 5 shall contain those parts of Douglas and Sarpy counties beginning at the intersection of the Douglas-Sarpy County line and South 72nd Street, north on South 72nd Street to Interstate Highway 80, east on Interstate Highway 80 to South 60th Street, north on South 60th Street to Grover Street, east on Grover Street to South 50th Street, north on South 50th Street to Spring Street, east on Spring Street to South 45th Street, north on South 45th Street to Frederick Street, east on Frederick Street to South 39th Street, north on South 39th Street to Wright Street, east on Wright Street to Field Club Trail, south on Field Club Trail to the intersection of an east-west line extending west

from Oak Street, east along such line to Oak Street, east on Oak Street to South 35th Street, south on South 35th Street to Frederick Street, east on Frederick Street to South 34th Street, south on South 34th Street to Spring Street, east on Spring Street to South 32nd Avenue, south on South 32nd Avenue to Vinton Street, east on Vinton Street to Hanscom Boulevard, southeast on Hanscom Boulevard and continuing along a southeast line extending southeast from Hanscom Boulevard to Interstate Highway 480, east then southeast on Interstate Highway 480 to John F. Kennedy Freeway, south on John F. Kennedy Freeway to the Union Pacific Railroad right-of-way, southeast along the Union Pacific Railroad right-of-way to Childs Road, west on Childs Road to South 25th Street, north on South 25th Street to Linda Street, west on Linda Street to Cedar Island Road, south on Cedar Island Road to Childs Road, west on Childs Road to the western boundary of Bellevue 4-4 Precinct, follow such boundary north to Bonnie Street, west on Bonnie Street to South 30th Street, south on South 30th Street to Evelyn Street, west on Evelyn Street to South 32nd Street, north on South 32nd Street to Chandler Road West, west on Chandler Road West to South 36th Street, south on South 36th Street to Suburban Drive, west on Suburban Drive to South 39th Avenue, north on South 39th Avenue to South 40th Street, northwest on South 40th Street to Southern Hills Drive, southwest on Southern Hills Drive to South 42nd Street, north on South 42nd Street to Margo Street, west on Margo Street to Bernadette Avenue, west on Bernadette Avenue to South 48th Street, north on South 48th Street to the Douglas-Sarpy County line, and west along the Douglas-Sarpy County line to the point of beginning.

**Source:** Laws 1981, LB 406, § 6; R.S.1943, (1987), § 5-206; Laws 1991, LB 614, § 6; Laws 2001, LB 852, § 6.

**50-1107 District No. 6, description.**

District No. 6 shall contain that part of Douglas County beginning at the intersection of North 132nd Street and West Maple Road, south on North 132nd Street to Blondo Street, east on Blondo Street to North 123rd Street, south on North 123rd Street to Decatur Street, west on Decatur Street to North 126th Street, south on North 126th Street to Charles Street, east on Charles Street to Rose Lane, follow Rose Lane south to North 122nd Street, south on North 122nd Street to Burt Street, west on Burt Street to Burt Plaza, west on Burt Plaza to North 124th Court, north on North 124th Court to Burt Court, west on Burt Court to Rose Lane, southwest on Rose Lane to Burt Street, west on Burt Street to the western boundary of Precinct 6-30, follow such boundary south to West Dodge Road, east on West Dodge Road to South 114th Street, south on South 114th Street to Pacific Street, east on Pacific Street to South 80th Street, south on South 80th Street to Woolworth Avenue, east on Woolworth Avenue to South 76th Street, southeast on South 76th Street to Hickory Street, east on Hickory Street to South 72nd Street, north on South 72nd Street to Pacific Street, east on Pacific Street to South 67th Street, north on South 67th Street to Leavenworth Street, west on Leavenworth Street to South 67th Street, north on South 67th Street to Howard Street, west on Howard Street to South 68th Street, north on South 68th Street to Dodge Street, east on Dodge Street to North Happy Hollow Boulevard, northeast on North Happy Hollow Boulevard to Underwood Avenue, east on Underwood Avenue to North 52nd Street, north on North 52nd Street to Western Avenue, west on Western Avenue to North 60th Street, north on North 60th Street to Hamilton Street, west on

Hamilton Street to North 72nd Street, north on North 72nd Street to Blondo Street, west on Blondo Street to Big Papillion Creek, north along Big Papillion Creek to West Maple Road, and west on West Maple Road to the point of beginning.

**Source:** Laws 1981, LB 406, § 7; R.S.1943, (1987), § 5-207; Laws 1991, LB 614, § 7; Laws 2001, LB 852, § 7.

**50-1108 District No. 7, description.**

District No. 7 shall contain that part of Douglas County beginning at the intersection of the Grace Street Outfall and the Nebraska-Iowa state line, northwest along the Grace Street Outfall to Abbott Drive, west on Abbott Drive to North 6th Street, north on North 6th Street to Seward Street, west on Seward Street to North 11th Street, south on North 11th Street to Nicholas Street, west on Nicholas Street to North 15th Street, south on North 15th Street to Cuming Street, west on Cuming Street to North 24th Street, south on North 24th Street to South 24th Street, south on South 24th Street to St. Mary's Avenue, west on St. Mary's Avenue to South 24th Street, south on South 24th Street to Leavenworth Street, west on Leavenworth Street to Interstate Highway 480, south on Interstate Highway 480 to Ed Creighton Avenue, west on Ed Creighton Avenue to Hanscom Boulevard, south then southeast on Hanscom Boulevard and continuing along a southeast line extending southeast from Hanscom Boulevard to Interstate Highway 480, east then southeast on Interstate Highway 480 to John F. Kennedy Freeway, south on John F. Kennedy Freeway to the Union Pacific Railroad right-of-way, southeast along the Union Pacific Railroad right-of-way to the Douglas-Sarpy County line, east along the Douglas-Sarpy County line to the Nebraska-Iowa state line, and north along the Nebraska-Iowa state line to the point of beginning.

**Source:** Laws 1981, LB 406, § 8; R.S.1943, (1987), § 5-208; Laws 1991, LB 614, § 8; Laws 2001, LB 852, § 8.

**50-1109 District No. 8, description.**

District No. 8 shall contain that part of Douglas County beginning at the intersection of North Saddle Creek Road and Cuming Street, south on North Saddle Creek Road to California Street, west on California Street to North 46th Street, south on North 46th Street to Dodge Street, west on Dodge Street to North Happy Hollow Boulevard, northeast on North Happy Hollow Boulevard to Underwood Avenue, east on Underwood Avenue to North 52nd Street, north on North 52nd Street to Western Avenue, west on Western Avenue to North 60th Street, north on North 60th Street to Hamilton Street, west on Hamilton Street to North 72nd Street, north on North 72nd Street to the intersection of the northern boundary of Precinct 1-11, follow an east-west line from such intersection east to Cole Creek, north along Cole Creek to Parkview Lane, east on Parkview Lane to North 65th Street, south on North 65th Street to Ogden Street, east on Ogden Street to North 62nd Street, south on North 62nd Street to Park Lane Drive, east on Park Lane Drive to North 60th Street, north on North 60th Street to Fort Street, east on Fort Street to North 48th Street, south on North 48th Street to Ames Avenue, west on Ames Avenue to North 52nd Street, south on North 52nd Street to Pratt Street, east on Pratt Street to North 45th Street, south on North 45th Street to Grant Street, west on Grant Street to North 45th Street, south on North 45th Street to Seward Street, east on Seward

Street to North 45th Street, south on North 45th Street to Hamilton Street, east on Hamilton Street to North 42nd Street, south on North 42nd Street to Lafayette Avenue, east on Lafayette Avenue to North 40th Street, south on North 40th Street to Cuming Street, and west on Cuming Street to the point of beginning.

**Source:** Laws 1981, LB 406, § 9; R.S.1943, (1987), § 5-209; Laws 1991, LB 614, § 9; Laws 2001, LB 852, § 9.

**50-1110 District No. 9, description.**

District No. 9 shall contain that part of Douglas County beginning at the intersection of North 24th Street and Cuming Street, south on North 24th Street to South 24th Street, south on South 24th Street to St. Mary's Avenue, west on St. Mary's Avenue to South 24th Street, south on South 24th Street to Leavenworth Street, west on Leavenworth Street to Interstate Highway 480, south on Interstate Highway 480 to Ed Creighton Avenue, west on Ed Creighton Avenue to Hanscom Boulevard, follow Hanscom Boulevard south to Vinton Street, west on Vinton Street to South 32nd Avenue, north on South 32nd Avenue to Spring Street, west on Spring Street to South 34th Street, north on South 34th Street to Frederick Street, west on Frederick Street to South 35th Street, north on South 35th Street to Oak Street, west on Oak Street and continuing west along an east-west line extending west from Oak Street to Field Club Trail, north on Field Club Trail to Wright Street, west on Wright Street to South 39th Street, follow South 39th Street north to Martha Street, west on Martha Street to South 39th Street, north on South 39th Street to Frances Street, west on Frances Street to South 48th Street, north on South 48th Street to Poppleton Avenue, west on Poppleton Avenue to South 55th Street, north on South 55th Street to Poppleton Avenue, west on Poppleton Avenue to South 56th Street, south on South 56th Street to William Street, west on William Street to South 60th Street, north on South 60th Street to William Street, west on William Street to South 63rd Street, north on South 63rd Street to Pacific Street, west on Pacific Street to South 67th Street, north on South 67th Street to Leavenworth Street, west on Leavenworth Street to South 67th Street, north on South 67th Street to Howard Street, west on Howard Street to South 68th Street, north on South 68th Street to Dodge Street, east on Dodge Street to North 46th Street, north on North 46th Street to California Street, east on California Street to North Saddle Creek Road, north on North Saddle Creek Road to Cuming Street, east on Cuming Street to North 40th Street, north on North 40th Street to Nicholas Street, east on Nicholas Street to Hawthorne Avenue, east on Hawthorne Avenue to North 34th Street, south on North 34th Street to Lincoln Boulevard, east on Lincoln Boulevard to North 33rd Street, south on North 33rd Street to Cuming Street, and east on Cuming Street to the point of beginning.

**Source:** Laws 1981, LB 406, § 10; R.S.1943, (1987), § 5-210; Laws 1991, LB 614, § 10; Laws 2001, LB 852, § 10.

**50-1111 District No. 10, description.**

District No. 10 shall contain that part of Douglas County beginning at the intersection of Blondo Street and North 72nd Street, west on Blondo Street to Big Papillion Creek, north along Big Papillion Creek to West Maple Road, east on West Maple Road to North 114th Avenue, north on North 114th Avenue to

Manderson Street, northeast on Manderson Street to Old Maple Road, east on Old Maple Road to North 108th Street, north on North 108th Street to the intersection of an east-west line extending west from Hilltop Road, west along such line to North 112th Street, north on North 112th Street to Fowler Avenue, northwest on Fowler Avenue to North 113th Street, follow North 113th Street north to Camden Avenue, west on Camden Avenue to North 114th Street, north on North 114th Street to Fort Street, east on Fort Street to North 108th Street, north on North 108th Street to Hartman Avenue, east on Hartman Avenue to Laurel Avenue, southeast on Laurel Avenue to North 103rd Street, southeast on North 103rd Street to Wiesman Drive, east on Wiesman Drive to North 102nd Street, north on North 102nd Street to Military Road, east on Military Road to Interstate Highway 680, follow Interstate Highway 680 northeast to North 60th Street, south on North 60th Street to Sorenson Parkway, west on Sorenson Parkway to 66th Street, north on 66th Street and continuing north along a north-south line extending north from 66th Street to the northernmost boundary of Precinct 1-13, follow such boundary west to North 72nd Street, and south on North 72nd Street to the point of beginning.

**Source:** Laws 1981, LB 406, § 11; R.S.1943, (1987), § 5-211; Laws 1991, LB 614, § 11; Laws 2001, LB 852, § 11.

**50-1112 District No. 11, description.**

District No. 11 shall contain that part of Douglas County beginning at the intersection of the Grace Street Outfall and the Nebraska-Iowa state line, north along the Nebraska-Iowa state line to the intersection of an east-west line extending east from Cornish Boulevard, west along such line to the Union Pacific Railroad right-of-way, north along the Union Pacific Railroad right-of-way to Ames Avenue, west on Ames Avenue to North 20th Street, north on North 20th Street to Florence Boulevard, northwest on Florence Boulevard to Ogden Street, west on Ogden Street to North 24th Street, north on North 24th Street to Kansas Avenue, west on Kansas Avenue to North 30th Street, south on North 30th Street to Laurel Avenue, west on Laurel Avenue to North 42nd Street, south on North 42nd Street to Sorenson Parkway, west on Sorenson Parkway to the intersection of a north-south line extending south from North 48th Street, south along such line to Redman Avenue, east on Redman Avenue to North 47th Avenue, south on North 47th Avenue to Jaynes Street, west on Jaynes Street to North 48th Street, south on North 48th Street to Fort Street, east on Fort Street to North 48th Street, south on North 48th Street to Ames Avenue, west on Ames Avenue to North 52nd Street, south on North 52nd Street to Pratt Street, east on Pratt Street to North 45th Street, south on North 45th Street to Grant Street, west on Grant Street to North 45th Street, south on North 45th Street to Seward Street, east on Seward Street to North 45th Street, south on North 45th Street to Hamilton Street, east on Hamilton Street to North 42nd Street, south on North 42nd Street to Lafayette Avenue, east on Lafayette Avenue to North 40th Street, south on North 40th Street to Nicholas Street, east on Nicholas Street to Hawthorne Avenue, east on Hawthorne Avenue to North 34th Street, south on North 34th Street to Lincoln Boulevard, east on Lincoln Boulevard to North 33rd Street, south on North 33rd Street to Cuming Street, east on Cuming Street to North 15th Street, north on North 15th Street to Nicholas Street, east on Nicholas Street to North 11th Street, north on North 11th Street to Seward Street, east on Seward Street to North 6th Street, south on North 6th Street to Abbott Drive, east on Abbott Drive to

the Grace Street Outfall, and southeast along the Grace Street Outfall to the point of beginning.

**Source:** Laws 1981, LB 406, § 12; R.S.1943, (1987), § 5-212; Laws 1991, LB 614, § 12; Laws 2001, LB 852, § 12.

**50-1113 District No. 12, description.**

District No. 12 shall contain that part of Douglas County beginning at the intersection of the Douglas-Sarpy County line and South 72nd Street, north on South 72nd Street to Interstate Highway 80, west on Interstate Highway 80 to Interstate Highway 680, north on Interstate Highway 680 to West Center Road, west on West Center Road to South 114th Street, north on South 114th Street to Arbor Street, west on Arbor Street to South 117th Street, south on South 117th Street to West Center Road, west on West Center Road to South 120th Street, south on South 120th Street to Q Street, west on Q Street to South 138th Street, south on South 138th Street to the Douglas-Sarpy County line, and east along the Douglas-Sarpy County line to the point of beginning.

**Source:** Laws 1981, LB 406, § 13; R.S.1943, (1987), § 5-213; Laws 1991, LB 614, § 13; Laws 2001, LB 852, § 13.

**50-1114 District No. 13, description.**

District No. 13 shall contain that part of Douglas County beginning at the intersection of an east-west line extending east from Cornish Boulevard and the Nebraska-Iowa state line, west along such line to the Union Pacific Railroad right-of-way, north along the Union Pacific Railroad right-of-way to Ames Avenue, west on Ames Avenue to North 20th Street, north on North 20th Street to Florence Boulevard, northwest on Florence Boulevard to Ogden Street, west on Ogden Street to North 24th Street, north on North 24th Street to Kansas Avenue, west on Kansas Avenue to North 30th Street, south on North 30th Street to Laurel Avenue, west on Laurel Avenue to North 42nd Street, south on North 42nd Street to Sorenson Parkway, west on Sorenson Parkway to the intersection of a north-south line extending south from North 48th Street, south along such line to Redman Avenue, east on Redman Avenue to North 47th Avenue, south on North 47th Avenue to Jaynes Street, west on Jaynes Street to North 48th Street, south on North 48th Street to Fort Street, west on Fort Street to North 60th Street, south on North 60th Street to Park Lane Drive, west on Park Lane Drive to North 62nd Street, north on North 62nd Street to Ogden Street, west on Ogden Street to North 65th Street, north on North 65th Street to Parkview Lane, west on Parkview Lane to Cole Creek, south along Cole Creek to the intersection of an east-west line extending east from the intersection of the northern boundary of Precinct 1-11 and North 72nd Street, west along such line to North 72nd Street, north on North 72nd Street to the northernmost boundary of Precinct 1-13, follow such boundary east to the intersection of a north-south line extending north from 66th Street, south along such line to 66th Street, south on 66th Street to Sorenson Parkway, east on Sorenson Parkway to North 60th Street, north on North 60th Street to Interstate Highway 680, follow Interstate Highway 680 southwest to Military Road, west on Military Road to North 102nd Street, south on North 102nd Street to Wiesman Drive, west on Wiesman Drive to North 103rd Street, northwest on North 103rd Street to Laurel Avenue, northwest on Laurel Avenue to Hartman Avenue, west on Hartman Avenue to North 108th Street, south on North 108th

Street to Fort Street, west on Fort Street to North 114th Street, north on North 114th Street to Crown Point Avenue, east on Crown Point Avenue to North 108th Street, north on North 108th Street to Military Road, west on Military Road to North 114th Street, north on North 114th Street to State Street, east on State Street to Blair High Road, north on Blair High Road to North 108th Street, east then north on North 108th Street to Rainwood Road, east on Rainwood Road to North 96th Street, north on North 96th Street to State Highway 36, east on State Highway 36 to North 72nd Street, north on North 72nd Street to Northern Hills Drive, east on Northern Hills Drive to Calhoun Frontage Road, northwest then east on Calhoun Frontage Road to Calhoun Road, north on Calhoun Road to the Douglas-Washington County line, east along the Douglas-Washington County line to the Nebraska-Iowa state line, and south along the Nebraska-Iowa state line to the point of beginning.

**Source:** Laws 1981, LB 406, § 14; R.S.1943, (1987), § 5-214; Laws 1991, LB 614, § 14; Laws 2001, LB 852, § 14.

**50-1115 District No. 14, description.**

District No. 14 shall contain that part of Sarpy County beginning at the intersection of the Douglas-Sarpy County line and South 48th Street, south on South 48th Street to Cornhusker Road, east on Cornhusker Road to South 36th Street, south on South 36th Street to West Papillion Creek, west along West Papillion Creek to the intersection of a north-south line extending north from South 60th Street, south along such line to South 60th Street, south on South 60th Street to State Highway 370, west on State Highway 370 to the intersection of a north-south line extending south from South 120th Street, north along such line to South 120th Street, north on South 120th Street and continuing north along a north-south line extending north from South 120th Street to the Douglas-Sarpy County line, and east along the Douglas-Sarpy County line to the point of beginning.

**Source:** Laws 1981, LB 406, § 15; Laws 1982, LB 685, § 1; Laws 1988, LB 789, § 3; R.S.Supp.,1990, § 5-215; Laws 1991, LB 614, § 15; Laws 2001, LB 852, § 15.

**50-1116 District No. 15, description.**

District No. 15 shall contain the county of Dodge.

**Source:** Laws 1981, LB 406, § 16; R.S.1943, (1987), § 5-216; Laws 1991, LB 614, § 16; Laws 2001, LB 852, § 16.

**50-1117 District No. 16, description.**

District No. 16 shall contain the counties of Thurston, Stanton, Cuming, and Burt and that part of Washington County not included in legislative districts 18 and 39.

**Source:** Laws 1981, LB 406, § 17; R.S.1943, (1987), § 5-217; Laws 1991, LB 614, § 17; Laws 2001, LB 852, § 17.

**50-1118 District No. 17, description.**

District No. 17 shall contain the counties of Wayne, Dixon, and Dakota.

**Source:** Laws 1981, LB 406, § 18; R.S.1943, (1987), § 5-218; Laws 1991, LB 614, § 18; Laws 1992, Second Spec. Sess., LB 7, § 2; Laws 2001, LB 852, § 18.

**50-1119 Repealed. Laws 1992, Second Spec. Sess., LB 7, § 8.**

**50-1119.01 District No. 18, description.**

District No. 18 shall contain those parts of Douglas and Washington counties beginning at the intersection of the Douglas-Washington County line and the Nebraska-Iowa state line, north along the Nebraska-Iowa state line to Serenity Lane, west on Serenity Lane to County Road 35, south on County Road 35 to County Road P14, west on County Road P14 to County Road P31, south on County Road P31 to County Road P16, follow County Road P16 west to County Road 16, follow County Road 16 west to U.S. Highway 75, south on U.S. Highway 75 to South Creek, west then southwest along South Creek to State Highway 91, west on State Highway 91 to County Road 23, south on County Road 23 to the intersection of an east-west line extending east from County Road 30, east along such line to U.S. Highway 30, southwest on U.S. Highway 30 to County Road P30, south then east on County Road P30 to County Road 29, south on County Road 29 to County Road 38, east on County Road 38 to County Road 33, south on County Road 33 to the Douglas-Washington County line, east along the Douglas-Washington County line to North 132nd Street, south on North 132nd Street to State Street, west on State Street to North 156th Street, south on North 156th Street to Ida Street, west on Ida Street to North 168th Street, south on North 168th Street and continuing south along a north-south line extending south from North 168th Street to West Dodge Road, east on West Dodge Road to North 156th Street, north on North 156th Street to West Maple Road, east on West Maple Road to North 114th Avenue, north on North 114th Avenue to Manderson Street, northeast on Manderson Street to Old Maple Road, east on Old Maple Road to North 108th Street, north on North 108th Street to the intersection of an east-west line extending west from Hilltop Road, west along such line to North 112th Street, north on North 112th Street to Fowler Avenue, northwest on Fowler Avenue to North 113th Street, follow North 113th Street north to Camden Avenue, west on Camden Avenue to North 114th Street, north on North 114th Street to Crown Point Avenue, east on Crown Point Avenue to North 108th Street, north on North 108th Street to Military Road, west on Military Road to North 114th Street, north on North 114th Street to State Street, east on State Street to Blair High Road, north on Blair High Road to North 108th Street, east then north on North 108th Street to Rainwood Road, east on Rainwood Road to North 96th Street, north on North 96th Street to State Highway 36, east on State Highway 36 to North 72nd Street, north on North 72nd Street to Northern Hills Drive, east on Northern Hills Drive to Calhoun Frontage Road, northwest then east on Calhoun Frontage Road to Calhoun Road, north on Calhoun Road to the Douglas-Washington County line, and east along the Douglas-Washington County line to the point of beginning.

**Source:** Laws 1992, Second Spec. Sess., LB 7, § 3; Laws 2001, LB 852, § 19.

**50-1120 District No. 19, description.**

District No. 19 shall contain the county of Madison.

**Source:** Laws 1981, LB 406, § 20; R.S.1943, (1987), § 5-220; Laws 1991, LB 614, § 20; Laws 1992, Second Spec. Sess., LB 7, § 4; Laws 2001, LB 852, § 20.

**50-1121 District No. 20, description.**

District No. 20 shall contain that part of Douglas County beginning at the intersection of Pacific Street and South 114th Street, south on South 114th Street to Hickory Road, southwest on Hickory Road to Crawford Road, northwest on Crawford Road to Skylark Drive, west on Skylark Drive to South 120th Street, south on South 120th Street to Shirley Street, west on Shirley Street to South 126th Street, south on South 126th Street to Marinda Street, west on Marinda Street to Royal Wood Drive, south on Royal Wood Drive to West Center Road, west on West Center Road to South 132nd Street, south on South 132nd Street to the Union Pacific Railroad right-of-way, east along the Union Pacific Railroad right-of-way to South 120th Street, north on South 120th Street to West Center Road, east on West Center Road to South 117th Street, north on South 117th Street to Arbor Street, east on Arbor Street to South 114th Street, south on South 114th Street to West Center Road, east on West Center Road to Interstate Highway 680, south on Interstate Highway 680 to Interstate Highway 80, east on Interstate Highway 80 to South 60th Street, north on South 60th Street to Grover Street, east on Grover Street to South 50th Street, north on South 50th Street to Spring Street, east on Spring Street to South 45th Street, north on South 45th Street to Frederick Street, east on Frederick Street to South 39th Street, north on South 39th Street to Wright Street, east on Wright Street to South 39th Street, follow South 39th Street north to Martha Street, west on Martha Street to South 39th Street, north on South 39th Street to Frances Street, west on Frances Street to South 48th Street, north on South 48th Street to Poppleton Avenue, west on Poppleton Avenue to South 55th Street, north on South 55th Street to Poppleton Avenue, west on Poppleton Avenue to South 56th Street, south on South 56th Street to William Street, west on William Street to South 60th Street, north on South 60th Street to William Street, west on William Street to South 63rd Street, north on South 63rd Street to Pacific Street, west on Pacific Street to South 72nd Street, south on South 72nd Street to Hickory Street, west on Hickory Street to South 76th Street, northwest on South 76th Street to Woolworth Avenue, west on Woolworth Avenue to South 80th Street, north on South 80th Street to Pacific Street, and west on Pacific Street to the point of beginning.

**Source:** Laws 1981, LB 406, § 21; R.S.1943, (1987), § 5-221; Laws 1991, LB 614, § 21; Laws 2001, LB 852, § 21.

**50-1122 District No. 21, description.**

District No. 21 shall contain that part of Saunders County not included in legislative district 23 and that part of Lancaster County beginning at the intersection of the Lancaster-Seward County line and West Van Dorn Street, east on West Van Dorn Street to the intersection of a north-south line extending south from Southwest 33rd Street, north along such line to Southwest 33rd Street, north then northwest on Southwest 33rd Street to Timber Ridge Road, north on Timber Ridge Road to West A Street, east on West A Street to the eastern boundary of Garfield 2 Precinct, follow such boundary north to the

southern boundary of 1F-2 Precinct, follow such boundary east to Oak Creek, east along Oak Creek to Interstate Highway 180, south on Interstate Highway 180 to Salt Creek, northeast along Salt Creek to North 14th Street, north on North 14th Street to Superior Street, east on Superior Street to Bel Ridge Drive, north on Bel Ridge Drive and continuing north along a north-south line extending north from Bel Ridge Drive to Hartland Road, east on Hartland Road to North 17th Street, follow North 17th Street north to Prairie Lane, east on Prairie Lane to North 20th Street, south on North 20th Street to Boston Drive, east on Boston Drive to Valley Forge Road, north on Valley Forge Road to Philadelphia Drive, east on Philadelphia Drive to North 25th Street, north on North 25th Street to Folkways Boulevard, east on Folkways Boulevard to North 27th Street, north on North 27th Street to the Lancaster-Saunders County line, west along the Lancaster-Saunders County line to the Lancaster-Seward County line, and south along the Lancaster-Seward County line to the point of beginning.

**Source:** Laws 1981, LB 406, § 22; R.S.1943, (1987), § 5-222; Laws 1991, LB 614, § 22; Laws 2001, LB 852, § 22.

**50-1123 District No. 22, description.**

District No. 22 shall contain the county of Platte and that part of Colfax County not included in legislative district 23.

**Source:** Laws 1981, LB 406, § 23; R.S.1943, (1987), § 5-223; Laws 1991, LB 614, § 23; Laws 2001, LB 852, § 23.

**50-1124 District No. 23, description.**

District No. 23 shall contain the county of Butler, that part of Colfax County beginning at the intersection of the Butler, Platte, and Colfax County lines, north along the Platte-Colfax County line to County Road G, east on County Road G to County Road 7, north on County Road 7 to County Road M, east on County Road M and continuing east along east-west lines extending east from County Road M to the Dodge-Colfax County line, south along the Dodge-Colfax County line to the Colfax-Butler County line, and west along the Colfax-Butler County line to the point of beginning, that part of Saunders County beginning at the intersection of the Butler-Saunders County line and County Road F, east on County Road F and continuing east along east-west lines extending from County Road F to the Saunders-Sarpy County line, north along the Saunders-Sarpy County line to the Saunders-Douglas County line, northwest along the Saunders-Douglas County line to the Saunders-Dodge County line, west along the Saunders-Dodge County line to the Saunders-Butler County line, and south along the Saunders-Butler County line to the point of beginning, that part of Sarpy County beginning at the intersection of the Sarpy-Saunders County line and U.S. Highway 6, northeast then north on U.S. Highway 6 to Capehart Road, west on Capehart Road to South 234th Street, north on South 234th Street to Schram Road, east on Schram Road to South 234th Street, north on South 234th Street to West Angus Road, northeast on West Angus Road to South 232nd Street, follow South 232nd Street north to Lincoln Road, east on Lincoln Road to U.S. Highway 6, northeast on U.S. Highway 6 to South 204th Street, north on South 204th Street to Giles Road, east on Giles Road to the Burlington Northern Santa Fe Railroad right-of-way, east along the Burlington Northern Santa Fe Railroad right-of-way to the intersection of a north-south

line extending south from South 180th Street, north along such line to South 180th Street, north on South 180th Street to the Douglas-Sarpy County line, west along the Douglas-Sarpy County line to the Saunders-Sarpy County line, and south along the Saunders-Sarpy County line to the point of beginning, and that part of Douglas County beginning at the intersection of the Douglas-Sarpy County line and South 192nd Street, north on South 192nd Street to F Street, west on F Street to South 204th Street, north on South 204th Street to West Center Road, west on West Center Road to 240th Street, north on 240th Street to U.S. Highway 275, north then northwest on U.S. Highway 275 to North 264th Street, north on North 264th Street to the Douglas-Dodge County line, west along the Douglas-Dodge County line to the Douglas-Saunders County line, southeast along the Douglas-Saunders County line to the Douglas-Sarpy County line, and east along the Douglas-Sarpy County line to the point of beginning.

**Source:** Laws 1981, LB 406, § 24; R.S.1943, (1987), § 5-224; Laws 1991, LB 614, § 24; Laws 2001, LB 852, § 24.

**50-1125 District No. 24, description.**

District No. 24 shall contain the counties of York and Seward and that part of Polk County beginning at the intersection of the Polk-Butler County line and County Road 36, west on County Road 36 and continuing west along east-west lines extending west from County Road 36 to County Road Q, south on County Road Q to County Road 32, west on County Road 32 to County Road J, south on County Road J to County Road 28, west on County Road 28 to County Road H, south on County Road H to the Polk-York County line, east along the Polk-York County line to the Polk-Butler County line, and north along the Polk-Butler County line to the point of beginning.

**Source:** Laws 1981, LB 406, § 25; R.S.1943, (1987), § 5-225; Laws 1991, LB 614, § 25; Laws 2001, LB 852, § 25.

**50-1126 District No. 25, description.**

District No. 25 shall contain that part of Lancaster County beginning at the intersection of North 27th Street and the Lancaster-Saunders County line, east then south along the Lancaster-Saunders County line to the Lancaster-Cass County line, south along the Lancaster-Cass County line to the Lancaster-Otoe County line, south along the Lancaster-Otoe County line to Yankee Hill Road, west on Yankee Hill Road to South 91st Street, south on South 91st Street to Yankee Hill Road, west on Yankee Hill Road to South 70th Street, south on South 70th Street to Rokeby Road, west on Rokeby Road and continuing west along an east-west line extending west from Rokeby Road to South 40th Street, north on South 40th Street to the southern boundary of 9H-4 Precinct, follow such boundary east to the intersection of an east-west line extending east from Tucson Drive, west along such line to San Mateo Lane, north on San Mateo Lane to Birch Creek Drive, east then south on Birch Creek Drive to Union Hill Road, east on Union Hill Road to South 48th Street, north on South 48th Street to Beaver Creek Lane, north on Beaver Creek Lane to Pine Lake Road, east on Pine Lake Road to South 56th Street, north on South 56th Street to Elkcrest Drive, west on Elkcrest Drive to South 54th Street, south on South 54th Street to Woodland Avenue, west on Woodland Avenue to South 53rd Street, north on South 53rd Street to Claire Avenue, west on Claire Avenue to South 52nd

Street, north on South 52nd Street to Pioneers Boulevard, west on Pioneers Boulevard to South 52nd Street, north on South 52nd Street to Prescott Avenue, east on Prescott Avenue to South 54th Street, north on South 54th Street to Calvert Street, east on Calvert Street to South 56th Street, north on South 56th Street to A Street, east on A Street to South 70th Street, north on South 70th Street to O Street, east on O Street to the eastern boundary of 12B-8 Precinct, follow such boundary north to the southern boundary of 12A-8 Precinct, follow such boundary east then north to David Murdock Trail, west on David Murdock Trail to the eastern boundary of 12C-6 Precinct, follow such boundary north to the eastern boundary of 12E Precinct, follow such boundary north then west to the eastern boundary of 12F Precinct, follow such boundary north, west, south, then west to North 27th Street, and north on North 27th Street to the point of beginning.

**Source:** Laws 1981, LB 406, § 26; R.S.1943, (1987), § 5-226; Laws 1991, LB 614, § 26; Laws 2001, LB 852, § 26.

**50-1127 District No. 26, description.**

District No. 26 shall contain that part of Lancaster County beginning at the intersection of 70th Street and O Street, east on O Street to the eastern boundary of 12B-8 Precinct, follow such boundary north to the southern boundary of 12A-8 Precinct, follow such boundary east then north to David Murdock Trail, west on David Murdock Trail to North 48th Street, south on North 48th Street to Adams Street, west on Adams Street to North 44th Street, south on North 44th Street to Leighton Avenue, southeast then east on Leighton Avenue to North 48th Street, south on North 48th Street to Holdrege Street, west on Holdrege Street to North 40th Street, south on North 40th Street to Dudley Street, west on Dudley Street to North 38th Street, south on North 38th Street to Apple Street, west on Apple Street to North 35th Street, south on North 35th Street to O Street, and east on O Street to the point of beginning.

**Source:** Laws 1981, LB 406, § 27; R.S.1943, (1987), § 5-227; Laws 1991, LB 614, § 27; Laws 2001, LB 852, § 27.

**50-1128 District No. 27, description.**

District No. 27 shall contain that part of Lancaster County beginning at the intersection of West Van Dorn Street and a north-south line extending south from Southwest 33rd Street, north along such line to Southwest 33rd Street, north then northwest on Southwest 33rd Street to Timber Ridge Road, north on Timber Ridge Road to West A Street, east on West A Street to the eastern boundary of Garfield 2 Precinct, follow such boundary north to the southern boundary of 1F-2 Precinct, follow such boundary east to Oak Creek, east along Oak Creek to Interstate Highway 180, south on Interstate Highway 180 to North 9th Street, south on North 9th Street to O Street, east on O Street to South 12th Street, south on South 12th Street to South Street, east on South Street to South 27th Street, south on South 27th Street to Sheridan Boulevard, southeast on Sheridan Boulevard to Van Dorn Street, east on Van Dorn Street to the off-street bike path, southwest along the off-street bike path to State Highway 2, west on State Highway 2 to South 27th Street, south on South 27th Street to Pine Lake Road, west on Pine Lake Road to Helen Witt Drive, southeast then south on Helen Witt Drive to the southern boundary of 5E-6 Precinct, follow such boundary west to South 14th Street, north on South 14th

Street to the southern boundary of 5E-4 Precinct, follow such boundary west, northeast, then west to the Burlington Northern Santa Fe Railroad right-of-way, follow the Burlington Northern Santa Fe Railroad right-of-way north to the intersection of an east-west line extending east from Pioneers Boulevard, west along such line to Pioneers Boulevard, west on Pioneers Boulevard to the Union Pacific Railroad right-of-way, north along the Union Pacific Railroad right-of-way to the western boundary of 5E-1 Precinct, follow such boundary north then west to the southern boundary of Garfield 2(1) Precinct, follow such boundary west to West Van Dorn Street, and west on West Van Dorn Street to the point of beginning.

**Source:** Laws 1981, LB 406, § 28; R.S.1943, (1987), § 5-228; Laws 1991, LB 614, § 28; Laws 2001, LB 852, § 28.

**50-1129 District No. 28, description.**

District No. 28 shall contain that part of Lancaster County beginning at the intersection of South 12th Street and O Street, south on South 12th Street to South Street, east on South Street to South 56th Street, north on South 56th Street to A Street, east on A Street to South 70th Street, north on South 70th Street to O Street, and west on O Street to the point of beginning.

**Source:** Laws 1981, LB 406, § 29; R.S.1943, (1987), § 5-229; Laws 1991, LB 614, § 29; Laws 2001, LB 852, § 29.

**50-1130 District No. 29, description.**

District No. 29 shall contain that part of Lancaster County beginning at the intersection of South 27th Street and Rokeby Road, east on Rokeby Road to South 40th Street, north on South 40th Street to the southern boundary of 9H-4 Precinct, follow such boundary east to the intersection of an east-west line extending east from Tucson Drive, west along such line to San Mateo Lane, north on San Mateo Lane to Birch Creek Drive, east then south on Birch Creek Drive to Union Hill Road, east on Union Hill Road to South 48th Street, north on South 48th Street to Beaver Creek Lane, north on Beaver Creek Lane to Pine Lake Road, east on Pine Lake Road to South 56th Street, north on South 56th Street to Elkcrest Drive, west on Elkcrest Drive to South 54th Street, south on South 54th Street to Woodland Avenue, west on Woodland Avenue to South 53rd Street, north on South 53rd Street to Claire Avenue, west on Claire Avenue to South 52nd Street, north on South 52nd Street to Pioneers Boulevard, west on Pioneers Boulevard to South 52nd Street, north on South 52nd Street to Prescott Avenue, east on Prescott Avenue to South 54th Street, north on South 54th Street to Calvert Street, east on Calvert Street to South 56th Street, north on South 56th Street to South Street, west on South Street to South 27th Street, south on South 27th Street to Sheridan Boulevard, southeast on Sheridan Boulevard to Van Dorn Street, east on Van Dorn Street to the off-street bike path, southwest along the off-street bike path to State Highway 2, west on State Highway 2 to South 27th Street, and south on South 27th Street to the point of beginning.

**Source:** Laws 1981, LB 406, § 30; R.S.1943, (1987), § 5-230; Laws 1991, LB 614, § 30; Laws 2001, LB 852, § 30.

**50-1131 District No. 30, description.**

District No. 30 shall contain the county of Gage and that part of Lancaster County beginning at the intersection of the Lancaster, Gage, and Saline County lines, east along the Lancaster-Gage County line to the Lancaster-Otoe County line, north along the Lancaster-Otoe County line to Yankee Hill Road, west on Yankee Hill Road to South 91st Street, south on South 91st Street to Yankee Hill Road, west on Yankee Hill Road to South 70th Street, south on South 70th Street to Rokeby Road, west on Rokeby Road and continuing west along an east-west line extending west from Rokeby Road to Rokeby Road, west on Rokeby Road to South 27th Street, north on South 27th Street to Pine Lake Road, west on Pine Lake Road to Helen Witt Drive, southeast then south on Helen Witt Drive to the southern boundary of 5E-6 Precinct, follow such boundary west to South 14th Street, north on South 14th Street to the southern boundary of 5E-4 Precinct, follow such boundary west, northeast, then west to the Burlington Northern Santa Fe Railroad right-of-way, follow the Burlington Northern Santa Fe Railroad right-of-way north to the intersection of an east-west line extending east from Pioneers Boulevard, west along such line to Pioneers Boulevard, west on Pioneers Boulevard to the Union Pacific Railroad right-of-way, north along the Union Pacific Railroad right-of-way to the western boundary of 5E-1 Precinct, follow such boundary north then west to the southern boundary of Garfield 2(1) Precinct, follow such boundary west to West Van Dorn Street, west on West Van Dorn Street to the Lancaster-Seward County line, south then west along the Lancaster-Seward County line to the Lancaster-Saline County line, and south along the Lancaster-Saline County line to the point of beginning.

**Source:** Laws 1981, LB 406, § 31; R.S.1943, (1987), § 5-231; Laws 1991, LB 614, § 31; Laws 2001, LB 852, § 31.

**50-1132 District No. 31, description.**

District No. 31 shall contain that part of Douglas County beginning at the intersection of the Douglas-Sarpy County line and South 138th Street, north on South 138th Street to Q Street, east on Q Street to South 120th Street, north on South 120th Street to the Union Pacific Railroad right-of-way, west along the Union Pacific Railroad right-of-way to South 132nd Street, north on South 132nd Street to West Center Road, west on West Center Road to the Union Pacific Railroad right-of-way, northwest along the Union Pacific Railroad right-of-way to Pacific Street, east on Pacific Street to South 156th Street, north on South 156th Street to West Dodge Road, west on West Dodge Road to the intersection of a north-south line extending north from South 157th Street, south along such line to the intersection of an east-west line extending east from Davenport Street, west along such line to South 160th Street, south on South 160th Street to Capitol Avenue, west on Capitol Avenue to the intersection of a north-south line extending north from South 160th Street, south along such line to Lamp Street, west on Lamp Street to South 163rd Street, south on South 163rd Street to Harney Street, west along an east-west line extending west from the intersection of South 163rd Street and Harney Street to South 168th Street, south on South 168th Street to Rolling Ridge Road, east on Rolling Ridge Road to South 167th Street, south on South 167th Street to Holmes Street, west on Holmes Street to South 167th Street, south on South 167th Street to Riggs Street, east on Riggs Street to Ohern Street, southeast then east on Ohern Street to South 165th Street, south on South 165th Street and continuing south along a north-south line extending south from South

165th Street to S Street, southwest on S Street to South 166th Street, south on South 166th Street to Y Street, west on Y Street to South 166th Avenue, south on South 166th Avenue to Washington Street, east on Washington Street to Z Street, east on Z Street to South 161st Avenue, follow South 161st Avenue south to the Douglas-Sarpy County line, and east along the Douglas-Sarpy County line to the point of beginning.

**Source:** Laws 1981, LB 406, § 32; R.S.1943, (1987), § 5-232; Laws 1991, LB 614, § 32; Laws 2001, LB 852, § 32.

**50-1133 District No. 32, description.**

District No. 32 shall contain the counties of Fillmore, Saline, Thayer, and Jefferson.

**Source:** Laws 1981, LB 406, § 33; R.S.1943, (1987), § 5-233; Laws 1991, LB 614, § 33; Laws 2001, LB 852, § 33.

**50-1134 District No. 33, description.**

District No. 33 shall contain the county of Adams and that part of Hall County beginning at the intersection of the Hall-Buffalo County line and West Airport Road, east on West Airport Road to North 80th Road, south on North 80th Road to South 80th Road, south on South 80th Road to West Schimmer Drive, east on West Schimmer Drive to U.S. Highway 281, south on U.S. Highway 281 to the Hall-Adams County line, west along the Hall-Adams County line to the Hall-Buffalo County line, and north along the Hall-Buffalo County line to the point of beginning.

**Source:** Laws 1981, LB 406, § 34; R.S.1943, (1987), § 5-234; Laws 1991, LB 614, § 34; Laws 2001, LB 852, § 34.

**50-1135 District No. 34, description.**

District No. 34 shall contain the counties of Merrick, Hamilton, and Nance, that part of Hall County which includes the precincts of Center 1, Center 2, Center 3, Center 5, Grand Island Fifteen False, Washington 1B and 1E, Doniphan, Washington 2, and Grand Island 23, and that part of Polk County not included in legislative district 24.

**Source:** Laws 1981, LB 406, § 35; Laws 1982, LB 685, § 2; R.S.1943, (1987), § 5-235; Laws 1991, LB 614, § 35; Laws 2001, LB 852, § 35.

**50-1136 District No. 35, description.**

District No. 35 shall contain that part of Hall County not included in legislative districts 33, 34, and 41.

**Source:** Laws 1981, LB 406, § 36; R.S.1943, (1987), § 5-236; Laws 1991, LB 614, § 36; Laws 2001, LB 852, § 36.

**50-1137 District No. 36, description.**

District No. 36 shall contain that part of Buffalo County not included in legislative district 37 and that part of Dawson County not included in legislative district 44.

**Source:** Laws 1981, LB 406, § 37; R.S.1943, (1987), § 5-237; Laws 1991, LB 614, § 37; Laws 2001, LB 852, § 37.

**50-1138 District No. 37, description.**

District No. 37 shall contain the county of Kearney and that part of Buffalo County which includes the city of Kearney, Precinct 1, and Collins Precinct.

**Source:** Laws 1981, LB 406, § 38; R.S.1943, (1987), § 5-238; Laws 1991, LB 614, § 38; Laws 2001, LB 852, § 38.

**50-1139 District No. 38, description.**

District No. 38 shall contain the counties of Gosper, Phelps, Harlan, Franklin, Webster, Nuckolls, and Clay.

**Source:** Laws 1981, LB 406, § 39; R.S.1943, (1987), § 5-239; Laws 1991, LB 614, § 39; Laws 1992, Second Spec. Sess., LB 15, § 1; Laws 2001, LB 852, § 39.

**50-1140 District No. 39, description.**

District No. 39 shall contain those parts of Douglas, Washington, and Sarpy counties beginning at the intersection of the Douglas, Washington, and Dodge County lines, west along the Douglas-Dodge County line to North 264th Street, south on North 264th Street to U.S. Highway 275, southeast then south on U.S. Highway 275 to 240th Street, south on 240th Street to West Center Road, east on West Center Road to South 204th Street, south on South 204th Street to F Street, east on F Street to South 192nd Street, south on South 192nd Street to the Douglas-Sarpy County line, east along the Douglas-Sarpy County line to South 180th Street, south on South 180th Street and continuing south along a north-south line extending south from South 180th Street to the Burlington Northern Santa Fe Railroad right-of-way, east along the Burlington Northern Santa Fe Railroad right-of-way to South 144th Street, north on South 144th Street to Josephine Street, east on Josephine Street to South 139th Avenue, south on South 139th Avenue to Frederick Avenue, east on Frederick Avenue to South 137th Avenue, northeast on South 137th Avenue to South 136th Street, south on South 136th Street to Edna Street, east on Edna Street to South 132nd Avenue, north on South 132nd Avenue to Gertrude Street, east on Gertrude Street to South 132nd Street, north on South 132nd Street to the Douglas-Sarpy County line, west along the Douglas-Sarpy County line to South 161st Avenue, follow South 161st Avenue north to Z Street, west on Z Street to Washington Street, west on Washington Street to South 166th Avenue, north on South 166th Avenue to Y Street, east on Y Street to South 166th Street, north on South 166th Street to S Street, northeast on S Street to the intersection of a north-south line extending south from South 165th Street, north along such line to South 165th Street, north on South 165th Street to Ohern Street, west then northwest on Ohern Street to Riggs Street, west on Riggs Street to South 167th Street, north on South 167th Street to Holmes Street, east on Holmes Street to South 167th Street, north on South 167th Street to Rolling Ridge Road, west on Rolling Ridge Road to South 168th Street, north on South 168th Street to the intersection of an east-west line extending west from the intersection of South 163rd Street and Harney Street, east along such line to South 163rd Street, north on South 163rd Street to Lamp Street, east on Lamp Street to the intersection of a north-south line extending north from South 160th Street, north along such line to Capitol Avenue, east on Capitol Avenue to South 160th Street, north on South 160th Street to the intersection of an east-west line extending east from Davenport Street, east along such line to the intersection of

a north-south line extending north from South 157th Street, north along such line to West Dodge Road, west on West Dodge Road to the intersection of a north-south line extending south from North 168th Street, north along such line to North 168th Street, north on North 168th Street to Ida Street, east on Ida Street to North 156th Street, north on North 156th Street to State Street, east on State Street to North 132nd Street, north on North 132nd Street to the Douglas-Washington County line, west along the Douglas-Washington County line to County Road 33, north on County Road 33 to County Road 38, west on County Road 38 to County Road 29, north on County Road 29 to County Road P30, west then north on County Road P30 to U.S. Highway 30, northeast on U.S. Highway 30 to the intersection of an east-west line extending east from County Road 30, west along such line to County Road 30, west on County Road 30 and continuing west along east-west lines extending west from County Road 30 to the Washington-Dodge County line, and southeast then south along the Washington-Dodge County line to the point of beginning.

**Source:** Laws 1981, LB 406, § 40; R.S.1943, (1987), § 5-240; Laws 1991, LB 614, § 40; Laws 2001, LB 852, § 40.

**50-1141 Repealed. Laws 1992, Second Spec. Sess., LB 7, § 8.**

**50-1141.01 District No. 40, description.**

District No. 40 shall contain the counties of Knox, Cedar, and Pierce and that part of Holt County which includes the precincts of Coleman, Rock Falls, Paddock, Scott, Steel Creek, Shields, Willowdale, Antelope, Iowa, Grattan, O'Neill Wards I through IV, Verdigris, Golden, Inman, Shamrock, Chambers, Conley, McClure, Lake, Ewing, and Deloit.

**Source:** Laws 1992, Second Spec. Sess., LB 7, § 5; Laws 2001, LB 852, § 41.

**50-1142 District No. 41, description.**

District No. 41 shall contain the counties of Garfield, Wheeler, Valley, Greeley, Sherman, Howard, Antelope, and Boone and that part of Hall County beginning at the intersection of the Buffalo, Hall, and Howard County lines, south along the Buffalo-Hall County line to West Airport Road, east on West Airport Road to East Airport Road, east on East Airport Road to the Hall-Merrick County line, north then west along the Hall-Merrick County line to the Hall-Howard County line, and west along the Hall-Howard County line to the point of beginning.

**Source:** Laws 1981, LB 406, § 42; R.S.1943, (1987), § 5-242; Laws 1991, LB 614, § 42; Laws 2001, LB 852, § 42.

**50-1143 District No. 42, description.**

District No. 42 shall contain the county of Lincoln.

**Source:** Laws 1981, LB 406, § 43; R.S.1943, (1987), § 5-243; Laws 1991, LB 614, § 43; Laws 2001, LB 852, § 43.

**50-1144 District No. 43, description.**

District No. 43 shall contain the counties of Keya Paha, Boyd, Brown, Blaine, Loup, Rock, Thomas, Hooker, McPherson, Logan, and Custer, that part of Holt

County not included in legislative district 40, and that part of Cherry County east of State Highway 61, excluding the village of Merriman.

**Source:** Laws 1981, LB 406, § 44; R.S.1943, (1987), § 5-244; Laws 1991, LB 614, § 44; Laws 2001, LB 852, § 44.

**50-1145 District No. 44, description.**

District No. 44 shall contain the counties of Perkins, Chase, Dundy, Hitchcock, Hayes, Frontier, Red Willow, and Furnas and that part of Dawson County which lies south of the Platte River.

**Source:** Laws 1981, LB 406, § 45; R.S.1943, (1987), § 5-245; Laws 1991, LB 614, § 45; Laws 1992, Second Spec. Sess., LB 15, § 2; Laws 2001, LB 852, § 45.

**50-1146 District No. 45, description.**

District No. 45 shall contain that part of Sarpy County beginning at the intersection of the Nebraska-Iowa state line and the Douglas-Sarpy County line, west along the Douglas-Sarpy County line to the Union Pacific Railroad right-of-way, southeast along the Union Pacific Railroad right-of-way to Childs Road, west on Childs Road to South 25th Street, north on South 25th Street to Linda Street, west on Linda Street to Cedar Island Road, south on Cedar Island Road to Childs Road, west on Childs Road to the western boundary of Bellevue 4-4 Precinct, follow such boundary north to Bonnie Street, west on Bonnie Street to South 30th Street, south on South 30th Street to Evelyn Street, west on Evelyn Street to South 32nd Street, north on South 32nd Street to Chandler Road West, west on Chandler Road West to South 36th Street, south on South 36th Street to Suburban Drive, west on Suburban Drive to South 39th Avenue, north on South 39th Avenue to South 40th Street, northwest on South 40th Street to Southern Hills Drive, southwest on Southern Hills Drive to South 42nd Street, north on South 42nd Street to Margo Street, west on Margo Street to Bernadette Avenue, west on Bernadette Avenue to South 48th Street, south on South 48th Street to Cornhusker Road, east on Cornhusker Road to South 36th Street, south on South 36th Street to Bline Avenue, east on Bline Avenue to Golden Boulevard, east on Golden Boulevard to South 31st Street, south on South 31st Street to the intersection of an east-west line extending east from Sierra Street, east along such line to the intersection of a north-south line extending south from 28th Street, south along such line to the intersection of an east-west line extending east from Dacey Drive, east along such line to South 25th Street, south on South 25th Street to Capehart Road, east on Capehart Road to U.S. Highway 75, south on U.S. Highway 75 to the Sarpy-Cass County line, east along the Sarpy-Cass County line to the Nebraska-Iowa state line, and north along the Nebraska-Iowa state line to the point of beginning.

**Source:** Laws 1981, LB 406, § 46; R.S.1943, (1987), § 5-246; Laws 1991, LB 614, § 46; Laws 2001, LB 852, § 46.

**50-1147 District No. 46, description.**

District No. 46 shall contain that part of Lancaster County beginning at the intersection of O Street and North 35th Street, north on North 35th Street to Apple Street, east on Apple Street to North 38th Street, north on North 38th Street to Dudley Street, east on Dudley Street to North 40th Street, north on North 40th Street to Holdrege Street, east on Holdrege Street to North 48th

Street, north on North 48th Street to Leighton Avenue, west then northwest on Leighton Avenue to North 44th Street, north on North 44th Street to Adams Street, east on Adams Street to North 48th Street, north on North 48th Street to David Murdock Trail, east on David Murdock Trail to the eastern boundary of 12C-6 Precinct, follow such boundary north to the eastern boundary of 12-E Precinct, follow such boundary north then west to the eastern boundary of 12-F Precinct, follow such boundary north, west, south, then west to North 27th Street, north on North 27th Street to Folkways Boulevard, west on Folkways Boulevard to North 25th Street, south on North 25th Street to Philadelphia Drive, west on Philadelphia Drive to Valley Forge Road, south on Valley Forge Road to Boston Drive, west on Boston Drive to North 20th Street, north on North 20th Street to Prairie Lane, west on Prairie Lane to North 17th Street, follow North 17th Street south to Hartland Road, west on Hartland Road to the intersection of a north-south line extending north from Bel Ridge Drive, south along such line to Bel Ridge Drive, south on Bel Ridge Drive to Superior Street, west on Superior Street to North 14th Street, south on North 14th Street to Salt Creek, southwest along Salt Creek to Interstate Highway 180, south on Interstate Highway 180 to North 9th Street, south on North 9th Street to O Street, and east on O Street to the point of beginning.

**Source:** Laws 1981, LB 406, § 47; R.S.1943, (1987), § 5-247; Laws 1991, LB 614, § 47; Laws 2001, LB 852, § 47.

**50-1148 District No. 47, description.**

District No. 47 shall contain the counties of Cheyenne, Morrill, Kimball, Garden, Deuel, Keith, Banner, and Arthur.

**Source:** Laws 1981, LB 406, § 48; R.S.1943, (1987), § 5-248; Laws 1991, LB 614, § 48; Laws 2001, LB 852, § 48.

**50-1149 District No. 48, description.**

District No. 48 shall contain that part of Scotts Bluff County not included in legislative district 49.

**Source:** Laws 1981, LB 406, § 49; R.S.1943, (1987), § 5-249; Laws 1991, LB 614, § 49; Laws 2001, LB 852, § 49.

**50-1150 District No. 49, description.**

District No. 49 shall contain the counties of Sioux, Dawes, Box Butte, Sheridan, and Grant, that part of Cherry County west of State Highway 61 including the village of Merriman, and that part of Scotts Bluff County which includes the precincts of Ford A and B, Highland, Castle Rock A, Castle Rock B, Kiowa-Lyman, and Village of Morrill.

**Source:** Laws 1981, LB 406, § 50; R.S.1943, (1987), § 5-250; Laws 1991, LB 614, § 50; Laws 2001, LB 852, § 50.

**50-1151 Repealed. Laws 2001, LB 852, § 53.**

**50-1152 Legislative districts; change; when operative.**

Sections 50-1102 to 50-1150 shall become operative on September 1, 2001, except that members of the Legislature from the even-numbered districts shall be nominated at the primary election in 2002 and elected at the general election in November 2002 for the term commencing January 8, 2003. The

members of the Legislature elected or appointed prior to September 1, 2001, shall represent the newly established districts for the balance of their terms, with each member representing the same numbered district as prior to September 1, 2001.

**Source:** Laws 1981, LB 406, § 52; R.S.1943, (1987), § 5-252; Laws 1991, LB 614, § 52; Laws 1992, LB 946, § 1; Laws 1992, Second Spec. Sess., LB 7, § 7; Laws 1992, Second Spec. Sess., LB 15, § 3; Laws 2001, LB 852, § 51.

**ARTICLE 12**

**LEGISLATIVE PERFORMANCE AUDIT ACT**

Section

- 50-1201. Act, how cited.
- 50-1202. Legislative findings and declarations; purpose of act.
- 50-1203. Terms, defined.
- 50-1204. Legislative Performance Audit Committee; established; membership; officers; Legislative Performance Audit Section; established; duties.
- 50-1205. Committee; duties.
- 50-1205.01. Performance audits; standards.
- 50-1206. Performance audits; how initiated; procedure.
- 50-1207. Performance audits; criteria.
- 50-1208. Performance audit; committee; duties; section; duties.
- 50-1209. Performance audit; notification of agency.
- 50-1210. Report of findings and recommendations; distribution; confidentiality; agency response.
- 50-1211. Committee; review materials; reports; public hearing; procedure.
- 50-1212. Written implementation plan; duties.
- 50-1213. Section; access to information and records; prohibited acts; penalty; proceedings; not reviewable by court; committee or section employee; privilege; working papers; not public records.
- 50-1214. Names not included in documents, when; state employee; immunity.
- 50-1215. Violations; penalty.

**50-1201 Act, how cited.**

Sections 50-1201 to 50-1215 shall be known and may be cited as the Legislative Performance Audit Act.

**Source:** Laws 1992, LB 988, § 1; Laws 2003, LB 607, § 3.

**50-1202 Legislative findings and declarations; purpose of act.**

(1) The Legislature hereby finds and declares that pursuant to section 50-402 it is the duty of the Legislative Council to do independent assessments of the performance of state government organizations, programs, activities, and functions in order to provide information to improve public accountability and facilitate decisionmaking by parties with responsibility to oversee or initiate corrective action.

(2) The purpose of the Legislative Performance Audit Act is to provide for a system of performance audits to be conducted by the Legislative Performance Audit Section as directed by the Legislative Performance Audit Committee.

(3) It is not the purpose of the act to interfere with the duties of the Public Counsel or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogative of any executive state officer, agency, board, bureau, commission, association, society, or institution, except that the act shall not be construed to preclude a performance audit of an

agency on the basis that another agency has the same responsibility. The act shall not be construed to interfere with or supplant the responsibilities or prerogative of the Governor to monitor and report on the performance of the agencies, boards, bureaus, commissions, associations, societies, and institutions under his or her administrative direction.

**Source:** Laws 1992, LB 988, § 2; Laws 2003, LB 607, § 4.

**50-1203 Terms, defined.**

For purposes of the Legislative Performance Audit Act:

(1) Agency means any department, board, commission, or other governmental unit of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska but does not include (a) any court, (b) the Governor or his or her personal staff, (c) any political subdivision or entity thereof, or (d) any entity of the federal government;

(2) Auditor of Public Accounts means the Auditor of Public Accounts whose powers and duties are prescribed in section 84-304;

(3) Business day means a day on which state offices are open for regular business;

(4) Committee means the Legislative Performance Audit Committee;

(5) Committee report means the report released by the committee at the conclusion of a performance audit;

(6) Legislative Auditor means the Legislative Auditor appointed by the Executive Board of the Legislative Council under section 50-401.01;

(7) Majority vote means a vote by the majority of the committee's members;

(8) Performance audit means an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decisionmaking by parties with responsibility to oversee or initiate corrective action. Performance audits may have a variety of objectives, including the assessment of a program's effectiveness and results, economy and efficiency, internal control, and compliance with legal or other requirements;

(9) Preaudit inquiry means an investigatory process during which the section gathers and examines evidence to determine if a performance audit topic has merit;

(10) Section means the Legislative Performance Audit Section; and

(11) Working papers means those documents containing evidence to support the section's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the section during the performance audit or preaudit inquiry.

**Source:** Laws 1992, LB 988, § 3; Laws 2003, LB 607, § 5; Laws 2004, LB 1118, § 1; Laws 2006, LB 588, § 1; Laws 2006, LB 956, § 3.

**50-1204 Legislative Performance Audit Committee; established; membership; officers; Legislative Performance Audit Section; established; duties.**

(1) The Legislative Performance Audit Committee is hereby established as a special legislative committee to exercise the authority and perform the duties provided for in the Legislative Performance Audit Act. The committee shall be

composed of the Speaker of the Legislature, the chairperson of the Executive Board of the Legislative Council, the chairperson of the Appropriations Committee of the Legislature, and four other members of the Legislature to be chosen by the Executive Board of the Legislative Council. The executive board shall ensure that the Legislative Performance Audit Committee includes adequate geographic representation. The chairperson and vice-chairperson of the Legislative Performance Audit Committee shall be elected by majority vote. The committee shall be subject to all rules prescribed by the Legislature. The committee shall be reconstituted at the beginning of each Legislature and shall meet as needed.

(2) The Legislative Performance Audit Section is established. The section shall be administered by the Legislative Auditor, who shall ensure that performance audit work conducted by the section conforms with performance audit standards contained in the Government Auditing Standards (2007 revision) as required in section 50-1205.01. The section shall be composed of the Legislative Auditor and other employees of the Legislature employed to conduct performance audits. The section shall be the custodian of all records generated by the committee or section except as provided by section 50-1213, subsection (11) of section 77-2711, or subdivision (10)(a) of section 77-27,119. The section shall inform the Legislative Fiscal Analyst of its activities and consult with him or her as needed. The section shall operate under the general direction of the committee.

**Source:** Laws 1992, LB 988, § 4; Laws 2003, LB 607, § 6; Laws 2006, LB 588, § 2; Laws 2006, LB 956, § 4; Laws 2008, LB822, § 1.

**50-1205 Committee; duties.**

The committee shall:

- (1) Adopt, by majority vote, procedures consistent with the Legislative Performance Audit Act to govern the business of the committee and the conduct of performance audits;
- (2) Ensure that performance audits done by the committee are not undertaken based on or influenced by special or partisan interests;
- (3) Review performance audit requests and select, by majority vote, agencies or agency programs for performance audit;
- (4) Review, amend, if necessary, and approve a scope statement and an audit plan for each performance audit;
- (5) Respond to inquiries regarding performance audits;
- (6) Inspect or approve the inspection of the premises, or any parts thereof, of any agency or any property owned, leased, or operated by an agency as frequently as is necessary in the opinion of the committee to carry out a performance audit or preaudit inquiry;
- (7) Inspect and examine, or approve the inspection and examination of, the records and documents of any agency as a part of a performance audit or preaudit inquiry;
- (8) Administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses either residing within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the district court;

(9) Review completed performance audit reports prepared by the section, together with comments from the evaluated agency, and adopt recommendations and incorporate them into a committee report;

(10) Release the committee report to the public and distribute it to the Legislature with or without benefit of a public hearing;

(11) Hold a public hearing, at the committee's discretion, for the purpose of receiving testimony prior to issuance of the committee report;

(12) Establish a system to ascertain and monitor an agency's implementation of the recommendations contained in the committee report and compliance with any statutory changes resulting from the recommendations;

(13) Issue an annual report each September, to be prepared by the Legislative Auditor and approved by the committee, summarizing recommendations made pursuant to reports of performance audits during the previous fiscal year and the status of implementation of those recommendations;

(14) Consult with the Legislative Auditor regarding the staffing and budgetary needs of the section and assist in presenting budget requests to the Appropriations Committee of the Legislature;

(15) Approve or reject, within the budgetary limits of the section, contracts to retain consultants to assist with performance audits requiring specialized knowledge or expertise. Requests for consultant contracts shall be approved by the Legislative Auditor and presented to the Legislative Performance Audit Committee by the Legislative Auditor. A majority vote shall be required to approve consultant contract requests. For purposes of section 50-1213, subsection (11) of section 77-2711, and subsections (10) through (13) of section 77-27,119, any consultant retained to assist with a performance audit or preaudit inquiry shall be considered an employee of the section during the course of the contract; and

(16) At its discretion, and with the agreement of the Auditor of Public Accounts, conduct joint fiscal or performance audits with the Auditor of Public Accounts. The details of any joint audit shall be agreed upon in writing by the committee and the Auditor of Public Accounts.

**Source:** Laws 1992, LB 988, § 5; Laws 2003, LB 607, § 7; Laws 2006, LB 588, § 3; Laws 2006, LB 956, § 5.

#### **50-1205.01 Performance audits; standards.**

Performance audits done under the terms of the Legislative Performance Audit Act shall be conducted in accordance with the generally accepted government auditing standards for performance audits contained in the Government Auditing Standards (2007 Revision), published by the Comptroller General of the United States, Government Accountability Office.

**Source:** Laws 2003, LB 607, § 8; Laws 2004, LB 1118, § 2; Laws 2006, LB 588, § 4; Laws 2008, LB822, § 2.

#### **50-1206 Performance audits; how initiated; procedure.**

(1) Requests for performance audits may be made by the Governor, any other constitutional officer of the State of Nebraska, a legislator, the Legislative Auditor, the Legislative Fiscal Analyst, or the Director of Research of the Legislature.

(2) Performance audit requests shall be submitted to the committee chairperson or Legislative Auditor by letter or on a form developed by the Legislative Auditor.

(3) When considering a performance audit request, if the committee determines that the request has potential merit but insufficient information is available, it may, by majority vote, instruct the Legislative Auditor to conduct a preaudit inquiry.

(4) Upon completion of the preaudit inquiry, the committee chairperson shall place the request on the agenda for the committee's next meeting and shall notify the request sponsor of that action.

**Source:** Laws 1992, LB 988, § 6; Laws 2003, LB 607, § 9; Laws 2006, LB 956, § 6; Laws 2008, LB822, § 3.

#### **50-1207 Performance audits; criteria.**

The committee may develop criteria to be used to screen requests for performance audits. The committee shall consult with the Legislative Auditor in the application of the screening criteria.

**Source:** Laws 1992, LB 988, § 7; Laws 2003, LB 607, § 10; Laws 2006, LB 956, § 7.

#### **50-1208 Performance audit; committee; duties; section; duties.**

(1) The committee shall, by majority vote, adopt requests for performance audit. The committee chairperson shall notify each requester of any action taken on his or her request.

(2) Before the section begins a performance audit, it shall notify in writing the agency director, the program director, when relevant, and the Governor that a performance audit will be conducted.

(3) Following notification, the section shall arrange an entrance conference to provide the agency with further information about the audit process. The agency director shall inform the agency staff, in writing, of the performance audit and shall instruct agency staff to cooperate fully with the section.

(4) After the entrance conference, the section shall conduct the research necessary to draft a scope statement for consideration by the committee. The scope statement shall identify the specific issues to be addressed in the audit. The committee shall, by majority vote, adopt, reject, or amend and adopt the scope statement prepared by the section.

(5) Once the committee has adopted a scope statement, the section shall develop an audit plan. The audit plan shall include a description of the research and audit methodologies to be employed and a projected deadline for completion of the section's report. The audit plan shall be submitted to the committee, and a majority vote shall be required for its approval.

(6) If the performance audit reveals a need to modify the scope statement or audit plan, the Legislative Auditor may request that the committee make revisions. A majority vote shall be required to revise the scope statement or audit plan. The agency shall be notified in writing of any revision to the scope statement or audit plan.

**Source:** Laws 1992, LB 988, § 8; Laws 2003, LB 607, § 11; Laws 2006, LB 956, § 8.

**50-1209 Performance audit; notification of agency.**

Upon approval of an audit plan pursuant to section 50-1208, the agency shall be notified in writing of the specific scope of the audit and the projected deadline for completion of the section's report. If the section needs information from a political subdivision or entity thereof to effectively conduct a performance audit of an agency, the political subdivision or entity thereof shall provide information, on request, to the section.

**Source:** Laws 1992, LB 988, § 9; Laws 2003, LB 607, § 12.

**50-1210 Report of findings and recommendations; distribution; confidentiality; agency response.**

(1) Upon completion of a performance audit, the section shall prepare a report of its findings and recommendations for action. The Legislative Auditor shall provide the section's report concurrently to the committee, agency director, and Legislative Fiscal Analyst. The committee may, by majority vote, release the section's report or portions thereof to other individuals, with the stipulation that the released material shall be kept confidential.

(2) When the Legislative Auditor provides the report to the Legislative Fiscal Analyst, the Legislative Fiscal Analyst shall issue an opinion to the committee indicating whether the section's recommendations can be implemented by the agency within its current appropriation.

(3) When the Legislative Auditor provides the report to the agency, the agency shall have twenty business days from the date of receipt of the report to provide a written response. Any written response received from the agency shall be attached to the committee report. The agency shall not release any part of the report to any person outside the agency, except that an agency may discuss the report with the Governor. The Governor shall not release any part of the report.

(4) Following receipt of any written response from the agency, the Legislative Auditor shall prepare a brief written summary of the response, including a description of any significant disagreements the agency has with the section's report or recommendations.

**Source:** Laws 1992, LB 988, § 10; Laws 2003, LB 607, § 13; Laws 2006, LB 956, § 9.

**50-1211 Committee; review materials; reports; public hearing; procedure.**

(1) The committee shall review the section's report, the agency's response, the Legislative Auditor's summary of the agency's response, and the Legislative Fiscal Analyst's opinion prescribed in section 50-1210. The committee may amend and shall adopt or reject each recommendation in the report and indicate whether each recommendation can be implemented by the agency within its current appropriation. The adopted recommendations shall be incorporated into a committee report, which shall be approved by majority vote.

(2) The committee report shall include, but not be limited to, the section's report, the agency's written response to the report, the Legislative Auditor's summary of the agency response, the committee's recommendations, and any opinions of the Legislative Fiscal Analyst regarding whether the committee's recommendations can be implemented by the agency within its current appropriation.

(3) The committee may decide, by majority vote, to defer adoption of a committee report pending a public hearing. If the committee elects to schedule a public hearing, it shall release, for review by interested persons prior to the hearing, the section's report, the agency's response, the Legislative Auditor's summary of the agency's response, and any opinions of the Legislative Fiscal Analyst. The public hearing shall be held not less than ten nor more than twenty business days following release of the materials.

(4) When the committee elects to schedule a hearing, a summary of the testimony received at the hearing shall be attached to the committee report as an addendum. A transcript of the testimony received at the hearing shall be on file with the committee and available for public inspection. Unless the committee votes to delay release of the committee report, the report shall be released within forty business days after the public hearing.

(5) Once the committee has approved its report, the committee shall, by majority vote, cause the committee report to be released to all members of the Legislature and to the public. The committee may, by majority vote, release the committee report or portions thereof prior to public release of the report.

**Source:** Laws 1992, LB 988, § 11; Laws 2003, LB 607, § 14; Laws 2006, LB 956, § 10.

#### **50-1212 Written implementation plan; duties.**

(1) Within forty business days following the release of the committee report, the agency shall provide to the committee a written implementation plan describing the action planned and timeframe for accomplishment of each of the recommendations contained in the committee report. The agency director shall make every effort to fully implement the recommendations that can be implemented within the limits of the agency's current appropriation. For those recommendations which require additional appropriations or the drafting of legislation, the committee shall sponsor the legislation or present the proposal for additional or revised appropriations to the Appropriations Committee of the Legislature.

(2) The Legislative Performance Audit Committee shall establish a system to ascertain and monitor agency conformity to the recommendations contained in the committee report and compliance with any statutory changes resulting from the report recommendations.

**Source:** Laws 1992, LB 988, § 12; Laws 2003, LB 607, § 15.

#### **50-1213 Section; access to information and records; prohibited acts; penalty; proceedings; not reviewable by court; committee or section employee; privilege; working papers; not public records.**

(1) The section shall have access to any and all information and records, confidential or otherwise, of any agency, in whatever form they may be, unless the section is denied such access by federal law or explicitly named and denied such access by state law. If such a law exists, the agency shall provide the committee with a written explanation of its inability to produce such information and records and, after reasonable accommodations are made, shall grant the section access to all information and records or portions thereof that can legally be reviewed. Accommodations that may be negotiated between the agency and the committee include, but are not limited to, a requirement that

specified information or records be reviewed on agency premises and a requirement that specified working papers be securely stored on agency premises.

(2) Except as provided in this section, any confidential information or confidential records shared with the section shall remain confidential and shall not be shared by an employee of the section with any person who is not an employee of the section, including any member of the committee. If necessary for the conduct of the performance audit, the section may discuss or share confidential information with the chairperson of the committee. If a dispute arises between the section and the agency as to the accuracy of a performance audit or preaudit inquiry involving confidential information or confidential records, the Speaker of the Legislature, as a member of the committee, will be allowed access to the confidential information or confidential records for the purpose of assessing the accuracy of the performance audit or preaudit inquiry.

(3) Except as provided in subdivision (10)(c) of section 77-27,119, if the speaker or chairperson knowingly divulges or makes known, in any manner not permitted by law, confidential information or confidential records, he or she shall be guilty of a Class III misdemeanor. Except as provided in subsection (11) of section 77-2711 and subdivision (10)(c) of section 77-27,119, if any employee or former employee of the section knowingly divulges or makes known, in any manner not permitted by law, confidential information or confidential records, he or she shall be guilty of a Class III misdemeanor and, in the case of an employee, shall be dismissed.

(4) No proceeding of the committee or opinion or expression of any member of the committee or section employee acting at the direction of the committee shall be reviewable in any court. No member of the committee or section employee acting at the direction of the committee shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters relating to the work of the section except in a proceeding brought to enforce the Legislative Performance Audit Act.

(5) Pursuant to sections 84-712 and 84-712.01 and subdivision (5) of section 84-712.05, the working papers obtained or produced by the committee or section shall not be considered public records. The committee may make the working papers available for purposes of an external quality control review as required by generally accepted government auditing standards. However, any reports made from such external quality control review shall not make public any information which would be considered confidential when in the possession of the section.

**Source:** Laws 1992, LB 988, § 13; Laws 2003, LB 607, § 16; Laws 2006, LB 588, § 5.

**50-1214 Names not included in documents, when; state employee; immunity.**

By majority vote, the committee may decide not to include in any document that will be a public record the names of persons providing information to the section or committee.

No employee of the State of Nebraska who provides information to the committee or section shall be subject to any penalties, sanctions, or restrictions in connection with his or her employment as a result of the provision of such information.

**Source:** Laws 1992, LB 988, § 14; Laws 2003, LB 607, § 17; Laws 2006, LB 588, § 6.

**50-1215 Violations; penalty.**

Any person who willfully obstructs or hinders the conduct of a performance audit or preaudit inquiry or who willfully misleads or attempts to mislead any person charged with the duty of conducting a performance audit or preaudit inquiry shall be guilty of a Class II misdemeanor.

**Source:** Laws 1992, LB 988, § 15; Laws 2003, LB 607, § 18; Laws 2006, LB 588, § 7.

**ARTICLE 13****REVIEW OF BOARDS AND COMMISSIONS**

## Section

50-1301. Legislative findings.

50-1302. Government, Military and Veterans Affairs Committee; report.

50-1303. Government, Military and Veterans Affairs Committee; conduct evaluation.

50-1304. Duty to furnish information; report and evaluation assistance.

**50-1301 Legislative findings.**

The Legislature finds that state government actions have produced an increase in the numbers of boards, commissions, and similar entities that support, advise, direct, or administer various state programs. The process has evolved without sufficient legislative and executive oversight and without a system of checks and balances. Because the Legislature is responsible for the expenditure of public money and the shaping of the administration of state government and is held accountable for fiscal policy, the Legislature should also be responsible for the termination, continuation, or modification of such boards, commissions, and similar entities so that it may be assured that its directives have been faithfully carried out.

**Source:** Laws 1999, LB 298, § 1.

**50-1302 Government, Military and Veterans Affairs Committee; report.**

(1) Every four years, beginning in 2008, the Government, Military and Veterans Affairs Committee of the Legislature shall prepare and publish a report pertaining to boards, commissions, and similar entities created by law that are made part of or are placed in the executive branch of state government. The committee may also include entities created by executive order or by an agency director. The report shall be submitted to the Legislature on December 1 of such year.

(2) The report shall include, but not be limited to, the following:

(a) The name of each board, commission, or similar entity;

(b) The name of a parent agency, if any;

(c) The statutory citation or other authorization for the creation of the board, commission, or entity;

(d) The number of members of the board, commission, or entity and how the members are appointed;

(e) The qualifications for membership on the board, commission, or entity;

(f) The number of times the board, commission, or entity is required to meet during the year and the number of times it actually met;

(g) Budget information of the board, commission, or entity for the four most recently completed fiscal years; and

(h) A brief summary of the accomplishments of the board, commission, or entity for the past four years.

**Source:** Laws 1999, LB 298, § 2; Laws 2002, LB 93, § 4; Laws 2005, LB 241, § 1.

**50-1303 Government, Military and Veterans Affairs Committee; conduct evaluation.**

(1) The Government, Military and Veterans Affairs Committee of the Legislature may randomly select and conduct an evaluation of any board, commission, or similar entity. An evaluation conducted by the committee shall include, but not be limited to, the following:

(a) A review of the basic assumptions underlying the creation of the board, commission, or entity;

(b) A statement of the impact and effectiveness of the programs, policies, services, or activities administered by, or under the supervision of, the board, commission, or entity; and

(c) A recommendation as to whether the board, commission, or entity should be terminated, continued, or modified.

(2) If the committee believes that a more extensive evaluation of a board, commission, or entity is necessary, the chairperson of the committee, on the committee's behalf, may request the Legislative Performance Audit Committee to conduct a performance audit pursuant to the Legislative Performance Audit Act. Nothing in this section shall be construed to give requests for performance audits under this section priority over other requests under consideration by the Legislative Performance Audit Committee.

**Source:** Laws 1999, LB 298, § 3; Laws 2003, LB 607, § 19.

**Cross References**

Legislative Performance Audit Act, see section 50-1201.

**50-1304 Duty to furnish information; report and evaluation assistance.**

(1) All agencies, boards, commissions, and departments of the state shall furnish such information, reports, aid, services, and assistance as may be requested by any standing committee of the Legislature in the performance of its duties.

(2) The Government, Military and Veterans Affairs Committee of the Legislature shall use its staff and may also request assistance from the Director of Research of the Legislature, the Legislative Fiscal Analyst, or any other division within the Legislature as may be necessary in the performance of the duties set forth in sections 50-1301 to 50-1304.

**Source:** Laws 1999, LB 298, § 4.

**ARTICLE 14**

**LEGISLATURE'S PLANNING COMMITTEE**

**Section**

50-1401. Legislative findings and declarations.

50-1402. Legislature's Planning Committee; established; members; staff.

## Section

50-1403. Legislature's Planning Committee; duties.

50-1404. Legislature's Planning Committee; powers.

**50-1401 Legislative findings and declarations.**

The Legislature finds and declares that:

(1) State government has significant challenges to face. An ever-changing global economy, an aging population, outmigration of educated young people, and constantly expanding needs for services, among other issues, require that the Legislature consider the long-term trends and factors affecting the welfare of Nebraskans and the long-term implications of the decisions made by the members of the Legislature;

(2) It is necessary for the Legislature to identify emerging trends, assets, and challenges of the state;

(3) It is vital for Nebraska to have continuity in policy;

(4) It is necessary to establish a process of long-term state planning within the Legislature; and

(5) It is the duty of the Legislature to assess the long-range needs of Nebraska and to adopt legislation which meets those needs.

**Source:** Laws 2009, LB653, § 1.

**50-1402 Legislature's Planning Committee; established; members; staff.**

The Legislature's Planning Committee is hereby established as a special legislative committee to exercise the authority and perform the duties provided for in this section. The committee shall be comprised of the Speaker of the Legislature, the chairperson of the Executive Board of the Legislative Council, the chairperson of the Appropriations Committee of the Legislature, and six other members of the Legislature to be chosen by the Executive Board of the Legislative Council. The executive board shall ensure that the Legislature's Planning Committee includes adequate geographic representation. The chairperson and vice-chairperson of the committee shall be elected by majority vote of the committee. The committee shall be subject to all rules prescribed by the Legislature. The initial members of the committee shall be appointed as soon as possible after May 14, 2009, and thereafter the committee shall be appointed at the beginning of each regular legislative session and shall meet as needed. The committee shall have staff support from the various legislative divisions and staff.

**Source:** Laws 2009, LB653, § 2.

**50-1403 Legislature's Planning Committee; duties.**

The Legislature's Planning Committee shall:

(1) Collect and analyze data about Nebraska, including, but not limited to, demographics, workforce, education, wages, wealth, tax structure, revenue, natural resources, assets, challenges, trends, and growth and efficiency of government;

(2) Identify long-term issues significant to the state;

(3) Set goals and benchmarks;

(4) Issue a yearly report of its findings; and

(5) Propose legislation.

**Source:** Laws 2009, LB653, § 3.

**50-1404 Legislature's Planning Committee; powers.**

In order to fulfill its duties, the Legislature's Planning Committee may:

- (1) Hold public hearings;
- (2) Obtain data and information from state agencies, the University of Nebraska, and private entities that contract with the state;
- (3) Contract for assistance, including consultants, with the approval of the Executive Board of the Legislative Council; and
- (4) Exercise any other authority or powers as granted from time to time by the executive board.

**Source:** Laws 2009, LB653, § 4.

## CHAPTER 51

### LIBRARIES AND MUSEUMS

#### Article.

1. State Library. 51-101 to 51-112.
2. Public Libraries. 51-201 to 51-220.
3. County and Regional Libraries. Repealed.
4. Nebraska Library Commission.
  - (a) Nebraska Library Commission. 51-401 to 51-410.01.
  - (b) Nebraska Publications Clearinghouse. 51-411 to 51-418.
5. Museums. 51-501 to 51-513.
6. Antique Farm Machinery and Equipment. Repealed.
7. Museum Property Act. 51-701 to 51-712.
8. Public Library Federation. 51-801 to 51-811.

#### ARTICLE 1

#### STATE LIBRARY

##### Cross References

#### Constitutional provisions:

Copyright of state reports, provisions for, see Article V, section 8, Constitution of Nebraska.

**Administrative code**, deposited with, see section 84-906.03.

**Examination and audit by Auditor of Public Accounts**, see section 84-304.

**Session laws and journals**, delivery to State Librarian, use of, see sections 49-506 to 49-509.

**Statutes**, distribution to and use, see section 49-617.

**Supreme Court and Nebraska Court of Appeals decisions**, deposited with, see section 24-209.

**Workers' compensation**, court rules, deposited with, see section 48-163.

#### Section

- 51-101. State Library; what constitutes.
- 51-102. State Library; librarian.
- 51-103. State Library; directors; powers.
- 51-104. Book register; entries.
- 51-105. Books; injury or failure to return; penalty.
- 51-106. Repealed. Laws 1981, LB 545, § 52.
- 51-107. Books; labeling.
- 51-108. Books; sale, exchange, disposal; authorization.
- 51-109. Books; removal; penalty.
- 51-110. Repealed. Laws 1972, LB 1284, § 23.
- 51-111. Repealed. Laws 1972, LB 1284, § 23.
- 51-112. Repealed. Laws 1972, LB 1284, § 23.

#### **51-101 State Library; what constitutes.**

The books, pamphlets, maps and charts belonging to the state, now in the State Library, or which shall hereafter be added to the same, shall constitute the State Library.

**Source:** Laws 1871, § 1, p. 52; R.S.1913, § 3777; C.S.1922, § 3170; C.S.1929, § 51-101; R.S.1943, § 51-101.

#### **51-102 State Library; librarian.**

The Clerk of the Supreme Court shall have the charge of the State Library, of which he shall be librarian.

**Source:** Laws 1871, § 2, p. 52; R.S.1913, § 3778; C.S.1922, § 3171; C.S.1929, § 51-102; R.S.1943, § 51-102.

## Cross References

For provisions of bond of State Librarian, see section 11-201.

**51-103 State Library; directors; powers.**

The judges of the Supreme Court shall constitute a board of directors of the State Library. They shall have power to make such rules as they may deem proper, not inconsistent with sections 51-101 to 51-109, for the regulation of the library under their direction, and may prescribe penalties for any violation thereof, which shall be collected in the same manner as for the nonreturn or injury of any books.

**Source:** Laws 1871, §§ 3, 4, p. 52; R.S.1913, § 3779; C.S.1922, § 3172; C.S.1929, § 51-103; R.S.1943, § 51-103.

**51-104 Book register; entries.**

The librarian shall cause to be kept a register of all books issued and returned at the time they shall be so issued and returned. None of the books, except the laws, journals, and reports of this state, which may be taken from the library, shall be detained more than ten days, and all the books taken out by officers or members of the Legislature shall be returned at the close of the session.

**Source:** Laws 1871, § 6, p. 52; R.S.1913, § 3781; C.S.1922, § 3174; C.S.1929, § 51-104; R.S.1943, § 51-104.

**51-105 Books; injury or failure to return; penalty.**

If any person injures or fails to return any book taken from the library, he shall forfeit and pay to the librarian for the use of the library, double the value of the book, or of the set to which it belongs, if a set is broken by its loss, to be recovered in an action in the name of the state. Before the Director of Administrative Services shall issue his warrant in favor of any person authorized to take books from the library, for the value of his services or amount of his salary, he shall be satisfied that such person has returned all books taken from the library, or settled for the same; otherwise he shall deduct all accounts for the detention or injury of such books.

**Source:** Laws 1871, § 7, p. 53; R.S.1913, § 3782; C.S.1922, § 3175; C.S.1929, § 51-105; R.S.1943, § 51-105.

**51-106 Repealed. Laws 1981, LB 545, § 52.****51-107 Books; labeling.**

It shall be the duty of the librarian to cause each book to be labeled with a printed or stamped label containing the words Nebraska State Library, and also to write the same words on the thirtieth page of each volume.

**Source:** Laws 1871, § 12, p. 54; R.S.1913, § 3785; C.S.1922, § 3178; C.S.1929, § 51-107; R.S.1943, § 51-107.

**51-108 Books; sale, exchange, disposal; authorization.**

The directors may authorize the sale, exchange, or disposal of any surplus, damaged, defective, obsolete, or duplicate books in the library and surplus or

obsolete books, reports, or pamphlets which are for sale or distribution by the librarian.

**Source:** Laws 1871, § 13, p. 54; R.S.1913, § 3786; C.S.1922, § 3179; Laws 1929, c. 64, § 2, p. 241; C.S.1929, § 51-108; R.S.1943, § 51-108; Laws 1957, c. 222, § 1, p. 764.

#### **51-109 Books; removal; penalty.**

If any person not authorized by the regulations made by the directors shall take a book from the library, either with or without the consent of the librarian, he shall be guilty of a Class V misdemeanor.

**Source:** Laws 1871, § 15, p. 54; R.S.1913, § 3788; C.S.1922, § 3181; Laws 1929, c. 64, § 3, p. 241; C.S.1929, § 51-109; R.S.1943, § 51-109; Laws 1977, LB 40, § 307.

**51-110 Repealed. Laws 1972, LB 1284, § 23.**

**51-111 Repealed. Laws 1972, LB 1284, § 23.**

**51-112 Repealed. Laws 1972, LB 1284, § 23.**

## **ARTICLE 2**

### **PUBLIC LIBRARIES**

#### **Cross References**

#### **Cities, establish and maintain:**

First-class, see sections 16-251 and 19-1302.

Metropolitan-class, see section 14-102.

Primary-class, see section 15-230.

Second-class, see sections 17-967 to 17-969 and 19-1302.

Villages, see sections 17-967 to 17-969 and 19-1302.

#### **Section**

- 51-201. Public libraries; establishment; tax; amount authorized; limitation; library fund; county library; election required; merger authorized.
- 51-201.01. Terms, defined.
- 51-201.02. Legislative findings.
- 51-201.03. County library; petition to establish; procedure; election.
- 51-201.04. County board; notice required; library merger; procedure; election.
- 51-201.05. Merger of county and municipal libraries; procedure.
- 51-201.06. Merger; transfer of assets and employees.
- 51-201.07. Withdrawal of municipal library from county library system; procedure.
- 51-202. City or village library; library board; members; elected or appointed; terms; vacancies, how filled.
- 51-203. County or township library; board; members; election or appointment; terms; vacancies; how filled.
- 51-204. Library board; organization; officers; quorum.
- 51-205. Library board; bylaws, rules, and regulations.
- 51-206. Library board; mortgages; release or renewal.
- 51-207. Library board; funds; buildings; custody and control.
- 51-208. Library board; use of library for city or school purposes; contracts.
- 51-209. Public library; funds; disbursements; sinking fund; bonds.
- 51-210. Library board; building sites; acquisition; procedure.
- 51-211. Library board; general powers and duties; discrimination prohibited.
- 51-212. Public library; use and purpose.
- 51-213. Library board; annual report; contents.
- 51-214. Penalties; action to recover; disposition of funds collected.
- 51-215. Public library; donations; library board may accept.
- 51-216. Real estate; sale and conveyance; conditions; remonstrance; procedure.

## Section

- 51-217. Public library; use by school districts.  
 51-218. Public library; property; exemption from execution and taxation; when.  
 51-219. Private and associate libraries; deposit and use; authorized; requirements.  
 51-220. Law library; establishment; maintenance; supervision.

**51-201 Public libraries; establishment; tax; amount authorized; limitation; library fund; county library; election required; merger authorized.**

The city council of any city, the board of trustees of any incorporated village, the county board of any county, and the electors of any township at their annual town meeting shall have the power to establish a public library free of charge for the use of the inhabitants of such city, village, county, or township.

Any such council, board, or electors may also contract for the use of a public library already established and may levy a tax of not more than ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city, village, county, or township annually to be levied and collected in like manner as other taxes in such city, village, county, or township, except that when any county discontinues township organization, the county shall levy and collect a tax of not more than ten and five-tenths cents on each one hundred dollars for such public library. The levy shall be subject to sections 77-3442 and 77-3443. The amount collected from such levy shall be known as the library fund.

Before establishing a county library, the county board shall submit the question to the voters of the county at a general election pursuant to section 32-559, including only incorporated and unincorporated areas which do not have a public library, and a majority of the voters voting on the question of whether to establish a county library shall authorize the establishment of such county library and the levying of the tax. A city, village, or township within the county that has a public library may merge with the county library, if established, upon a majority vote pursuant to section 51-201.04. When such questions are submitted and carried, the county board shall include the county library in its next succeeding estimate and levy. Such submission shall not be required when the board levies a tax for the purpose of contracting for use of a library already established. When the county board makes a levy for a county library or for the purpose of contracting for use of a public library already established, the county board shall omit from the levy of the library tax all property within the limits of any city, village, or township in such county which already maintains a library by public tax unless the voters of the city, village, or township have voted to merge with the county library.

The method of merger of libraries provided in this section and sections 51-201.03 to 51-201.07 shall not be construed as the exclusive way to merge libraries or library facilities. Nothing in such sections shall prohibit a county, city, village, or township from entering into an agreement pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act relating to library services.

**Source:** Laws 1911, c. 73, § 1, p. 313; R.S.1913, § 3792; Laws 1919, c. 120, § 1, p. 285; C.S.1922, § 3185; C.S.1929, § 51-201; Laws 1931, c. 98, § 1, p. 267; C.S.Supp.,1941, § 51-201; R.S.1943, § 51-201; Laws 1951, c. 170, § 1, p. 657; Laws 1953, c. 287, § 65, p. 968; Laws 1957, c. 223, § 1, p. 765; Laws 1967, c. 120, § 2, p. 384; Laws 1971, LB 493, § 1; Laws 1979, LB 187, § 178;

Laws 1991, LB 94, § 1; Laws 1992, LB 719A, § 154; Laws 1996, LB 1114, § 60; Laws 1997, LB 250, § 10; Laws 1997, LB 269, § 30; Laws 1998, LB 306, § 5; Laws 1999, LB 87, § 76.

## Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

**51-201.01 Terms, defined.**

For purposes of sections 51-201 to 51-219:

(1) Basic services shall include, but not be limited to, free loan of circulating print and nonprint materials from the local collection and general reference and information services; and

(2) Nonbasic services shall include, but not be limited to, use of:

(a) Photocopying equipment;

(b) Telephones, facsimile equipment, and other telecommunications equipment;

(c) Media equipment;

(d) Personal computers; and

(e) Videocassette recording and playing equipment.

**Source:** Laws 1990, LB 1236, § 1.

**51-201.02 Legislative findings.**

The Legislature finds and declares that public libraries perform services which are vitally important for the maintenance of an educated and democratic society, including, but not limited to, providing information which stimulates thought, awareness, and involvement in issues of public interest and providing avenues for intellectual and cultural growth and enjoyment. The Legislature further finds that an educated and culturally aware society is increasingly important in an economy in which Nebraskans must compete on a global scale. It is the intent of the Legislature that Nebraskans will help lead the nation into the world of the twenty-first century.

**Source:** Laws 1997, LB 250, § 9.

**51-201.03 County library; petition to establish; procedure; election.**

(1) The registered voters of the incorporated and unincorporated areas of a county which do not have a public library may file an initiative petition with the county board requesting the establishment of a county library. The petition shall be filed by July 31 prior to a statewide general election. Signatures gathered before the last statewide general election shall not be counted. An initiative petition shall conform to the requirements of section 32-628. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The county board shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be five percent of the voters registered at the last statewide general election in the incorporated and unincorporated areas of the county which do not have a public library. The election commissioner or county clerk shall notify the county board within thirty days

after receiving the petitions from the county board whether the required number of signatures has been gathered.

(2) If the county board determines that the petitions are in proper form and signed by the necessary number of registered voters, the county board shall notify the governing body and library board of each incorporated area within the county within ten days after such determination and shall publish in a newspaper of general circulation in the county that the registered voters of the unincorporated area of the county and of the incorporated areas which do not have a public library will be asked to vote on the issue at the next statewide general election and shall submit the question of whether to establish a county library to the voters as required in section 51-201.

**Source:** Laws 1997, LB 250, § 11; Laws 2008, LB269, § 12.

**51-201.04 County board; notice required; library merger; procedure; election.**

(1) At the time the county board decides to hold an election pursuant to section 51-201 on the question of establishing a public library, the county board shall notify the governing body and library board of each incorporated area within the county and shall publish in a newspaper of general circulation in the county that the registered voters of the unincorporated area of the county and of the incorporated areas which do not have a public library will be asked to vote on the issue at the next statewide general election. The notice shall be delivered and publication shall occur prior to June 1 before the election.

(2) If a city council, village board, or township board of a city, village, or township that has a public library and the library board, if one exists, of the city, village, or township both adopt a resolution indicating that they desire to merge the city, village, or township library with the county library if established and notify the county board by filing the resolutions with the county clerk by August 25, the county board shall submit the question of merger to the voters of the city, village, or township at the same time as the election pursuant to section 51-201.

(3) The registered voters of a city, village, or township that has a public library may file an initiative petition with the county board to require the issue of merger to be on the ballot in the city, village, or township. The petition shall be filed by July 31 prior to the statewide general election at which the issue would be on the ballot. Signatures gathered before the last statewide general election shall not be counted. An initiative petition shall conform to the requirements of section 32-628. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The county board shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be ten percent of the voters registered in the city, village, or township at the last statewide general election. The election commissioner or county clerk shall notify the county board within thirty days after receiving the petitions from the county board whether the required number of signatures has been gathered. If the county board determines that the petitions are in proper form and signed by the necessary number of registered voters, the county board shall submit the question of whether to merge with the county library, if

established, to the voters at the same time as the election pursuant to section 51-201.

**Source:** Laws 1997, LB 250, § 12.

**51-201.05 Merger of county and municipal libraries; procedure.**

In a county that has an established county library, if a city council, village board, or township board of a city, village, or township that has a public library and the library board, if one exists, of the city, village, or township both adopt a resolution indicating that such city, village, or township library desires to merge with the established county library, they shall notify the county board by filing the resolutions with the county clerk. After such notification, the city, village, or township library shall be a part of the county library as provided in section 51-201.06 and its residents shall be entitled to the benefits of the county library, and the property within such city, village, or township library shall be liable to taxes levied for county library purposes. At least once a week for two successive weeks prior to adopting such resolution, the city council, village board, or township board and library board shall publish notice of such proposed resolution and the date and the place of the meeting at which such resolution is proposed to be adopted, in a newspaper designated by the council or board and published in or of general circulation in such city, village, or township.

**Source:** Laws 1997, LB 250, § 13.

**51-201.06 Merger; transfer of assets and employees.**

If a city, village, or township library merges with a county library under sections 51-201 to 51-219, (1) all assets shall be transferred to the county library, (2) all employees of the city, village, or township library shall be transferred to the county and shall receive at least the same or comparable salaries, sick leave, vacation leave, health benefits, retirement benefits, and other benefits as provided by the city, village, or township, and (3) a plan shall be established for the repayment of any bonded indebtedness or other debt of the city, village, or township existing at the time of the merger, including, but not limited to, the payment of the debt, the establishment of a sinking fund, and the issuance of bonds by the county. The city council, village board, or township board and the county board shall enter into a merger agreement consistent with this section setting the date for the merger to take effect which shall not be more than one year after an election or after the notification to the county board under section 51-201.05. If the parties cannot agree within one year after the election or notification, any party may bring an action in the district court and the district court shall determine the conditions of the transfer of assets and employees and the plan for payment of indebtedness.

**Source:** Laws 1997, LB 250, § 14.

**51-201.07 Withdrawal of municipal library from county library system; procedure.**

If the city council, village board, or township board and library board, if one exists, both adopt a resolution indicating that such city, village, or township library no longer desires to be a part of the county library system and notify the county board by filing the resolutions with the county clerk, the county board shall submit the question to the voters of the city, village, or township at the

next statewide general election. If a majority of the voters voting on the issue vote to withdraw from the county library, then beginning on January 1 following the election, the city, village, or township shall cease to be entitled to the benefits of such county library and the property situated in such city, village, or township library shall not be liable for taxes levied for county library purposes. The city council, village board, or township board and the county board shall enter into a dissolution agreement to provide for the disposition of assets, indebtedness, and employees. If the parties cannot agree within one year after the election, either party may bring an action in the district court and the district court shall determine the disposition of assets, indebtedness, and employees.

**Source:** Laws 1997, LB 250, § 15.

**51-202 City or village library; library board; members; elected or appointed; terms; vacancies, how filled.**

(1) When any city council or village board decides by ordinance to establish and maintain a public library and reading room under sections 51-201 to 51-219, the city council or village board shall establish a library board. The library board shall have at least five members. Neither the mayor nor any member of the city council or village board shall be a member of the library board. Except as otherwise provided in subsection (2) of this section, the city council or village board shall by ordinance determine the number of members, whether the members are elected or appointed, and the length of the terms of the members. The terms of members serving on the effective date of a change in the number of members shall not be shortened, and the city council or village board shall provide for the appointment or election of their successors. In cases of vacancies by resignation, removal, or otherwise, the city council or village board shall fill such vacancy for the unexpired term. No member shall receive any pay or compensation for any services rendered as a member of the board.

(2) If the city council or village board by ordinance provides for appointment of the members to the library board, such library board members shall be appointed by a majority vote of the members of the city council or village board. If an interlocal agreement, a memorandum of understanding, or any other contractual agreement between the city or village and another political subdivision providing for library services allows representation from the other political subdivision on the library board from outside the city or village, the governing board of the other political subdivision may appoint one or more members to the library board as provided in the interlocal agreement, memorandum of understanding, or other contractual agreement.

(3) If the city council or village board adopts an ordinance to provide for the election of library board members at municipal elections in April, it shall follow the statutes governing municipal elections. If the municipal election is to be held in conjunction with the statewide primary election, the election shall be held as provided in the Election Act. If the board members are to be elected, the city council or village board shall give public notice of such election after the adoption of such ordinance naming the offices to be filled, the length of terms, and the filing deadline for the placing of names of candidates on the ballot.

**Source:** Laws 1911, c. 73, § 2, p. 314; R.S.1913, § 3793; Laws 1919, c. 120, § 2, p. 286; Laws 1921, c. 233, § 1, p. 831; C.S.1922,

§ 3186; C.S.1929, § 51-202; R.S.1943, § 51-202; Laws 1961, c. 254, § 1, p. 748; Laws 1967, c. 329, § 1, p. 874; Laws 1972, LB 661, § 78; Laws 1973, LB 555, § 1; Laws 1981, LB 194, § 1; Laws 1994, LB 76, § 569; Laws 1997, LB 250, § 16.

## Cross References

Election Act, see section 32-101.

**51-203 County or township library; board; members; election or appointment; terms; vacancies; how filled.**

When the county board of any county or the electors of any township vote to establish and maintain a public library, the county board or the township board shall establish a library board. The library board shall have at least five members. No member of the county board or township board shall be a member of the library board. The county board or township board shall determine by resolution the number of members, whether the members are elected or appointed, and the length of the terms of the members. The terms of members serving on the effective date of a change in the number of members shall not be shortened, and the county board or township board shall provide for the appointment or election of their successors. Such county or township board shall have the power to fill for the unexpired term any vacancy which may occur in the county or township library board. No member shall receive any pay or compensation for any services rendered as a member of such board.

If the county board or township board provides for appointment of the members to the library board, such library board members shall be appointed by a majority vote of the members of the county board or township board. If the county board or township board provides for the election of library board members, the election shall be held in conjunction with the statewide primary election as provided in the Election Act and the county board or township board shall give public notice of such election after the adoption of such resolution naming the offices to be filled, the length of terms, and the filing deadline for the placing of names of candidates on the ballot.

**Source:** Laws 1911, c. 73, § 3, p. 314; R.S.1913, § 3794; Laws 1919, c. 120, § 3, p. 287; C.S.1922, § 3187; C.S.1929, § 51-203; R.S.1943, § 51-203; Laws 1997, LB 250, § 17.

## Cross References

Election Act, see section 32-101.

**51-204 Library board; organization; officers; quorum.**

The members of any city, village, county, or township library board shall immediately after their appointment meet and organize by electing from their number a president, secretary, and such other officers as may be necessary. A majority of the members of a city, village, county, or township library board shall constitute a quorum for the transaction of business.

**Source:** Laws 1911, c. 73, § 4, p. 315; R.S.1913, § 3795; C.S.1922, § 3188; Laws 1923, c. 148, § 1, p. 363; Laws 1925, c. 38, § 1, p. 148; C.S.1929, § 51-204; Laws 1941, c. 103, § 1, p. 421; C.S.Supp.,1941, § 51-204; R.S.1943, § 51-204; Laws 1997, LB 250, § 18.

**51-205 Library board; bylaws, rules, and regulations.**

The library board shall have the power to make and adopt such bylaws, rules, and regulations for its own guidance and for the government of the library and reading room as it may deem expedient, not inconsistent with sections 51-201 to 51-219.

**Source:** Laws 1911, c. 73, § 4, p. 315; R.S.1913, § 3795; C.S.1922, § 3188; Laws 1923, c. 148, § 1, p. 363; Laws 1925, c. 38, § 1, p. 149; C.S.1929, § 51-204; Laws 1941, c. 103, § 1, p. 421; C.S.Supp.,1941, § 51-204; R.S.1943, § 51-205; Laws 1997, LB 250, § 19.

**51-206 Library board; mortgages; release or renewal.**

The president shall have the power to release, upon full payment, any mortgage constituting a credit to the library fund and standing in the name of such library board. The signature of the president on any such release shall be authenticated by the secretary of the board. The president and secretary in like manner, upon resolution duly passed and adopted by the board, may renew any such mortgage.

**Source:** Laws 1925, c. 38, § 1, p. 149; C.S.1929, § 51-204; Laws 1941, c. 103, § 1, p. 421; C.S.Supp.,1941, § 51-204; R.S.1943, § 51-206.

**51-207 Library board; funds; buildings; custody and control.**

The library board shall have exclusive control of expenditures, of all money collected or donated to the credit of the library fund, of the renting and construction of any library building, and the supervision, care and custody of the grounds, rooms or buildings constructed, leased or set apart for that purpose.

**Source:** Laws 1911, c. 73, § 4, p. 315; R.S.1913, § 3795; C.S.1922, § 3188; Laws 1923, c. 148, § 1, p. 363; Laws 1925, c. 38, § 1, p. 149; C.S.1929, § 51-204; Laws 1941, c. 103, § 1, p. 421; C.S.Supp.,1941, § 51-204; R.S.1943, § 51-207.

**51-208 Library board; use of library for city or school purposes; contracts.**

The library board of any public library may contract with the city council of any city, with the trustees of any incorporated village, with the county board of the county in which such library is located or of any adjacent county, or with the directors of any school district, to furnish the use and privilege of its library to the inhabitants of such city, village, county, township or school district, to the extent and upon such terms as may be agreed upon.

**Source:** Laws 1911, c. 73, § 4, p. 315; R.S.1913, § 3795; C.S.1922, § 3188; Laws 1923, c. 148, § 1, p. 363; Laws 1925, c. 38, § 1, p. 149; C.S.1929, § 51-204; Laws 1941, c. 103, § 1, p. 422; C.S.Supp.,1941, § 51-204; R.S.1943, § 51-208.

**51-209 Public library; funds; disbursements; sinking fund; bonds.**

All taxes levied or collected and all funds donated or in any way acquired for the erection, maintenance, or support of any public library shall be kept for the use of the library separate and apart from all other funds of the city, village, county, or township, shall be drawn upon and paid out by the treasurer of such

city, village, county, or township upon vouchers signed by the president of the library board and authenticated by the secretary of such board, and shall not be used or disbursed for any other purpose or in any other manner.

The city, village, county, or township may establish a public library sinking fund for major capital expenditures.

The county may issue bonds for library purposes pursuant to Chapter 10.

**Source:** Laws 1911, c. 73, § 5, p. 315; R.S.1913, § 3796; C.S.1922, § 3189; C.S.1929, § 51-205; R.S.1943, § 51-209; Laws 1997, LB 250, § 20.

#### **51-210 Library board; building sites; acquisition; procedure.**

Every library board created under sections 51-201 to 51-219 shall have power to purchase or lease grounds, to exercise the power of eminent domain, and to condemn real estate for the purpose of securing a site for a library building. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** Laws 1911, c. 73, § 6, p. 316; R.S.1913, § 3797; Laws 1917, c. 86, § 1, p. 223; C.S.1922, § 3190; C.S.1929, § 51-206; R.S.1943, § 51-210; Laws 1951, c. 101, § 100, p. 494; Laws 1971, LB 560, § 1; Laws 1997, LB 250, § 21.

#### **51-211 Library board; general powers and duties; discrimination prohibited.**

(1) The library board shall have the power to erect, lease, or occupy an appropriate building for the use of such library and to appoint a suitable librarian and assistants, to fix their compensation, and to remove such appointees at pleasure. It shall have the power to establish rules and regulations for the government of such library as may be deemed necessary for its preservation and to maintain its usefulness and efficiency. It shall have the power to fix and impose, by general rules, penalties and forfeitures for trespasses upon or injury to the library grounds, rooms, books, or other property, for failure to return any book, or for violation of any bylaw, rule, or regulation and to fix and impose reasonable fees, not to exceed the library's actual cost, for nonbasic services. The board shall have and exercise such power as may be necessary to carry out the spirit and intent of sections 51-201 to 51-219 in establishing and maintaining a public library and reading room.

(2) The public library shall make its basic services available without charge to all residents of the political subdivision which supplies its tax support.

(3) No service shall be denied to any person because of race, sex, religion, age, color, national origin, ancestry, physical handicap, or marital status.

**Source:** Laws 1911, c. 73, § 6, p. 316; R.S.1913, § 3797; Laws 1917, c. 86, § 1, p. 223; C.S.1922, § 3190; C.S.1929, § 51-206; R.S.1943, § 51-211; Laws 1990, LB 1236, § 2; Laws 1997, LB 250, § 22.

#### **51-212 Public library; use and purpose.**

Except as provided in section 51-211, every library and reading room supported by public tax shall be forever free to the use of the inhabitants of the city, village, county, or township maintaining such library, subject always to such reasonable regulations as the library board may adopt to render such library of the greatest use to the inhabitants of the city, village, county, or

township. The board may exclude from the use of the library and reading rooms any person who willfully violates or refuses to comply with rules and regulations established for the government thereof.

**Source:** Laws 1911, c. 73, § 7, p. 316; R.S.1913, § 3798; C.S.1922, § 3191; C.S.1929, § 51-207; R.S.1943, § 51-212; Laws 1990, LB 1236, § 3.

**51-213 Library board; annual report; contents.**

The library board shall, on or before the second Monday in February in each year, make a report to the city council or village board or to the county or township board of the condition of its trust on the last day of the prior fiscal year. The report shall show all money received and credited or expended; the number of materials held, including books, video and audio materials, software programs, and materials in other formats; the number of periodical subscriptions on record, including newspapers; the number of materials added and the number withdrawn from the collection during the year; the number of materials circulated during the year; and other statistics, information, and suggestions as the library board may deem of general interest or as the city council or village, county, or township board may require. The report shall be verified by affidavit of the proper officers of the library board.

**Source:** Laws 1911, c. 73, § 8, p. 316; R.S.1913, § 3799; C.S.1922, § 3192; C.S.1929, § 51-208; R.S.1943, § 51-213; Laws 2004, LB 936, § 1.

**51-214 Penalties; action to recover; disposition of funds collected.**

Penalties imposed or accruing by any bylaw or regulation of the library board and any court costs and attorney's fees may be recovered in a civil action before any court having jurisdiction, such action to be instituted in the name of the library board of the city, village, county, or township. Money, other than any court costs and attorney's fees, collected in such actions shall be forthwith placed in the treasury of the city, village, township, or county to the credit of the city, village, township, or county library fund. Attorney's fees collected pursuant to this section shall be placed in the treasury of the city, village, or county and credited to the budget of the city, village, or county attorney's office. All attorney's fees collected on behalf of a township shall be paid over to the county treasury and credited to the budget of the county attorney's office.

**Source:** Laws 1911, c. 73, § 9, p. 317; R.S.1913, § 3800; C.S.1922, § 3193; C.S.1929, § 51-209; R.S.1943, § 51-214; Laws 1972, LB 1032, § 256; Laws 1984, LB 229, § 1.

**51-215 Public library; donations; library board may accept.**

Any person may make donation of money, lands or other property for the benefit of any public library. The title to property so donated may be made to and shall vest in the library board of such library and their successors in office, and the board shall thereby become the owners thereof in trust to the uses of the public library of the city, village, township or county.

**Source:** Laws 1911, c. 73, § 10, p. 317; R.S.1913, § 3801; C.S.1922, § 3194; C.S.1929, § 51-210; Laws 1937, c. 123, § 1, p. 434; Laws 1941, c. 103, § 2, p. 422; C.S.Supp.,1941, § 51-210; R.S.1943, § 51-215.

**51-216 Real estate; sale and conveyance; conditions; remonstrance; procedure.**

The library board may, by resolution, direct the sale and conveyance of any real estate owned by the library board or by the public library, which is not used for library purposes, or of any real estate so donated or devised to the library board or to the public library upon such terms as the library board may deem best. Before any such sale is made the library board shall advertise such sale once each week for three consecutive weeks in a legal newspaper published or, if none is published, of general circulation in the city, village, township, or county in which the public library is situated, and such notice shall set out the time, place, terms, manner of sale, legal description of such real estate, and the right to reject any and all bids. If such bid or bids have not been rejected, then the real estate shall be sold to the highest bidder for cash, and the chairperson of the library board, upon resolution of the library board directing him or her so to do, shall convey such real estate to the purchaser of such real estate upon his or her payment of his or her bid. If within thirty days after the third publication of such notice a remonstrance against such sale is signed by thirty percent of the registered voters of such city, village, township, or county voting at the last regular city, village, or county election and is filed with the governing body of such city, village, township, or county, such property shall not then, nor within one year thereafter, be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

**Source:** Laws 1937, c. 123, § 1, p. 434; Laws 1941, c. 103, § 2, p. 422; C.S.Supp.,1941, § 51-210; R.S.1943, § 51-216; Laws 1986, LB 960, § 34; Laws 1993, LB 59, § 4.

**51-217 Public library; use by school districts.**

Any school district may in its discretion at its annual meeting, by a majority vote, authorize the school board to contract for the use of a public library by the inhabitants of such district.

**Source:** Laws 1911, c. 73, § 11, p. 317; R.S.1913, § 3802; C.S.1922, § 3195; C.S.1929, § 51-211; R.S.1943, § 51-217.

**51-218 Public library; property; exemption from execution and taxation; when.**

The property of any public library shall be exempt from execution and shall be exempt from taxation to the extent it is used for a public purpose.

**Source:** Laws 1911, c. 73, § 12, p. 317; R.S.1913, § 3803; C.S.1922, § 3196; C.S.1929, § 51-212; R.S.1943, § 51-218; Laws 2001, LB 173, § 16.

**51-219 Private and associate libraries; deposit and use; authorized; requirements.**

The library board shall have power to authorize any circulating library, reading matter, or work of art belonging to any private person, association or corporation, to be deposited in the public library rooms, to be drawn or used outside of the rooms only on payment of such fee or membership as the person,

corporation or association owning the same may require. Deposits may be removed by the owner thereof at pleasure, but the books or other reading matter so deposited in the rooms of any such public library shall be separately and distinctly marked and kept upon shelves apart from the books of the public city or town library. Every such private or associate library or other property so deposited in any public library, while so placed or remaining, shall, without charge, be subject to use and reading within the library room by any person who is an inhabitant of such city or town and entitled to the use of the free library.

**Source:** Laws 1911, c. 73, § 13, p. 318; R.S.1913, § 3804; C.S.1922, § 3197; C.S.1929, § 51-213; R.S.1943, § 51-219.

**51-220 Law library; establishment; maintenance; supervision.**

The county board may, when in its discretion it shall deem it advisable, provide by purchase or otherwise for the procuring and maintaining of a suitable law library for the use of the public. Such library shall be under the supervision of the judges of the district court of the county wherein the same is located.

**Source:** Laws 1911, c. 73, § 1, p. 319; R.S.1913, § 3805; C.S.1922, § 3198; C.S.1929, § 51-214; R.S.1943, § 51-220; Laws 1961, c. 255, § 1, p. 749.

**ARTICLE 3**

**COUNTY AND REGIONAL LIBRARIES**

Section

- 51-301. Repealed. Laws 1997, LB 250, § 26.
- 51-302. Repealed. Laws 1997, LB 250, § 26.
- 51-303. Repealed. Laws 1997, LB 250, § 26.
- 51-304. Repealed. Laws 1997, LB 250, § 26.
- 51-305. Repealed. Laws 1997, LB 250, § 26.
- 51-306. Repealed. Laws 1971, LB 95, § 2.
- 51-307. Repealed. Laws 1997, LB 250, § 26.
- 51-308. Repealed. Laws 1997, LB 250, § 26.
- 51-309. Repealed. Laws 1997, LB 250, § 26.
- 51-310. Repealed. Laws 1997, LB 250, § 26.
- 51-311. Repealed. Laws 1997, LB 250, § 26.
- 51-312. Repealed. Laws 1997, LB 250, § 26.
- 51-313. Repealed. Laws 1997, LB 250, § 26.
- 51-314. Repealed. Laws 1997, LB 250, § 26.
- 51-315. Repealed. Laws 1997, LB 250, § 26.
- 51-316. Repealed. Laws 1997, LB 250, § 26.
- 51-317. Repealed. Laws 1997, LB 250, § 26.
- 51-318. Repealed. Laws 1997, LB 250, § 26.
- 51-319. Repealed. Laws 1997, LB 250, § 26.

**51-301 Repealed. Laws 1997, LB 250, § 26.**

**51-302 Repealed. Laws 1997, LB 250, § 26.**

**51-303 Repealed. Laws 1997, LB 250, § 26.**

**51-304 Repealed. Laws 1997, LB 250, § 26.**

**51-305 Repealed. Laws 1997, LB 250, § 26.**

- 51-306 Repealed. Laws 1971, LB 95, § 2.**
- 51-307 Repealed. Laws 1997, LB 250, § 26.**
- 51-308 Repealed. Laws 1997, LB 250, § 26.**
- 51-309 Repealed. Laws 1997, LB 250, § 26.**
- 51-310 Repealed. Laws 1997, LB 250, § 26.**
- 51-311 Repealed. Laws 1997, LB 250, § 26.**
- 51-312 Repealed. Laws 1997, LB 250, § 26.**
- 51-313 Repealed. Laws 1997, LB 250, § 26.**
- 51-314 Repealed. Laws 1997, LB 250, § 26.**
- 51-315 Repealed. Laws 1997, LB 250, § 26.**
- 51-316 Repealed. Laws 1997, LB 250, § 26.**
- 51-317 Repealed. Laws 1997, LB 250, § 26.**
- 51-318 Repealed. Laws 1997, LB 250, § 26.**
- 51-319 Repealed. Laws 1997, LB 250, § 26.**

**ARTICLE 4**

**NEBRASKA LIBRARY COMMISSION**

(a) NEBRASKA LIBRARY COMMISSION

Section

- 51-401. Nebraska Library Commission; members; term.
- 51-402. Nebraska Library Commission; expenses; payment.
- 51-403. Nebraska Library Commission; powers and duties; director; appointment; salary.
- 51-403.01. Repealed. Laws 1959, c. 266, § 1.
- 51-403.02. Repealed. Laws 1963, c. 341, § 1.
- 51-403.03. Nebraska Library Commission; director; salary increase; when effective.
- 51-404. Director; duties.
- 51-405. Local libraries, agencies, or organizations; entitled to services, when.
- 51-406. Books; loans to libraries.
- 51-407. Nebraska Library Commission; reports from all libraries required.
- 51-408. Nebraska Library Commission; assistance to local libraries.
- 51-409. Repealed. Laws 1981, LB 497, § 1.
- 51-410. Nebraska Library Commission; disbursements; power of director.
- 51-410.01. Nebraska Library Commission Cash Fund; created; how funded.

(b) NEBRASKA PUBLICATIONS CLEARINGHOUSE

- 51-411. Terms, defined.
- 51-412. Nebraska Publications Clearinghouse; created; duties; rules and regulations.
- 51-413. State agencies; publications; filing with Nebraska Publications Clearinghouse.
- 51-414. Depository contracts; standards; establish.
- 51-415. Official list of publications; publish; contents.
- 51-416. Current state publications; furnish.
- 51-417. Distribution of state publications; restriction.
- 51-418. Interlibrary loan service; provide.

## (a) NEBRASKA LIBRARY COMMISSION

**51-401 Nebraska Library Commission; members; term.**

A Nebraska Library Commission is hereby established composed of six members to be appointed by the Governor, one to serve one year, one for two years, one for three years, one for four years, and one for five years, and thereafter the Governor shall appoint a new member annually to serve for a term of three years and no person shall be appointed to more than two successive terms. The new member provided for by this section shall be appointed for an initial term of three years. The term of one of the three members whose term expires in 1981 shall expire in 1980. That member shall be selected by lot.

**Source:** Laws 1935, c. 115, § 1, p. 370; C.S.Supp.,1941, § 51-501; R.S. 1943, § 51-401; Laws 1972, LB 1033, § 4; Laws 1979, LB 352, § 1.

**51-402 Nebraska Library Commission; expenses; payment.**

The members of the Nebraska Library Commission shall serve without pay. They shall receive remuneration for traveling and actual expenses incurred while engaged in the business of the commission as provided in sections 81-1174 to 81-1177 for state employees. These expenses shall be paid out of the funds of the Nebraska Library Commission.

**Source:** Laws 1935, c. 115, § 2, p. 370; C.S.Supp.,1941, § 51-502; R.S. 1943, § 51-402; Laws 1972, LB 1033, § 5; Laws 1981, LB 204, § 93.

**51-403 Nebraska Library Commission; powers and duties; director; appointment; salary.**

The powers and duties of the Nebraska Library Commission shall be (1) to make rules and regulations not inconsistent with law for its government and operations, (2) to appoint a director, at a salary to be fixed by the commission, who shall be a technically trained, qualified, and experienced librarian, a graduate of an American Library Association accredited library school, to administer the work of the commission as hereinafter specified, (3) to authorize the director to employ such assistance as may be necessary to properly carry out the requirements of sections 51-401 to 51-410, (4) to be responsible for the statewide promotion, development, and coordination of library programs and services in accordance with nationally acceptable library standards, (5) to receive, as the legally designated state governmental agency, federal library funds which by federal law are to be dispersed within the state by a prescribed formula, (6) to accept and administer any gifts, bequests, and legacies which, in the opinion of the director and the commission, may be of value to it, and (7) to make a biennial report for the past two fiscal years to the Governor of its activities and the progress of its work on or before December 15 in each even-numbered year.

**Source:** Laws 1935, c. 115, § 3, p. 370; Laws 1937, c. 124, § 1, p. 435; C.S.Supp.,1941, § 51-503; R.S.1943, § 51-403; Laws 1945, c. 238, § 21, p. 713; Laws 1951, c. 311, § 3, p. 1066; Laws 1951, c. 171, § 1, p. 659; Laws 1953, c. 178, § 1, p. 562; Laws 1955, c.

231, § 10, p. 721; Laws 1961, c. 256, § 1, p. 750; Laws 1965, c. 315, § 1, p. 878; Laws 1972, LB 1033, § 6; Laws 1983, LB 369, § 3.

**51-403.01 Repealed. Laws 1959, c. 266, § 1.**

**51-403.02 Repealed. Laws 1963, c. 341, § 1.**

**51-403.03 Nebraska Library Commission; director; salary increase; when effective.**

Section 51-403 shall be so interpreted as to effectuate its general purpose, to provide, in the public interest, adequate compensation as therein provided for the director of the Nebraska Library Commission; and to permit a change of such salary as soon as same may become operative under the Constitution of the State of Nebraska.

**Source:** Laws 1965, c. 315, § 2, p. 879; Laws 1972, LB 1033, § 7.

**51-404 Director; duties.**

It shall be the duty of the director of the commission (1) to administer the work and activities of the commission, (2) to purchase books, periodicals, other library materials, and all necessary equipment and supplies for the commission, (3) to keep a catalog of all books, periodicals and other library materials belonging to the commission, (4) to keep a record of all books and property added to the library of the commission, and the cost thereof, (5) to keep a record of all books, periodicals and other library materials loaned by the commission and notify the borrowers of the expiration period of the loan, and (6) to keep fiscal and other operational records in accordance with state regulations.

**Source:** Laws 1935, c. 115, § 4, p. 371; C.S.Supp.,1941, § 51-504; R.S. 1943, § 51-404; Laws 1972, LB 1033, § 8.

**51-405 Local libraries, agencies, or organizations; entitled to services, when.**

Any library, governmental agency, or any body of citizens or taxpayers organized for library purposes shall, upon complying with the rules prescribed by the Nebraska Library Commission, be entitled to the commission's services.

**Source:** Laws 1935, c. 115, § 5, p. 371; C.S.Supp.,1941, § 51-505; R.S. 1943, § 51-405; Laws 1972, LB 1033, § 9.

**51-406 Books; loans to libraries.**

Any books, collection of books or other property of the Nebraska Library Commission may be loaned to any library, under such rules for the safekeeping, preservation, care, handling and management of the same as may be fixed by the Nebraska Library Commission.

**Source:** Laws 1935, c. 115, § 6, p. 371; C.S.Supp.,1941, § 51-506; R.S. 1943, § 51-406; Laws 1972, LB 1033, § 10.

**51-407 Nebraska Library Commission; reports from all libraries required.**

The director shall each year obtain from all libraries in the state reports showing the conditions, growth, development and manner of conducting such

libraries, together with such other facts and statistics regarding the same as may be deemed of public interest by the Nebraska Library Commission.

**Source:** Laws 1935, c. 115, § 7, p. 371; C.S.Supp.,1941, § 51-507; R.S. 1943, § 51-407; Laws 1972, LB 1033, § 11.

**51-408 Nebraska Library Commission; assistance to local libraries.**

The director shall when asked give advice and instruction to all libraries or individuals and to all communities which may propose to establish libraries as to the best means for establishing, organizing and administering such libraries, selecting and cataloging books, and other duties of library management. The director shall, so far as possible, promote and assist by counsel and encouragement the formation of libraries where none exist, and the director may send one of his employees or assistants to aid in organizing new libraries or improving those already established.

**Source:** Laws 1935, c. 115, § 8, p. 371; C.S.Supp.,1941, § 51-508; R.S. 1943, § 51-408; Laws 1972, LB 1033, § 12.

**51-409 Repealed. Laws 1981, LB 497, § 1.**

**51-410 Nebraska Library Commission; disbursements; power of director.**

The director may from time to time as needed draw a voucher signed by himself in favor of any party to whom money is due, stating in such voucher what the money is to be used for. Upon presentation of such order the Director of Administrative Services shall draw his warrant upon the State Treasurer for the amount thereof, not exceeding the amount of the appropriation for the purposes of the Nebraska Library Commission.

**Source:** Laws 1935, c. 115, § 10, p. 372; C.S.Supp.,1941, § 51-510; R.S.1943, § 51-410; Laws 1972, LB 1033, § 14.

**51-410.01 Nebraska Library Commission Cash Fund; created; how funded.**

There is hereby created a fund to be known as the Nebraska Library Commission Cash Fund, from which shall be appropriated such amounts as are available and as shall be considered incident to the administration of the Nebraska Library Commission. All funds received by the Nebraska Library Commission for services rendered shall be paid into the state treasury and the State Treasurer shall credit the money to the Nebraska Library Commission Cash Fund.

**Source:** Laws 1975, LB 550, § 1.

(b) NEBRASKA PUBLICATIONS CLEARINGHOUSE

**51-411 Terms, defined.**

As used in sections 51-411 to 51-418, unless the context otherwise requires:

(1) Print shall include all forms of printing and duplicating, regardless of format or purpose, with the exception of correspondence and interoffice memoranda;

(2) State publications shall include any multiply produced publications printed or purchased for distribution by the state, the Legislature, constitutional

officers, any state department or committee, or any other state agency supported wholly or in part by state funds;

(3) State agency shall include every state office, officer, department, division, bureau, board, commission, and agency of the state and, when applicable, all subdivisions of each, including state institutions of higher education defined as all state-supported colleges and universities; and

(4) Governmental publications shall include any publications of associations, regional organizations, intergovernmental bodies, federal agencies, boards, and commissions, or other publishers that may contribute supplementary materials to support the work of the state Legislature and state agencies.

**Source:** Laws 1972, LB 1284, § 1; Laws 1988, LB 802, § 3.

**51-412 Nebraska Publications Clearinghouse; created; duties; rules and regulations.**

There is hereby created, as a division of the Nebraska Library Commission, a Nebraska Publications Clearinghouse. The clearinghouse shall establish and operate a publications collection and depository system for the use of Nebraska citizens. To this end, the Nebraska Library Commission shall adopt and promulgate such rules and regulations as shall be necessary to carry out sections 51-411 to 51-418.

**Source:** Laws 1972, LB 1284, § 2; Laws 1988, LB 802, § 4.

**51-413 State agencies; publications; filing with Nebraska Publications Clearinghouse.**

Every state agency head or his or her appointed records officer shall notify the Nebraska Publications Clearinghouse of his or her identity. The records officer shall upon release of a state publication deposit four copies and a short summary, including author, title, and subject, of each of its state publications with the Nebraska Publications Clearinghouse for record purposes. One of these copies shall be forwarded by the clearinghouse to the Nebraska State Historical Society for archival purposes and one to the Library of Congress. Additional copies, including sale items, shall also be deposited in the Nebraska Publications Clearinghouse in quantities certified to the agencies by the clearinghouse as required to meet the needs of the Nebraska publications depository system, with the exception that the University of Nebraska Press shall only be required to deposit four copies of its publications.

**Source:** Laws 1972, LB 1284, § 3; Laws 1979, LB 322, § 80; Laws 1989, LB 18, § 4.

**51-414 Depository contracts; standards; establish.**

The Nebraska Publications Clearinghouse may enter into depository contracts with any municipal or county public library, state college or state university library, and out-of-state research libraries. The requirements for eligibility to contract as a depository library shall be established by the Nebraska Publications Clearinghouse. The standards shall include and take into consideration the type of library, ability to preserve such publications and to make them available for public use, and also such geographical locations as will make the publications conveniently accessible to residents in all areas of the state.

**Source:** Laws 1972, LB 1284, § 4; Laws 1997, LB 250, § 23.

**51-415 Official list of publications; publish; contents.**

The Nebraska Publications Clearinghouse shall publish and distribute regularly to contracting depository libraries, other libraries, state agencies and legislators, an official list of state publications with an annual cumulation. The official list shall provide a record of each agency's publishing and show author, agency, title and subject approaches.

**Source:** Laws 1972, LB 1284, § 5.

**51-416 Current state publications; furnish.**

Upon request by the Nebraska Publications Clearinghouse, records officers of state agencies shall furnish the clearinghouse with a complete list of their current state publications.

**Source:** Laws 1972, LB 1284, § 6.

**51-417 Distribution of state publications; restriction.**

The Nebraska Publications Clearinghouse shall not engage in general public distribution of either state publications or lists of publications. Sections 51-411 to 51-418 shall not affect the distribution of state publications distributed by state agencies, except that the agencies shall deposit in the Nebraska Publications Clearinghouse the number of copies of each of their state publications certified by the clearinghouse.

**Source:** Laws 1972, LB 1284, § 7; Laws 1988, LB 802, § 5.

**51-418 Interlibrary loan service; provide.**

The Nebraska Publications Clearinghouse shall provide access to local, state, federal and other governmental publications to state agencies and legislators and through interlibrary loan service to citizens of the state.

**Source:** Laws 1972, LB 1284, § 8.

**ARTICLE 5****MUSEUMS****Cross References**

**City of the metropolitan class, landmark heritage preservation commission,** see sections 14-2001 to 14-2004.

**Historical, archeological, and paleontological remains,** Department of Roads enter into agreements to preserve, see section 39-1363.

**Monuments and markers,** county markers, see sections 23-351 to 23-355.

**Nebraska State Historical Society,** see sections 82-101 to 82-136.

**Nonprofit county historical association or society,** tax levy, see section 23-355.01.

**State historical parks,** see sections 37-337 to 37-348.

**Section**

- 51-501. Museums; local governmental subdivisions; establishment; tax levy; limitation; authorization by election; discontinuance.
- 51-502. Museums; city or village; establishment; museum board; members; terms; vacancy, how filled.
- 51-503. Museums; county or township; establishment; museum board; members; terms; vacancies, how filled; compensation.
- 51-504. Museums; trustees; officers; appointment; meetings; quorum.
- 51-505. Museums; board; powers.
- 51-506. Museums; board; finances; care of building.
- 51-507. Museums; funds; disbursement; acquisition from private sources; kept separate and apart; manner of disbursement.
- 51-508. Museums; public use; admission charges; rules and regulations.
- 51-509. Museums; board; report; contents.

## Section

- 51-510. Museums; gifts and devises; title in trust; revenue bonds; payment.  
 51-511. Museum; conveyance of real estate or other property; procedure; applicability of section.  
 51-512. Museums; property; exempt from execution and taxation.  
 51-513. Museums; revenue bonds; purpose; issuance; payable; sale; refunding.

**51-501 Museums; local governmental subdivisions; establishment; tax levy; limitation; authorization by election; discontinuance.**

(1) The city council of any city, the board of trustees of any incorporated village, the county board of any county, and the electors of any township at their annual town meeting shall have the power to establish a museum for the use of the inhabitants of such city, village, county, or township or to contract for the use of a museum already established and may levy a tax of not more than seven cents on each one hundred dollars upon the taxable value of all the taxable property within the city, village, township, or county to be levied each year and collected in like manner as other taxes in such city, village, county, or township and to be known as the museum fund. The levy shall be part of the levy of the city, village, county, or township and shall be subject to sections 77-3442 and 77-3443.

(2) When the county board makes a levy for a county museum, it shall omit from the levy of the museum tax all property within the limits of any city, village, or township in such county which already maintains a museum by public tax. Before establishing such county museum or levying such tax, the county board shall submit the question to the voters of the county and a majority of the voters voting thereon shall have authorized the establishment of such county museum and the levying of the tax. Such questions shall be submitted at a general election only, and when so submitted and carried, it is hereby made the duty of the county board to include the county museum in its next succeeding estimate and levy.

(3) The electors of the county may discontinue such levy by vote of the people in the same manner that the initial levy was authorized, except that the proposition to discontinue such levy shall be placed on the ballot by the county board of such county at a general election only when requested to do so by a petition signed by at least twenty percent of the legal voters of such county based on the total vote cast for Governor at the last general election in the county.

**Source:** Laws 1957, c. 224, § 1, p. 766; Laws 1979, LB 187, § 180; Laws 1992, LB 719A, § 156; Laws 1996, LB 1114, § 62; Laws 1997, LB 269, § 31; Laws 1998, LB 306, § 6.

## Cross References

## For other provisions for establishment of museums:

- Cities of the first class, see section 16-251.  
 Cities of the metropolitan class, see section 14-102.

The county board was permitted under this section to provide for the establishment of a museum to be constructed by public-donated funds and to levy a tax for the maintenance of the museum thereafter. *Geer-Melkus Constr. Co., Inc. v. Hall County Museum Board*, 186 Neb. 615, 185 N.W.2d 671 (1971).

**51-502 Museums; city or village; establishment; museum board; members; terms; vacancy, how filled.**

A city or village may establish and maintain a museum pursuant to sections 51-501 to 51-513 when approved by at least fifty-one percent of the votes cast at

the election by the electors of the city or village voting on the proposition. Notwithstanding the provisions of any home rule charter to the contrary, any city or village which established a museum prior to April 10, 1957, or any city or village contracting for the use of a museum already established shall not be required to hold an election to contract for or to establish and maintain such a museum for any term of years deemed necessary or advisable by such city or village. When the electors of a city or village approve the establishment and the maintenance of a museum pursuant to sections 51-501 to 51-513, the city council or village board shall establish and maintain a museum pursuant to such sections. Such city or village shall appoint a museum board of not less than five but not more than nine members to be chosen from the citizens of the city or village at large. Except as further provided in this section, neither the mayor nor any member of the city council or village board shall be a member of the museum board. The members of the museum board first appointed shall hold office, the first for a term of one year, the second for a term of two years, the third for a term of three years, the fourth for a term of four years, the fifth for a term of five years, the sixth for a term of one year, the seventh for a term of two years, the eighth for a term of three years, and the ninth for a term of four years from the first day of July following their appointment. As their terms expire, one member shall be chosen annually thereafter for a term of five years. In cases of vacancies by resignation, removal, or otherwise, the city council or village board shall fill such vacancy for the unexpired term. Cities having home rule charters may fix by ordinance the number of members of such museum board. No member shall receive any pay or compensation for any services rendered. However, the city council of any city or the board of trustees of any village which is contracting for the use of a museum already established shall be the museum board and may establish the city council or board of trustees as the museum board without regard to the requirements for terms and numbers of members on the board set forth in this section.

**Source:** Laws 1957, c. 224, § 2, p. 767; Laws 1963, c. 306, § 1, p. 903; Laws 1965, c. 316, § 1, p. 880; Laws 1989, LB 444, § 1.

**51-503 Museums; county or township; establishment; museum board; members; terms; vacancies, how filled; compensation.**

When the electors of any county or of any township shall have voted to establish and maintain a museum, the county board of such county or the township board of such township shall appoint a museum board of not less than five but not more than nine members, no member of which shall be a member of the county or township board, the five members of the museum board first appointed shall hold office, one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, the sixth member shall be for a term of one year, the seventh for a term of two years, the eighth for a term of three years, and the ninth for a term of four years, from the first day of July following their appointment; and as the terms of the members expire, the county or township board shall appoint annually one trustee to serve for a term of five years. In case of vacancies, the county or township board shall have the power to fill the vacancy for the unexpired term. No trustee shall receive any pay or compensation for any services rendered as a member of such board.

**Source:** Laws 1957, c. 224, § 3, p. 768; Laws 1963, c. 306, § 2, p. 904; Laws 1965, c. 316, § 2, p. 881.

**51-504 Museums; trustees; officers; appointment; meetings; quorum.**

The trustees of any city, village, county, or township museum shall immediately after their appointment meet and organize by electing from their number a president, secretary and such other officers as may be necessary. Three members of the board shall constitute a quorum for the transaction of business.

**Source:** Laws 1957, c. 224, § 4, p. 769; Laws 1963, c. 306, § 3, p. 904.

**51-505 Museums; board; powers.**

The museum board shall have the power to make and adopt such bylaws, rules, and regulations for its own guidance and for the government of the museum as it may deem expedient and not inconsistent with the provisions of sections 51-501 to 51-512. The board shall have power to employ any and all personnel necessary for the operation of the museum and to fix their salaries.

**Source:** Laws 1957, c. 224, § 5, p. 769.

**51-506 Museums; board; finances; care of building.**

The museum board shall have exclusive control of expenditures, of all money collected or donated to the credit of the museum fund, of the renting or construction of a museum building and the supervision, care, and custody of the grounds, rooms, or buildings constructed, leased, or set apart for that purpose.

**Source:** Laws 1957, c. 224, § 6, p. 769.

Because the vote establishing museum hereunder limited the tax levy to the maintenance of a museum constructed by public-donated funds, it was held that tax funds cannot be used for

construction purposes. Geer-Melkus Constr. Co., Inc. v. Hall County Museum Board, 186 Neb. 615, 185 N.W.2d 671 (1971).

**51-507 Museums; funds; disbursement; acquisition from private sources; kept separate and apart; manner of disbursement.**

All taxes levied or collected shall be kept for the use of the museum, separate and apart from other funds of the city, village, county, or township. They shall be drawn upon and paid out by the treasurer of such city, village, county, or township upon vouchers signed by the president of the museum board and authenticated by the secretary of such board, and shall not be used or disbursed for any other purpose or in any other manner. All funds donated or in any other way acquired from private sources, including paid memberships in a local museum association, for the erection, maintenance, or support of any museum shall be kept for the use of the museum, separate and apart from all other funds of the city, village, county or township. They shall be drawn upon and paid out by the treasurer of such museum board upon vouchers signed by the president of the museum board and authenticated by the secretary of such board, and shall not be used or disbursed for any other purpose or in any other manner.

**Source:** Laws 1957, c. 224, § 7, p. 769; Laws 1963, c. 306, § 4, p. 905.

**51-508 Museums; public use; admission charges; rules and regulations.**

Every museum supported by public tax shall be open to the use of the public, subject to such reasonable regulations and admission charges as the museum board may adopt to render such museum of the greatest use to the public. The board may exclude from the use of the museum any person who shall willfully violate or refuse to comply with rules and regulations established for the

government thereof. The power of the museum board under this section may be exercised by the other contracting party as set forth in a contract which has been entered into by a city or village for the use of a museum already established.

**Source:** Laws 1957, c. 224, § 8, p. 769; Laws 1963, c. 306, § 5, p. 905; Laws 1989, LB 444, § 2.

**51-509 Museums; board; report; contents.**

Except where a contract is entered into for the use of a museum already established, the museum board shall, on or before the second Monday in June in each year, make a report to the city council, village board, or to the county or township board as to the condition of its trust on June 1 of such year, showing all money received or expended and a general report on all its activities in the operation and supervision of the museum and any information and suggestions it may deem of general interest, or as the city council, village, county, or township board may require. The report shall be in writing and verified by affidavit of the proper officers of such board.

**Source:** Laws 1957, c. 224, § 9, p. 770; Laws 1989, LB 444, § 3.

Holding that the county had an interest in result of pending litigation and had standing to intervene on the question as to whether proceeds from a tax levy could be used to pay for construction costs based in part on this section. Geer-Melkus Constr. Co., Inc. v. Hall County Museum Board, 186 Neb. 615, 185 N.W.2d 671 (1971).

**51-510 Museums; gifts and devises; title in trust; revenue bonds; payment.**

Any person may make gifts or devises of money, lands, or other property to or for the benefit of any public museum. The title to property so donated or devised may be made to and shall vest in the museum board of such museum and their successors in office, and the board shall thereby become the owners thereof in trust to the uses of the museum of the city, village, county, or township, but such museum board may pledge and use any unrestricted gifts or devises for the payment of the principal of or the interest or redemption premium on any revenue bonds issued for the benefit of such museum.

**Source:** Laws 1957, c. 224, § 10, p. 770; Laws 1965, c. 316, § 3, p. 881.

**51-511 Museum; conveyance of real estate or other property; procedure; applicability of section.**

The museum board may, by resolution of the majority of the board, direct the sale, conveyance, or disposition of any real estate or other property owned by the museum board or by the museum upon such terms and conditions as the museum board deems in the best interest of the museum, except that the provisions of this section shall not include any items or property subject to the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et seq. The museum board shall properly document the sale, conveyance, or disposition of any real estate or other property, including a brief description of the real estate or other property, the disposition made, the name of the recipient of the real estate or other property, the amount tendered or a description and stated value of real estate or other property received in exchange, and the date of the transaction. All funds derived from such sales shall be deposited in the museum fund and kept for use by the museum

separate and apart from other funds of the city, village, county, or township as authorized by section 51-507.

**Source:** Laws 1957, c. 224, § 11, p. 770; Laws 1986, LB 960, § 35; Laws 1993, LB 750, § 1; Laws 1993, LB 59, § 5.

**Cross References**

Unmarked Human Burial Sites and Skeletal Remains Protection Act, see section 12-1201.

**51-512 Museums; property; exempt from execution and taxation.**

The property of any public museum, including the museum property of a contracting party set forth in a contract with a city or village for the use of a museum already established, shall be exempt from execution and taxation, as is other public property.

**Source:** Laws 1957, c. 224, § 12, p. 771; Laws 1989, LB 444, § 4.

**51-513 Museums; revenue bonds; purpose; issuance; payable; sale; refunding.**

The city council of any city, the board of trustees of any incorporated village, the county board of any county and the electors of any township at their annual town meeting, who have established a museum pursuant to the provisions of sections 51-501 to 51-503, shall have the power to issue revenue bonds for the purpose of (1) purchasing and improving a site or sites for the location of a museum or museum buildings, structures or educational or historical exhibits, (2) erecting museum buildings, structures and educational or historical exhibits, (3) acquiring historical collections and other museum items, (4) acquiring furniture, furnishings and equipment for any of the foregoing, or (5) paying any outstanding notes, obligations, or other indebtedness incurred in connection with the museum. Such revenue bonds shall be payable solely from the admission charges authorized by section 51-508, nontax revenue received from the operation of such museum, or from unrestricted gifts, devises, or other property and funds of such museum. Such bonds shall be of such tenure, form, and denominations, be payable in such installments, at such time or times not exceeding forty years from their date, and at such place or places, bear interest at such rate or rates payable at such place or places and evidenced in such manner, be redeemable prior to maturity with or without premium, and contain such other provisions not inconsistent with the provisions of this section as the governing body of the issuing city, village, county or township shall determine. All bonds issued under the authority of this section and all interest coupons applicable thereto shall be construed to be negotiable instruments despite the fact that they are payable solely from a specified source. Such bonds may be sold at public or private sale in such manner and at such times as may be determined by the governing body of the issuer. Any bonds issued under the provisions of this section and at any time outstanding may at any time and from time to time be refunded by the issuing agency by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums necessary to be paid in connection therewith. Such refunding may be either by sale of the refunding bonds and the application of the proceeds thereof for the

payment of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby.

**Source:** Laws 1965, c. 466, § 1, p. 1508.

### ARTICLE 6

#### ANTIQUÉ FARM MACHINERY AND EQUIPMENT

##### Section

- 51-601. Repealed. Laws 2004, LB 940, § 4.
- 51-602. Repealed. Laws 2004, LB 940, § 4.
- 51-603. Repealed. Laws 2004, LB 940, § 4.
- 51-604. Repealed. Laws 2004, LB 940, § 4.
- 51-605. Repealed. Laws 2004, LB 940, § 4.
- 51-606. Repealed. Laws 2004, LB 940, § 4.
- 51-607. Repealed. Laws 2004, LB 940, § 4.

**51-601 Repealed. Laws 2004, LB 940, § 4.**

**51-602 Repealed. Laws 2004, LB 940, § 4.**

**51-603 Repealed. Laws 2004, LB 940, § 4.**

**51-604 Repealed. Laws 2004, LB 940, § 4.**

**51-605 Repealed. Laws 2004, LB 940, § 4.**

**51-606 Repealed. Laws 2004, LB 940, § 4.**

**51-607 Repealed. Laws 2004, LB 940, § 4.**

### ARTICLE 7

#### MUSEUM PROPERTY ACT

##### Section

- 51-701. Act, how cited.
- 51-702. Terms, defined.
- 51-703. Notice; contents.
- 51-704. Acquisition of title to loaned property; when.
- 51-705. Acquisition of title to undocumented property; when.
- 51-706. Preservation of interest in loaned property; notice; contents.
- 51-707. Conservation measures; authorized; effect.
- 51-708. Limitation of actions; liability.
- 51-709. Obligations to lender or claimant.
- 51-710. Records; maintenance and retention.
- 51-711. Lender or claimant; duty to notify museum; when.
- 51-712. Death of owner of property; effect.

##### **51-701 Act, how cited.**

Sections 51-701 to 51-712 shall be known and may be cited as the Museum Property Act.

**Source:** Laws 1996, LB 1276, § 1.

##### **51-702 Terms, defined.**

For purposes of the Museum Property Act:

(1) Claimant means a person who files a notice of intent to preserve an interest in property on loan to a museum as provided in section 51-706;

(2) Claimant's address means the most recent address as shown on a notice of intent to preserve an interest in property on loan to a museum or notice of change of address, which notice is on file with the museum;

(3) Lender means a person whose name appears on the records of the museum as the person legally entitled to or claiming to be legally entitled to property held by the museum;

(4) Lender's address means the most recent address as shown on the museum's records pertaining to the property on loan from the lender;

(5) Loan means a deposit of property not accompanied by a transfer of permanent title to the property;

(6) Museum means an institution located in Nebraska and operated by a nonprofit corporation or a public agency, primarily for educational, scientific, historic preservation, or aesthetic purposes, and which owns, borrows, cares for, exhibits, studies, archives, or catalogs property. Museum includes, but is not limited to, historical societies, historic sites or landmarks, parks, monuments, libraries, and zoos;

(7) Permanent loan means a loan of property to a museum for an indefinite period;

(8) Property means a tangible object, animate or inanimate, under a museum's care, which has intrinsic historic, artistic, scientific, or cultural value; and

(9) Undocumented property means property in the possession of a museum for which the museum cannot determine the owner by reference to the museum's records.

**Source:** Laws 1996, LB 1276, § 2.

**51-703 Notice; contents.**

(1) In addition to any other information prescribed for a particular notice, each notice given pursuant to the Museum Property Act shall contain the following information:

- (a) The lender's or claimant's name as appropriate;
- (b) The lender's last-known address or the claimant's last-known address as appropriate;
- (c) A brief description of the property on loan;
- (d) The date of the loan, if known;
- (e) The name of the museum; and
- (f) The name, address, and telephone number of the appropriate person or office to be contacted regarding the property.

(2) Each notice given by a museum pursuant to the act shall be mailed to the lender's and any claimant's last-known address by restricted certified mail. Notice is deemed given if the museum receives proof of receipt within thirty days after mailing the notice.

(3) Notice may be given by publication if the museum does not:

- (a) Know the identity of the lender;
- (b) Have the address or telephone number for the lender or the address or telephone number for the claimant; or

(c) Receive proof of receipt of the notice by the person to whom the notice was sent within thirty days after the notice was mailed.

(4) Notice by publication must be given at least once each week for three consecutive weeks in a newspaper of general circulation in both the county where the museum is located and the county of the lender's or claimant's address, if any.

**Source:** Laws 1996, LB 1276, § 3.

**51-704 Acquisition of title to loaned property; when.**

Subject to any existing security interest in the property, a museum may acquire title to property on permanent loan or loaned for a specified term that has expired if:

(1) The museum gives written notice that the museum is terminating the loan of the property;

(2) The notice that the loan of the property is being terminated includes a statement containing substantially the following information:

The records of (name of museum) indicate that you have property on loan to it. The institution wishes to terminate the loan. If you desire to claim the property, you must contact the institution, establish your ownership of the property, and make arrangements to collect the property. If you fail to do so promptly, you will be considered to have donated the property to the institution; and

(3) The lender does not respond to the notice of termination provided under subdivision (1) of this section within one year after receipt of the notice by filing a notice of intent to preserve an interest in the property on loan.

**Source:** Laws 1996, LB 1276, § 4.

**51-705 Acquisition of title to undocumented property; when.**

Subject to any existing security interest in the property, a museum may acquire title to undocumented property held by the museum for at least seven years as follows:

(1) The museum must give notice as provided in subsection (3) of section 51-703 that the museum is asserting title to the undocumented property;

(2) The notice that the museum is asserting title to the property must include a statement containing substantially the following information:

The records of (name of museum) fail to indicate the owner of record of certain property in its possession. The museum hereby asserts title to the following property: (general description of property). If you claim ownership or other legal interest in this property, you must contact the museum, establish ownership of the property, and make arrangements to collect the property. If you fail to do so within three years, you will be considered to have waived any claim you may have had to the property; and

(3) If a claimant or lender does not respond to the notice provided in subdivision (2) of this section within three years by giving a written notice of intent to retain an interest in the property on loan, the museum's title to the property becomes absolute.

**Source:** Laws 1996, LB 1276, § 5.

**51-706 Preservation of interest in loaned property; notice; contents.**

(1) A notice of intent to preserve an interest in property on loan to a museum filed pursuant to the Museum Property Act shall be in writing and contain all of the following information:

(a) A description of the property adequate to enable the museum to identify the property;

(b) Documentation sufficient to establish the claimant as owner of the property or a holder of a security interest in the property;

(c) A statement attesting to the truth, to the best of the signer's knowledge, of all information included in or with the notice; and

(d) The signature, under penalty of perjury, of the claimant or a person authorized to act on behalf of the claimant.

(2) The museum need not retain a notice which does not meet the requirements set forth in subsection (1) of this section. If the museum does not intend to retain a notice for this reason, the museum shall promptly notify the claimant at the address given on the notice that the museum believes the notice is ineffective to preserve an interest and the reasons for the insufficiency. The fact that a museum retains a notice under section 51-710 does not mean that the museum accepts the sufficiency or accuracy of the notice or that the notice is effective to preserve an interest in property on loan to the museum.

**Source:** Laws 1996, LB 1276, § 6.

**51-707 Conservation measures; authorized; effect.**

(1) Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to loaned property if immediate action is required to protect the property on loan or to protect other property in the custody of the museum, or the property on loan has become a hazard to the health and safety of the public or of the museum's staff, and:

(a) The museum cannot reach the lender at the lender's last address of record so that the museum and the lender can promptly agree on a solution; or

(b) The lender will not agree to the protective measures the museum recommends, yet is unwilling or unable to terminate the loan and retrieve the property.

(2) If a museum applies conservation measures under subsection (1) of this section, the museum:

(a) Has a lien on the property and on the proceeds from any disposition of the property for the costs incurred by the museum; and

(b) Is not liable for injury to or loss of the property if the museum:

(i) Had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum or that the property on loan constituted a hazard to the health and safety of the public or the museum's staff; and

(ii) Exercised reasonable care in the choice and application of the conservation measures.

**Source:** Laws 1996, LB 1276, § 7.

**51-708 Limitation of actions; liability.**

(1) An action shall not be brought against a museum for damages because of injury to or loss of property loaned to the museum more than three years from the date the museum gives the lender or claimant notice of the injury or loss or ten years from the date of the injury or loss, whichever occurs earlier.

(2) An action shall not be brought against a museum to recover property on loan more than one year after the date the museum gives the lender or claimant notice of its intent to terminate the loan or notice of acquisition of title to undocumented property.

(3) An action shall not be brought against a museum to recover property on loan more than seven years from the date of the last written contact between the lender or claimant and the museum as evidenced by the museum's records.

(4) A lender or claimant is considered to have donated loaned property to the museum if the lender fails to file an action to recover the property on loan to the museum within the time periods specified in subsections (1) through (3) of this section.

(5) Notwithstanding subsections (3) and (4) of this section, a lender or claimant who was not given notice as provided in the Museum Property Act that the museum intended to terminate a loan as provided in section 51-704 and who proves that the museum received an adequate notice of intent to preserve an interest in loaned property, which satisfies all of the requirements of section 51-706, within the seven years immediately preceding the filing of an action to recover the property, may recover the property or, if the property has been disposed of, the reasonable value of the property at the time it was disposed of plus interest at the legal rate.

(6) A museum is not liable at any time, in the absence of a court order, for returning property to the original lender even if a claimant other than the lender has filed a notice of intent to preserve an interest in property. If a person claims competing interests in property in the possession of a museum, the burden is upon the claimant to prove the interest in an action in equity initiated by a claimant. A museum is not liable at any time for returning property to an uncontested claimant who produced reasonable proof of ownership or the existence of a security interest pursuant to section 51-706.

**Source:** Laws 1996, LB 1276, § 8.

#### **51-709 Obligations to lender or claimant.**

In order to take title pursuant to the Museum Property Act, a museum has the following obligations to a lender or claimant:

(1) The museum shall retain all written records regarding the property for at least three years after the date of taking title pursuant to the act;

(2) The museum shall keep written records on all loaned property acquired pursuant to section 51-704. Records shall contain the following information:

(a) The lender's name, address, and telephone number;

(b) The claimant's name, address, and telephone number;

(c) The nature and terms of the loan; and

(d) The beginning date of the loan period, if known; and

(3) The museum is responsible for notifying a lender or claimant of the museum's change of address or dissolution.

**Source:** Laws 1996, LB 1276, § 9.

**51-710 Records; maintenance and retention.**

Beginning on July 19, 1996, a museum shall at a minimum maintain and retain the following records, either as originals or accurate copies, for a period of not less than twenty-five years:

- (1) A notice of intent to preserve an interest in property, if any;
- (2) The loan agreement, if any;
- (3) A receipt or ledger for property delivered to an owner or claimant; and
- (4) Records containing the following information, as available, for property in the museum's possession:
  - (a) The lender's name, address, and telephone number;
  - (b) The claimant's name, address, and telephone number;
  - (c) The donor's name, address, and telephone number;
  - (d) The seller's name, address, and telephone number;
  - (e) The nature and terms of the transaction (loan for specified term, loan for unspecified term, donation, purchase, etc.); and
  - (f) The beginning date of the loan period or transaction date.

**Source:** Laws 1996, LB 1276, § 10.

**51-711 Lender or claimant; duty to notify museum; when.**

(1) The lender or claimant of property on loan to a museum shall notify the museum of a change of address or change in ownership of the property. Failure to notify the museum of these changes may result in the lender's or claimant's loss of rights in the property.

(2) The lender or claimant of property on loan to a museum may file with the museum a notice of intent to preserve an interest in the property as provided for in section 51-706. The filing of a notice of intent to preserve an interest in property on loan to a museum does not validate or make enforceable any claim which would be extinguished under the terms of a written agreement or which would otherwise be invalid or unenforceable.

**Source:** Laws 1996, LB 1276, § 11.

**51-712 Death of owner of property; effect.**

Loaned property in the possession of a museum at the time of the owner's death which would otherwise escheat to the state shall not so escheat but shall become the property of the museum to which it is loaned.

**Source:** Laws 1996, LB 1276, § 12.

**ARTICLE 8****PUBLIC LIBRARY FEDERATION**

## Section

- 51-801. Legislative findings.  
 51-802. Terms, defined.  
 51-803. Intracounty public library federation; establishment; board; members; terms; expenses.  
 51-804. Intercounty public library federation; establishment; board; members; terms; expenses.  
 51-805. Public library federation board; powers and duties.

## Section

- 51-806. Public library federation fund; establishment.  
51-807. Affiliation with federation.  
51-808. Annual report.  
51-809. Title to property; exempt from taxation; when.  
51-810. Withdrawal of affiliation.  
51-811. Dissolution.

**51-801 Legislative findings.**

The Legislature finds and declares that public libraries are vital to the quality of life in Nebraska communities and that public libraries provide access to information resources for the personal, educational, and vocational needs of the citizens. The Legislature further finds that public library services can be improved by permitting creative and flexible means of library governance and organization. It is the intent of the Legislature to encourage cooperation and collaboration among political subdivisions to assure access to public library services for every Nebraskan.

**Source:** Laws 1999, LB 362, § 1.

**51-802 Terms, defined.**

For purposes of sections 51-801 to 51-811:

- (1) Basic public library services includes, but is not limited to, free loan of circulating print and nonprint materials from the local collection and general reference and information services;
- (2) Local governing authority means the governing body of a county, city, village, or township; and
- (3) Public library federation means a library service agency of one or more counties responsible for a planned program of library services to be provided through public libraries which choose to affiliate with the federation.

**Source:** Laws 1999, LB 362, § 2.

**51-803 Intracounty public library federation; establishment; board; members; terms; expenses.**

- (1) Upon the request of two or more local governing authorities within a county, the county board may establish a public library federation.
- (2) The county board shall appoint seven residents of the county to the public library federation board. At least four members of the public library federation board shall represent communities whose public libraries have affiliated with the federation. The members shall be appointed to broadly represent the county's population.
- (3) Each member of the public library federation board shall serve a term of not less than three nor more than five years as determined by the county board, except that the terms of the initial appointments may vary in length so that terms will expire in a staggered fashion. If a vacancy exists, the unexpired term shall be filled by appointment by the county board.
- (4) A member of the public library federation board shall not receive compensation for services rendered as a board member but may be reimbursed

for actual and necessary expenses incurred in the performance of official duties from the public library federation fund.

**Source:** Laws 1999, LB 362, § 3.

**51-804 Intercounty public library federation; establishment; board; members; terms; expenses.**

(1) Upon the request of two or more local governing authorities within each of two or more adjoining counties, the county boards may jointly establish a public library federation.

(2) Each county board shall appoint two residents of the county to the public library federation board. At least one member from each county shall represent communities whose public libraries have affiliated with the federation. The members appointed by the county boards shall appoint an additional member. The members shall be appointed to broadly represent each county's population.

(3) Each member of the public library federation board shall serve a term of not less than three nor more than five years as jointly determined by the county boards, except that the terms of the initial appointments may vary in length so that terms will expire in a staggered fashion. If a vacancy exists in the membership from one of the participating counties, the unexpired term shall be filled by appointment by the appropriate county board.

(4) A member of the public library federation board shall not receive compensation for services rendered as a board member but may be reimbursed for actual and necessary expenses incurred in the performance of official duties from the public library federation fund.

**Source:** Laws 1999, LB 362, § 4.

**51-805 Public library federation board; powers and duties.**

(1) The public library federation board shall be responsible for the general governance of the public library federation, but affiliated libraries shall retain governance of all aspects of local library operations. The board shall make and adopt bylaws, rules, and regulations for the board's guidance and for the governance of the federation. The board shall develop a long-range public library service plan for the provision of public library service to the area included in the federation.

(2) The board may designate and determine the compensation of a library federation director. The director shall be responsible to the board only in relationship to federation operations.

(3) The board shall develop and present an annual budget in support of the annual public library plan to each participating county board. The public library federation board shall administer and authorize the expenditure of all money received from taxes and other sources in support of federation public library service.

(4) The board may contract with other public entities for services.

(5) The method of federating libraries provided in sections 51-801 to 51-811 shall not be the exclusive way to provide joint or cooperative library services. Nothing in sections 51-801 to 51-811 shall prohibit a county, city, village, or

township from entering into an agreement pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act concerning library services.

**Source:** Laws 1999, LB 362, § 5; Laws 2000, LB 968, § 18.

**Cross References**

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

**51-806 Public library federation fund; establishment.**

Upon the establishment of a public library federation and a public library federation board, each participating county board shall establish a public library federation fund to be supported from the general fund of each participating local governing authority or from a public library tax levy. Any local governing authority which is not affiliated with the public library federation shall not be subject to the levy. The levy shall be subject to section 77-3442. The amount of tax support for the federation shall be subject to an agreement among the participating local governing authorities. All money received for the federation shall be remitted to the county treasurer for credit to the public library federation fund.

**Source:** Laws 1999, LB 362, § 6.

**51-807 Affiliation with federation.**

The local governing authority of each existing public library within a county participating in a public library federation shall either choose to affiliate with the federation or shall choose to exempt itself from the federation. A county, city, village, or township public library that chooses to affiliate with the federation shall agree to provide basic public library services free of charge to all residents within the federation area. Residents within the area of a public library that has chosen to exempt itself from the federation shall not be entitled to participate in programs of the public library federation. The public library board of a county, city, village, or township shall retain its authority and autonomy regardless of whether or not the public library is an affiliate of the federation.

**Source:** Laws 1999, LB 362, § 7.

**51-808 Annual report.**

The public library federation board shall submit an annual report of activities and operations to the Nebraska Library Commission and to the participating local governing authorities.

**Source:** Laws 1999, LB 362, § 8.

**51-809 Title to property; exempt from taxation; when.**

The title to property, equipment, and library materials of a public library federation acquired with funds of the public library federation shall be vested in the participating local governing authorities as reflected by an agreement entered into before the formation of the federation. The title to property, equipment, and library materials of an affiliated public library shall remain in the affiliated public library. Removal or disposal of public library federation property shall be determined by the public library federation board. The property of any public library federation shall be exempt from execution and

shall be exempt from taxation to the extent such property is used for a public purpose.

**Source:** Laws 1999, LB 362, § 9; Laws 2001, LB 173, § 17.

**51-810 Withdrawal of affiliation.**

An affiliate of a public library federation may, by a two-thirds majority vote of the local governing authority, withdraw from affiliation with the federation after giving one year's notice.

**Source:** Laws 1999, LB 362, § 10.

**51-811 Dissolution.**

A public library federation may, by a two-thirds majority vote of the library federation board, be dissolved after one year's notice. In the event of the dissolution of a public library federation, the participating local governing authorities shall determine the disposition of all federation assets on a prorated basis to affiliated public libraries.

**Source:** Laws 1999, LB 362, § 11.



**LIENS**

**CHAPTER 52**  
**LIENS**

Article.

1. Construction Lien.
  - (a) Miscellaneous. 52-101 to 52-124.
  - (b) Nebraska Construction Lien Act. 52-125 to 52-159.
2. Artisan's Lien. 52-201 to 52-204.
3. Jeweler's Lien. 52-301 to 52-304.
4. Lien of Physician, Nurse, or Hospital. 52-401, 52-402.
5. Thresher's Lien. 52-501 to 52-504.
6. Lien for Services Performed Upon Personal Property. 52-601 to 52-605.
7. Veterinarian's Lien. 52-701, 52-702.
8. Sale of Goods to Pay for Services Rendered Thereon or for Storage. 52-801 to 52-806.
9. Petroleum Products Lien. 52-901 to 52-905.
10. Uniform Federal Lien Registration Act. 52-1001 to 52-1008.
11. Fertilizer and Agricultural Chemical Liens. 52-1101 to 52-1104.
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14. Agricultural Production Liens. 52-1401 to 52-1411.
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16. Master Lien List. 52-1601 to 52-1605.
17. Security Interest in Rents. 52-1701 to 52-1708.
18. Mobile Homes. 52-1801.
19. Nonconsensual Common-Law Liens. 52-1901 to 52-1904.
20. Homeowners' Association. 52-2001.

**ARTICLE 1**

**CONSTRUCTION LIEN**

(a) MISCELLANEOUS

Section

- |         |  |
|---------|--|
| 52-101. | Repealed. Laws 1981, LB 512, § 37.   |
| 52-102. | Repealed. Laws 1981, LB 512, § 37.   |
| 52-103. | Repealed. Laws 1981, LB 512, § 37.   |
| 52-104. | Repealed. Laws 1981, LB 512, § 37.   |
| 52-105. | Repealed. Laws 1981, LB 512, § 37.   |
| 52-106. | Repealed. Laws 1981, LB 512, § 37.   |
| 52-107. | Repealed. Laws 1981, LB 512, § 37.   |
| 52-108. | Repealed. Laws 1981, LB 512, § 37.   |
| 52-109. | Repealed. Laws 1981, LB 512, § 37.   |
| 52-110. | Repealed. Laws 1981, LB 512, § 37.   |
| 52-111. | Repealed. Laws 1981, LB 512, § 37.   |
| 52-112. | Repealed. Laws 1981, LB 512, § 37.   |
| 52-113. | Repealed. Laws 1981, LB 512, § 37.   |
| 52-114. | Repealed. Laws 1981, LB 512, § 37.   |
| 52-115. | Labor on railroads, similar utilities; liability of company; notice of claim; interest.                          |
| 52-116. | Railroad and similar construction; lien for labor or material; to what attaches.                                 |
| 52-117. | Railroad and similar construction; lien for labor or material; statement of claim; filing; time limit; duration. |
| 52-118. | Public building construction; bond required for benefit of laborers, mechanics, and suppliers; exception.        |

## LIENS

### Section

- 52-118.01. Public building construction; bond; claim for unpaid labor or material; action; procedure.
- 52-118.02. Public building construction; bond; action; limitation; person to bring suit; rental equipment, defined.
- 52-119. Repealed. Laws 1969, c. 793, § 1.
- 52-120. Repealed. Laws 1969, c. 432, § 3.
- 52-121. Repealed. Laws 1981, LB 512, § 37.
- 52-122. Repealed. Laws 1981, LB 512, § 37.
- 52-123. Failure to apply payments received on lawful claims; unlawful; failure to discharge lien; prima facie evidence of intent to deprive or defraud.
- 52-124. Failure to apply payments for lawful claims; failure to discharge lien; penalty.

### (b) NEBRASKA CONSTRUCTION LIEN ACT

- 52-125. Act, how cited.
- 52-126. Sections, purpose.
- 52-127. Terms, defined.
- 52-128. Contracting owner; presumption of agency.
- 52-129. Protected party, residential real estate, defined.
- 52-130. Real estate improvement contract, defined.
- 52-131. Construction lien; existence; amount; priority; enforcement.
- 52-132. Public property; exempt from lien.
- 52-133. Real estate subject to construction lien.
- 52-134. Lien for materials; conditions; limitations.
- 52-135. Notice of right to assert lien; contents; optional notice to contracting owner; notice, when effective; applicability of section.
- 52-136. Amount of lien.
- 52-137. Attachment and enforcement of lien; recording required; time limitation; attachment, when.
- 52-138. Priority among lien claimants.
- 52-139. Priority of construction liens as against claims other than construction lien claims.
- 52-140. Duration of lien; demand to institute judicial proceedings; continuation of lien during pendency of proceeding.
- 52-141. Surety bond; notice recorded; no lien attaches to real estate; bond, requirements; copy to claimant; action against surety.
- 52-142. Substitution of collateral; release of lien; procedure.
- 52-143. Obligation of claimant to furnish information to other lien claimant; damages; applicability of section.
- 52-144. Waiver of construction lien rights; what constitutes; validity; effect.
- 52-145. Notice of commencement; by whom filed; contents; recording; duration; extension.
- 52-146. Termination of notice of commencement; procedure.
- 52-147. Lien recording; contents.
- 52-148. Amendment of recorded lien.
- 52-149. Assignment of lien rights; recording; effect.
- 52-150. Notice of surety bond; recording; contents.
- 52-151. Substitution of collateral; certificate; recording; contents.
- 52-152. Demand to institute judicial proceedings; recording; claimant's statement; recording.
- 52-153. Owner's statement of apportionment of lien; recording; contents.
- 52-154. Discharge of lien; partial release; procedure.
- 52-155. Proceeding to enforce lien.
- 52-156. Recording of notice of termination before abandonment or completion; owner; liability.
- 52-157. Remedies for wrongful conduct.
- 52-158. Liens arising prior to January 1, 1982; enforcement.
- 52-159. Substitution of terms; Revisor of Statutes; duties.

## (a) MISCELLANEOUS

**52-101 Repealed. Laws 1981, LB 512, § 37.**

**52-102 Repealed. Laws 1981, LB 512, § 37.**

**52-103 Repealed. Laws 1981, LB 512, § 37.**

**52-104 Repealed. Laws 1981, LB 512, § 37.**

**52-105 Repealed. Laws 1981, LB 512, § 37.**

**52-106 Repealed. Laws 1981, LB 512, § 37.**

**52-107 Repealed. Laws 1981, LB 512, § 37.**

**52-108 Repealed. Laws 1981, LB 512, § 37.**

**52-109 Repealed. Laws 1981, LB 512, § 37.**

**52-110 Repealed. Laws 1981, LB 512, § 37.**

**52-111 Repealed. Laws 1981, LB 512, § 37.**

**52-112 Repealed. Laws 1981, LB 512, § 37.**

**52-113 Repealed. Laws 1981, LB 512, § 37.**

**52-114 Repealed. Laws 1981, LB 512, § 37.**

**52-115 Labor on railroads, similar utilities; liability of company; notice of claim; interest.**

Whenever any laborer upon any railroad, canal, viaduct, bridge, ditch, or other similar improvement in this state, shall have just claim or demand for labor performed on any such railroad, canal, bridge, ditch, viaduct, or other similar improvement against any person or persons who are, or any company which is a contractor on such railroad, canal, viaduct or bridge, or against any person or persons who are subcontractors with any person or persons or company contracting with any such railroad, bridge, viaduct, or ditching company for the construction of any part of any such railroad, bridge, canal, viaduct or ditch of any such company, every such railroad, canal, bridge or ditch company shall be liable to pay such laborer the amount of such claim or demand with ten percent interest thereon; *Provided*, such laborer shall have given notice within sixty days after the last item of labor shall have been performed, that he or she has such claim or demand. Such notice shall be given in writing and shall specify the nature and amount of the claim or demand, and shall be delivered to the president or vice president, superintendent, agent or the managing director or chief engineer in charge of that portion of the work, or any portion of the railroad, canal, viaduct, bridge or ditch upon which such labor is performed.

**Source:** Laws 1881, c. 60, § 1, p. 267; R.S.1913, § 3837; C.S.1922, § 3221; C.S.1929, § 52-115; R.S.1943, § 52-115.

Statute is remedial and should be liberally construed. *Owen v. Chicago, B. & Q. Ry. Co.*, 86 Neb. 851, 126 N.W. 658 (1910).

Lumber sold to contractor, used in building temporary sheds and stables, is no foundation for lien. *Stewart-Chute Lumber Co. v. M. P. R. Co.*, 33 Neb. 29, 49 N.W. 769 (1891).

Act providing for lien on railways is constitutional. *K. C. & O. R. Co. v. Frey*, 30 Neb. 790, 47 N.W. 87 (1890).

**52-116 Railroad and similar construction; lien for labor or material; to what attaches.**

When material shall have been furnished, or labor performed in the construction, repair, and equipment of any railroad, canal, bridge, viaduct or other similar improvement, such laborer and materialman, contractor, or subcontractor, shall have a lien therefor, and such lien therefor shall extend and attach to the erections, excavations, embankments, bridges, roadbed, and all land upon which the same may be situated, including the rolling stock thereto appertaining and belonging, all of which, including the right-of-way, shall constitute the excavation, erection or improvement provided for and mentioned in sections 52-115 to 52-117.

**Source:** Laws 1881, c. 60, § 2, p. 268; R.S.1913, § 3838; C.S.1922, § 3222; C.S.1929, § 52-116; R.S.1943, § 52-116.

Description of railroad right-of-way as being between certain streets in a specified city was sufficient. *Owen v. Chicago, B. & Q. Ry. Co.*, 86 Neb. 851, 126 N.W. 658 (1910).

Mortgage, given prior to construction, mortgagees being promoters, is subject to liens. Waiver of lien is not inferred from

taking collateral security. *Kilpatrick v. Kansas City & B. R. Co.*, 38 Neb. 620, 57 N.W. 664 (1894).

**52-117 Railroad and similar construction; lien for labor or material; statement of claim; filing; time limit; duration.**

Every person, whether contractor or subcontractor or materialman, who wishes to avail himself of the provisions of section 52-116 shall file with the register of deeds of the county in which the building, erection, excavation or other similar improvement to be charged with the lien, is situated, a just and true statement or account of the demand due him after allowing all credits, setting forth the time when such material was furnished or labor performed, and when completed, containing a correct description of the property to be charged with the lien and verified by affidavit. Such verified statement or account must be filed by a principal contractor within ninety days, and by a subcontractor within sixty days from the date on which the last of the material shall have been furnished, or the last of the labor is performed; but a failure or omission to file the same within the periods last aforesaid shall not defeat the lien, except against purchasers or encumbrancers in good faith without notice, whose rights accrued after the sixty or ninety days, as the case may be, and before any claim for the lien was filed; *Provided*, when a lien is claimed upon a railway, the subcontractor shall have sixty days from the last day of the month in which such labor was done or material furnished within which to file his claim therefor. Such lien shall continue for the period of two years, and any person holding such lien may proceed to obtain a judgment for the amount of his account thereon by civil action. When any suit or suits shall be commenced on such accounts within the time of such lien, the lien shall continue until such suit or suits are finally determined and satisfied.

**Source:** Laws 1881, c. 60, § 3, p. 268; R.S.1913, § 3839; C.S.1922, § 3223; C.S.1929, § 52-117; R.S.1943, § 52-117; Laws 1961, c. 257, § 3, p. 753.

In case of lien of subcontractor, claim must have been filed within sixty days. *McPhee v. Kay*, 30 Neb. 62, 46 N.W. 223 (1890).

**52-118 Public building construction; bond required for benefit of laborers, mechanics, and suppliers; exception.**

(1) Except as provided in subsection (2) of this section, it shall be the duty of the State of Nebraska or any department or agency thereof, the county boards, the contracting board of all cities, villages, and school districts, all public boards empowered by law to enter into a contract for the erecting, furnishing, or repairing of any public building, bridge, highway, or other public structure or improvement, and any officer or officers so empowered by law to enter into such contract, to which the general provisions of the mechanics' lien laws do not apply and when the mechanics and laborers have no lien to secure the payment of their wages and suppliers who furnish material and who lease equipment for such work have no lien to secure payment therefor, to take from the person as defined in section 49-801 to whom the contract is awarded a payment bond or bonds in a sum not less than the contract price with a corporate surety company and agent selected by such person, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental which is actually used or rented in the erecting, furnishing, or repairing of the public structure or improvement or in performing the contract.

(2) The labor and material payment bond or bonds referred to in subsection (1) of this section shall not be required for (a) any project bid or proposed by the State of Nebraska or any department or agency thereof which has a total cost of fifteen thousand dollars or less or (b) any project bid or proposed by any county board, contracting board of any city, village, or school district, public board, or officer referred to in subsection (1) of this section which has a total cost of ten thousand dollars or less unless the state, department, agency, board, or officer includes a bond requirement in the specifications for the project.

(3) The bond or bonds referred to in subsection (1) of this section shall be to, filed with, approved by, and safely kept by the State of Nebraska, department or agency thereof, officer or officers, or board awarding the contract. No contract referred to in subsection (1) of this section shall be entered into by the State of Nebraska, department or agency thereof, officer or officers, or board referred to in subsection (1) of this section until the bond or bonds referred to in subsection (1) of this section has been so made, filed, and approved.

(4) The bond or bonds referred to in subsection (1) of this section may be taken from the person to whom the contract is awarded by the owner and owner's representative jointly as determined by the owner. The corporate surety company referred to in subsection (1) of this section shall have a rating acceptable to the owner as the owner may require.

**Source:** Laws 1889, c. 28, § 1, p. 375; Laws 1913, c. 170, § 1, p. 522; R.S.1913, § 3840; C.S.1922, § 3224; C.S.1929, § 52-118; R.S. 1943, § 52-118; Laws 1953, c. 179, § 4, p. 567; Laws 1955, c. 199, § 1, p. 565; Laws 1961, c. 257, § 4, p. 754; Laws 1990, LB 257, § 1; Laws 2001, LB 420, § 32; Laws 2007, LB208, § 1.

- 1. Provisions of contract
- 2. Actions
- 3. Coverage of materials
- 4. Miscellaneous

**1. Provisions of contract**

Covenants and conditions of bond of contractor erecting school building will not be read into or construed as part of contract, or to alter it. American Surety Co. v. School Dist. No. 64, 117 Neb. 6, 219 N.W. 583 (1928).

Subcontractor furnishing millwork, etc., for schoolhouse is not bound by provision of contract between owner and principal

contractor that architect shall arbitrate all matters in dispute. Central Nebraska Millwork Co. v. Olson & Johnson Co., 111 Neb. 396, 196 N.W. 707 (1923).

**2. Actions**

One furnishing labor or supplies to highway contractor may sue in own name on surety bond as contract made with third

person for his benefit. *West v. Detroit Fidelity & Surety Co.*, 118 Neb. 544, 225 N.W. 673 (1929).

Public officers are not liable individually to one furnishing material or labor on public work, for failure to require bond in accordance with this section. *Paxton & Vierling Iron Works v. Village of Naponee*, 107 Neb. 784, 186 N.W. 976 (1922); *Sailling v. Morrell*, 97 Neb. 454, 150 N.W. 195 (1914).

Action will lie by unpaid materialman against sureties on bond of contractor for public building, although bond was not conditioned as required by this section, and, since statute requires such bond to provide for payment of material and labor, it will be so construed. *Nye-Schneider-Fowler Co. v. Roeser*, 103 Neb. 614, 173 N.W. 605 (1919).

One furnishing labor or material in construction of building may maintain action against contractor and sureties, and no act or neglect of contractor will defeat right. *Forburger Stone Co. v. Lion Bonding & Surety Co.*, 103 Neb. 202, 170 N.W. 897 (1919).

### 3. Coverage of materials

A contractor's bond is security for only material and rental equipment actually used in the performance of a contract described in this section. *Quality Equip. Co. v. Transamerica Ins. Co.*, 243 Neb. 786, 502 N.W.2d 488 (1993).

Purpose of this section is to obligate a surety company to pay for material which is actually used in performing public contract. *Peter Kiewit Sons' Co. v. National Casualty Co.*, 142 Neb. 835, 8 N.W.2d 192 (1943).

Coal used in performance of contract is material within obligation of surety on contractor's bond. *Iddings Co. v. Lincoln Constr. Co.*, 104 Neb. 124, 175 N.W. 643 (1919).

Bond secures payment for material actually used in performing contract. *Higgins & Coufal v. Massachusetts Bonding & Ins. Co.*, 112 F.Supp. 390 (D. Neb. 1953).

### 4. Miscellaneous

Purpose of this section is to provide protection to materialmen and laborers in the construction or repair of public build-

ings where the provisions of the general mechanic's lien laws do not apply. *Dukane Corp. v. Sides Constr. Co.*, 208 Neb. 227, 302 N.W.2d 721 (1981).

In suit against principal and bonding company as surety where issue of liability of surety was not presented to jury and judgment was against principal, only attorney's fee was not recoverable. *Ritzau v. Wiebe Constr. Co.*, 191 Neb. 92, 214 N.W.2d 244 (1974).

Subcontractor has no cause of action against department or agency in absence of express or implied contract and must look to contractor or his bond for payment. *Boyd v. Benkelman Public Housing Authority*, 188 Neb. 69, 195 N.W.2d 230 (1972).

Materialman or supplier can be a subcontractor; factors in determination discussed in holding one who sold and delivered gravel to road construction site to be a subcontractor; purpose and construction of section discussed. *McElhose v. Universal Surety Co.*, 182 Neb. 847, 158 N.W.2d 228 (1968).

Duty is imposed upon state and public boards to take bond for benefit of materialmen before entering into construction contract. *Westinghouse Electric Supply Co. v. Brookley*, 176 Neb. 807, 127 N.W.2d 465 (1964).

Materialmen do not have a lien upon debt owing by county to contractor. *Fremont Foundry & Machine Co. v. Saunders County*, 136 Neb. 101, 285 N.W. 115 (1939).

Contractor for public building purchasing material from dealer and paying for same is not liable on his bond to manufacturer or jobber from whom dealer purchased. *Concrete Steel Co. v. Rowles Co.*, 101 Neb. 400, 163 N.W. 323 (1917).

Surety who pays claims for labor or material on public building, after contractor's default, has interest in balance due contractor superior to one who advanced money and took assignment from latter. *First Nat. Bank of Auburn v. Pesha*, 99 Neb. 785, 157 N.W. 924 (1916).

Labor necessarily employed in performing contract for public building is protected by this section. *Nye-Schneider-Fowler Co. v. Bridges, Hoye & Co.*, 98 Neb. 27, 151 N.W. 942 (1915).

## 52-118.01 Public building construction; bond; claim for unpaid labor or material; action; procedure.

Every person who has furnished labor or material in the prosecution of the work provided for in the contract set out in subsection (1) of section 52-118, in respect of which a bond is or bonds are furnished under such section, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or her or material was furnished or supplied by him or her for which such claim is made shall have the right to sue on such bond or bonds for the amount or the balance thereof unpaid at the time of the institution of such suit and to prosecute the action to final execution and judgment for the sum or sums justly due him or her. Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing such bond or bonds shall have a right of action upon the bond or bonds upon giving written notice to the contractor within four months from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he or she maintains an office or conducts his or her business or his or her residence or in any other manner in which a notice may be served.

**Source:** Laws 1955, c. 199, § 2, p. 566; Laws 1990, LB 257, § 2; Laws 2001, LB 420, § 33.

Under the facts of the case, evidence of a contractual relationship existed to create an exemption from the notice requirements of this section. *Gerhold Concrete Co. v. St. Paul Fire & Marine Ins.*, 269 Neb. 692, 695 N.W.2d 665 (2005).

Proviso in this section limits the right to bring suit on bond required by section 52-118 to those materialmen, laborers, and subcontractors who deal directly with the prime contractor and those materialmen, laborers, and subcontractors who, lacking

express or implied contractual relationship with the prime contractor, have direct contractual relationship with a subcontractor and who give the statutory notice of their claims to the prime contractor. *McElhose v. Universal Surety Co.*, 182 Neb. 847, 158 N.W.2d 228 (1968).

Right of action on construction bond in favor of materialmen is provided. *Westinghouse Electric Supply Co. v. Brookley*, 176 Neb. 807, 127 N.W.2d 465 (1964).

**52-118.02 Public building construction; bond; action; limitation; person to bring suit; rental equipment, defined.**

Every suit instituted under section 52-118.01 shall be brought by any person entitled to the benefit of this action, but no such suit shall be commenced after the expiration of one year after the date of final settlement of the principal contract. The action shall be in the name of the party claiming the benefits of this action.

For the purposes of subsection (1) of section 52-118, equipment which is rented for a project covered by such subsection under a lease with an option to purchase shall be considered to be equipment rented under a straight lease agreement not to exceed the reasonable rental value of the equipment during the period such equipment is actually used on such project and unless and until the option to purchase is validly exercised under the contract.

**Source:** Laws 1955, c. 199, § 3, p. 567; Laws 1969, c. 435, § 1, p. 1462; Laws 1990, LB 257, § 3.

Final settlement under public building contract is a determination made and recorded in accordance with established administrative practice by the officer or department in charge that the contract has been completed and final payment is due. *Zimmerman's Electric, Inc. v. Fidelity & Deposit Co.*, 194 Neb. 248, 231 N.W.2d 342 (1975).

Final settlement was made with respect to amount due following completion of the project which was accepted by the owner

and action was barred one year thereafter. *Boyd v. Benkelman Public Housing Authority*, 188 Neb. 69, 195 N.W.2d 230 (1972).

Action on bond must be brought within one year after date of final settlement on principal contract. *Westinghouse Electric Supply Co. v. Brookley*, 176 Neb. 807, 127 N.W.2d 465 (1964).

**52-119 Repealed. Laws 1969, c. 793, § 1.**

**52-120 Repealed. Laws 1969, c. 432, § 3.**

**52-121 Repealed. Laws 1981, LB 512, § 37.**

**52-122 Repealed. Laws 1981, LB 512, § 37.**

**52-123 Failure to apply payments received on lawful claims; unlawful; failure to discharge lien; prima facie evidence of intent to deprive or defraud.**

It shall be unlawful for any person, firm, or corporation who has taken a contract for the erection, improvement, repair, or removal of any house, mill, manufactory, or building of any kind for another, and has received payment in whole or in part upon such contract, to fail to apply the money so received, or so much thereof as may be necessary for that purpose, in payment of the lawful claims of such laborers or materialmen as could otherwise have a right to file a laborers' or materialmen's lien against such house or other structure, with the intent thereby to deprive or defraud the owner or person so paying the person, firm or corporation receiving payment, of his funds without discharging the liens, unless such person, firm, or corporation, taking such contract, shall have received and delivered to the owner of the property the written waiver of lien from all persons who otherwise would have a right to file a lien thereon. In any prosecution under sections 52-123 and 52-124 of the person, firm, or corpora-

tion so receiving payment, when it shall be shown in evidence that any lien for labor or materials existed in favor of any laborer or materialman and that such lien has been filed within the time and at the place as provided by law for the filing of such liens and that such person, firm, or corporation charged has received payment without discharging the lien to the extent of the funds received by him, the fact of acceptance of such payment without having discharged the lien within ten days after receipt of such payment shall be prima facie evidence of intent to deprive or defraud on the part of the person, firm, or corporation so receiving payment.

**Source:** Laws 1969, c. 432, § 1, p. 1455.

In this section the words "with the intent thereby to deprive or defraud," should be read as though it read "with the fraudulent intent thereby to deprive". State v. McConnell, 201 Neb. 84, 266 N.W.2d 219 (1978).

a trust fund. State v. McConnell, 201 Neb. 84, 266 N.W.2d 219 (1978).

No express trust arises by operation of this statute and, therefore, 11 U.S.C. 35(a)(14), which prescribes release of debt created by fraud of bankrupt when acting in a fiduciary capacity, does not apply to bankrupt contractor who failed to meet requirements of section 52-123. Matter of Dloogoff, 600 F.2d 166 (8th Cir. 1979).

This section does not make the general contractor an agent or trustee for laborers or materialmen in receiving payments from the property owners, nor does it make the amounts so received

**52-124 Failure to apply payments for lawful claims; failure to discharge lien; penalty.**

Any person, firm, or corporation, the members of any firm, or the officers of any corporation, violating the provisions of section 52-123 shall be guilty of a Class II misdemeanor.

**Source:** Laws 1969, c. 432, § 2, p. 1456; Laws 1977, LB 40, § 308.

(b) NEBRASKA CONSTRUCTION LIEN ACT

**52-125 Act, how cited.**

Sections 52-125 to 52-159 shall be known and may be cited as the Nebraska Construction Lien Act.

**Source:** Laws 1981, LB 512, § 1.

Trustees of a health, welfare, and pension fund may assert a construction lien on behalf of union employees against the

property owner. Omaha Constr. Indus. Pension Plan v. Children's Hosp., 11 Neb. App. 35, 642 N.W.2d 849 (2002).

**52-126 Sections, purpose.**

Sections 52-125 to 52-159 creates, and provides for the attachment and enforceability of, a lien against real estate in favor of a person furnishing services or materials under a real estate improvement contract. Except as provided in sections 52-125 to 52-159, no nonconsensual lien arises against real estate by reason of improvements made thereon.

**Source:** Laws 1981, LB 512, § 2.

The Nebraska Construction Lien Act does not take away a construction lienholder's common-law right to sue for breach of

contract. Tilt-Up Concrete, Inc. v. Star City/Federal, Inc., 261 Neb. 64, 621 N.W.2d 502 (2001).

**52-127 Terms, defined.**

As used in sections 52-125 to 52-159, unless the context otherwise requires:

- (1) Claimant shall mean a person having a right to a lien under sections 52-125 to 52-159 upon real estate and includes his or her successor in interest;
- (2) Contract price shall mean the amount agreed upon by the contracting parties for performing services and furnishing materials covered by the con-

tract, increased or diminished by the price of change orders or extras, amounts attributable to altered specifications, or breach of contract, including but not limited to defects in workmanship or materials. Liquidation of damages between the owner and a prime contractor does not diminish the contract price as to other claimants. If no price is agreed upon by the contracting parties, contract price shall mean the reasonable value of all services or materials covered by the contract;

(3) Contracting owner shall mean a person who owns real estate and who, personally or through an agent, enters into a contract, express or implied, for the improvement of the real estate;

(4) Construction lien or lien shall mean a lien arising under sections 52-125 to 52-159, and shall not include a security interest;

(5) Notice of commencement shall mean the notice specified in section 52-145, whether recorded by an owner or by a claimant;

(6) Notice of termination shall mean a notice terminating a notice of commencement;

(7) Prime contract shall mean any real estate improvement contract made between the contracting owner and a prime contractor;

(8) Prime contractor shall mean any person who makes a real estate improvement contract with a contracting owner;

(9) Services shall not include financing or activities in connection with financing;

(10) Construction security interest shall mean a security interest created by a security agreement that contains a legend on the first page clearly stating that it is a Construction Security Agreement and that secures an obligation which the debtor incurred for the purpose of making an improvement of the real estate in which the security interest is given if the instrument recorded to perfect the interest states that it is a construction security interest;

(11) Good faith shall mean honesty in fact and the observance of reasonable standards of fair dealing in the conduct or transaction involved;

(12) Judicial proceeding shall mean action at law or suit in equity, and any other proceeding in which rights are judicially determined;

(13) To record shall mean to present to the register of deeds for the county where the land is situated a document which he or she accepts and either enters in a daily log or notes thereon an identifying number, regardless of whether under applicable law the register of deeds is directed to file the document or otherwise to maintain a record of it. Recorded and recording have corresponding meanings;

(14) Record location shall mean the location, whether book and page, document number, electronic retrieval code, or other specific place, of a document in the public records accessible in the same recording office where the document containing the reference to the location is found; and

(15) Security interest shall mean a consensual interest in real estate which secures payment or performance of an obligation.

**Source:** Laws 1981, LB 512, § 3.

A potential purchaser's interest in a property does not satisfy the requirements of "contracting owner" under subsection (3) of this section, and, therefore, potential purchasers cannot limit their liability under subsection (5) of section 52-136 for construction liens properly recorded before the filing of their own

title document. *Lincoln Lumber Co. v. Lancaster*, 260 Neb. 585, 618 N.W.2d 676 (2000).

Vendor of real estate held not to be "contracting owner," where the executory contract did not require construction of

improvements ordered by purchaser necessary to subject the vendor's interest in the property to a construction lien filed by supplier. *Tuttle & Assoc. v. Gendler*, 237 Neb. 825, 467 N.W.2d 881 (1991).

### **52-128 Contracting owner; presumption of agency.**

For the purpose of determining whether an owner is a contracting owner, agency is presumed, in the absence of clear and convincing evidence to the contrary, between employer and employee, between spouses, between joint tenants, and among tenants in common.

**Source:** Laws 1981, LB 512, § 4.

### **52-129 Protected party, residential real estate, defined.**

(1) Protected party shall mean:

(a) An individual who contracts to give a real estate security interest in, or to buy or to have improved, residential real estate all or a part of which he or she occupies or intends to occupy as a residence;

(b) A person obligated primarily or secondarily on a contract to buy or have improved residential real estate or on an obligation secured by residential real estate if, at the time he or she becomes obligated, he or she is related to an individual who occupies or intends to occupy all or a part of the real estate as a residence; or

(c) With respect to a security agreement, a person who acquires residential real estate and assumes or takes subject to the obligation of a prior protected party under the real estate security agreement.

(2) Residential real estate shall mean, in relation to a protected party, real estate, improved or to be improved, containing not more than four dwelling units and no nonresidential uses for which the protected party is a lessor. A condominium unit that is otherwise residential real estate remains so even though the condominium development contains more than four dwelling units or units used for nonresidential purposes.

**Source:** Laws 1981, LB 512, § 5.

One must intend to occupy the real estate as a residence to be considered a protected party. *Midlands Rental & Mach., Inc. v. Christensen Ltd.*, 252 Neb. 806, 566 N.W.2d 115 (1997).

### **52-130 Real estate improvement contract, defined.**

(1) Except as provided in subsection (2) of this section, real estate improvement contract shall mean an agreement to perform services, including labor, or to furnish materials for the purpose of producing a change in the physical condition of land or of a structure including:

(a) Alteration of the surface by excavation, fill, change in grade, or change in a shore, bank, or flood plain of a stream, swamp, or body of water;

(b) Construction or installation on, above, or below the surface of land;

(c) Demolition, repair, remodeling, or removal of a structure previously constructed or installed;

(d) Seeding, sodding, or other landscaping operation;

(e) Surface or subsurface testing, boring, or analyzing; and

(f) Preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of land or structures whether or not used incident to producing a change in physical condition of the real estate.

(2) A contract for the mining or removal of timber, minerals, gravel, soil, sod, or things growing on land, or other similar contracts in which the activity is primarily for the purpose of realizing upon the disposal or removal of the objects removed, or a contract for the planting, cultivation, or harvesting of crops or for the preparation of the soil for planting of crops, is not a real estate improvement contract.

**Source:** Laws 1981, LB 512, § 6.

General cleanup activities in preparation for sale of property are inconsistent with the property changes contemplated and required by this section for a valid construction lien. *Taylor v. Taylor*, 277 Neb. 617, 764 N.W.2d 101 (2009).

**52-131 Construction lien; existence; amount; priority; enforcement.**

(1) A person who furnishes services or materials pursuant to a real estate improvement contract has a construction lien, only to the extent provided in the Nebraska Construction Lien Act, to secure the payment of his or her contract price.

(2) A lien arises under the act only if the claimant records a lien within the time specified by section 52-137.

(3) Real estate to which a construction lien attaches is specified by section 52-133, and limitations on the existence of a lien for materials are specified by section 52-134.

(4) The amount of a claimant’s lien is specified by section 52-136. The content of the notice of the right to assert a lien to be given to the owner under section 52-136 is specified by section 52-135.

(5) The priority of a claimant’s lien as against other construction-lien claimants is specified in section 52-138, and priority as against claimants other than construction-lien claimants is specified in section 52-139.

(6) Foreclosure of a lien under the act is governed by section 52-155, and the time within which an action to foreclose must be brought by section 52-140.

**Source:** Laws 1981, LB 512, § 7; Laws 2003, LB 655, § 5.

A construction lien is not valid absent a contract between the parties. *Mid-America Maintenance v. Bill Morris Ford*, 232 Neb. 920, 442 N.W.2d 869 (1989).

property owner. *Omaha Constr. Indus. Pension Plan v. Children’s Hosp.*, 11 Neb. App. 35, 642 N.W.2d 849 (2002).

The Nebraska Construction Lien Act does not prevent employees of a subcontractor from filing a construction lien against the

parties. *Sorenson v. Dager*, 8 Neb. App. 729, 601 N.W.2d 564 (1999).

**52-132 Public property; exempt from lien.**

Notwithstanding the provisions on existence of a construction lien of section 52-131, no lien attaches under sections 52-125 to 52-159 to real estate owned by the state, a county, a municipality, or other governmental agency or political subdivision.

**Source:** Laws 1981, LB 512, § 8.

**52-133 Real estate subject to construction lien.**

(1) If at the time a construction lien is recorded there is a recorded notice of commencement covering the improvement pursuant to which the lien arises,

the lien is on the contracting owner's real estate described in the notice of commencement.

(2) Except as provided in subsection (3) of this section, if at the time a construction lien is recorded there is no recorded notice of commencement covering the improvement pursuant to which the lien arises, the lien is on the contracting owner's real estate being improved or directly benefited.

(3) If a claimant who recorded a lien while there was no recorded notice of commencement covering the real estate later records a notice of commencement, his or her lien is on the contracting owner's real estate described in the notice of commencement.

(4) If as a part of an improvement on his or her real estate or for the purpose of directly benefiting his or her real estate an owner contracts for improvements on real estate not owned by him or her, persons who furnish services or materials in connection with that improvement have a lien against the contracting owner's real estate being improved or directly benefited to the same extent as if the improvement had been on the contracting owner's real estate.

(5) If a recorded notice of commencement covers more than one lot in a platted subdivision of record, a claimant may apportion his or her lien to the various lots covered by the notice of commencement in any proportion he or she chooses and states in his or her recorded lien, including assigning all his or her lien to a particular lot.

(6) If a recorded lien does not contain an apportionment as provided in subsection (5) of this section, the owner may make demand on the claimant to make an apportionment and, if the claimant does not, within thirty days after the demand, make an apportionment by recording an amendment of the recorded lien, the owner may make a good faith apportionment by recording an owner's statement of apportionment. Notwithstanding the fact that the owner did not in fact give the notice to apportion referred to in this subsection or for any other reason was not entitled to record a statement of apportionment, or did not make a good faith apportionment, the apportionment is conclusive in favor of persons acquiring interests in the real estate after the statement of apportionment is recorded.

**Source:** Laws 1981, LB 512, § 9.

**52-134 Lien for materials; conditions; limitations.**

(1) A lien for furnishing materials arises only if:

(a) They are supplied with the intent, shown by the contract of sale, the delivery order, delivery to the site by the claimant or at his or her direction, or by other evidence, that they be used in the course of construction of, or incorporated into, the improvement in connection with which the lien arises; and

(b) They are either:

(i) Incorporated in the improvement or consumed as normal wastage in construction operations;

(ii) Specially fabricated for incorporation in the improvements and not readily resalable in the ordinary course of the fabricator's business even though not actually incorporated in the improvement;

(iii) Used for the construction or for the operation of machinery or equipment used in the course of construction and not remaining in the improvement, subject to diminution by the salvage value of those materials; or

(iv) Tools, appliances, or machinery used on the particular improvement, but a lien for supplying tools, appliances, or machinery used on the improvement is limited as provided by subsection (3) of this section.

(2) The delivery of materials to the site of the improvement, whether or not by the claimant, creates a presumption that they were used in the course of construction or were incorporated into the improvement.

(3) A lien arising for the supplying of tools, appliances, or machinery under subdivision (1)(b)(iv) of this section is limited as follows:

(a) If they are rented, the lien is for the reasonable rental value for the period of actual use and any reasonable periods of nonuse taken into account in the rental contract; and

(b) If they are purchased, the lien is for the price but arises only if they were purchased for use in the course of the particular improvement and have no substantial value to the purchaser after the completion of the improvement on which they were used.

**Source:** Laws 1981, LB 512, § 10.

Subsection (3)(a) of this section requires that the reasonable rental value of equipment be determined in setting the amount of a lien, regardless of the monetary amount by which the value of the real estate is actually increased by the use of the rented equipment. *Midlands Rental & Mach., Inc. v. Christensen Ltd.*, 252 Neb. 806, 566 N.W.2d 115 (1997).

Testimony of a witness with personal knowledge is sufficient evidence to demonstrate that items listed on a construction lien were actually used. *Mid-America Maintenance v. Bill Morris Ford*, 232 Neb. 920, 442 N.W.2d 869 (1989).

**52-135 Notice of right to assert lien; contents; optional notice to contracting owner; notice, when effective; applicability of section.**

(1) At any time after a claimant has entered into the contract under which he or she may claim a lien under the Nebraska Construction Lien Act, he or she may give notice of the right to assert a lien to the contracting owner. The notice of the right to assert a lien must be in writing, state that it is a notice of a right to assert a lien against real estate for services or materials furnished in connection with improvement of the real estate, and contain:

(a) The name of the claimant and the address to which the owner or others may send communications to the claimant;

(b) The name and address of the person with whom the claimant contracted;

(c) The name of the owner against whom a lien is or may be claimed;

(d) A general description of the services or materials provided or to be provided;

(e) A description sufficient to identify the real estate against which the lien is or may be claimed;

(f) A statement that the claimant is entitled to record a lien;

(g) The amount unpaid to the claimant for services or materials, whether or not due, or if no amount is fixed by the contract, a good faith estimate of the amount designated as an estimate; and

(h) The following statement in type no smaller than that used in providing the information required by subdivisions (1)(a) through (1)(g) of this subsection:

Warning. If you did not contract with the person giving this notice, any future payments you make in connection with this project may subject you to double liability.

(2) A claimant may notify the contracting owner, either in the notice of the right to assert a lien or separately, that the claimant must be notified of the recording of any termination of the notice of commencement. The notice to the owner must be in writing and, if not part of the notice of the right to assert a lien, shall contain the information specified in subdivisions (1)(a) through (1)(e) of this section. In addition, the notice shall state that a written notice of the recording of any notice of termination must be given to the claimant at least three weeks before the effective date of the notice of termination.

(3) The claimant shall send a copy of a recorded lien to the contracting owner within ten days after recording, and the recording shall be within the time specified for the filing of liens under section 52-137.

(4) If the contracting owner has held out another person as contracting owner, either by naming that person in the notice of commencement or otherwise, a notice directed to and received by that person is effective against the contracting owner.

(5) If the contracting owner has held out a fictitious or nonexistent person as contracting owner either by naming that person in the notice of commencement or otherwise, a notice to that fictitious or nonexistent person delivered at an address held out by the contracting owner as the address of the fictitious or nonexistent person is effective against the contracting owner.

(6) This section shall apply to a lien claimant only when the contracting owner is a protected party.

**Source:** Laws 1981, LB 512, § 11; Laws 2003, LB 655, § 6.

This section applies only to protected parties, and although a party that may eventually claim a lien may, if it so desires, give notice of lien liability to the contracting owner, such notice is not required. Midlands Rental & Mach., Inc. v. Christensen Ltd., 252 Neb. 806, 566 N.W.2d 115 (1997).

### **52-136 Amount of lien.**

(1) Subject to subsection (3) of this section:

(a) The lien of a prime contractor is for the unpaid part of his or her contract price; and

(b) Except as against a protected party contracting owner, the lien of a claimant other than a prime contractor is for the amount unpaid under the claimant's contract.

(2) Except as modified by subsections (4) and (5) of this section, as against a protected party contracting owner, the lien of a claimant other than a prime contractor is for the lesser of:

(a) The amount unpaid under the claimant's contract; or

(b) The amount unpaid under the prime contract through which the claimant claims at the time the contracting owner receives the claimant's notice of the right to assert a lien.

(3) The lien of a claimant is reduced by the sum of the liens of claimants who claim through him or her.

(4) If a protected party contracting owner's lien liability under a particular prime contract as provided in subsection (5) of this section is less than the sum of claims of all claimants claiming through that particular prime contractor:

(a) Lien claimants whose liens attach at different times have liens in the order of attachment until the owner's lien liability is exhausted; and

(b) Among claimants whose liens attach, or may attach, at the same time, each claimant's lien is for his or her pro rata portion of the amount of the contracting owner's lien liability to claimants whose liens attach at that time.

(5) A protected party contracting owner's lien liability under a particular prime contract is the prime contract price less payments properly made thereon. A payment is properly made on a prime contract to the extent that the payment:

(a) Is made in good faith before the receipt by the contracting owner of a copy of a recorded lien or of a notice of the right to assert a lien; or

(b) If made after receipt by the contracting owner of a copy of a recorded lien or of a notice of the right to assert a lien, is made in good faith and leaves unpaid a part of the prime contract price sufficient to satisfy the unpaid claims of all claimants who have provided a copy of a recorded lien or who have given notice of the right to assert a lien and whose claims are not being satisfied by the payment.

**Source:** Laws 1981, LB 512, § 12; Laws 2003, LB 655, § 7.

A potential purchaser's interest in a property does not satisfy the requirements of "contracting owner" under subsection (3) of section 52-127, and, therefore, potential purchasers cannot limit their liability under subsection (5) of this section for construction liens properly recorded before the filing of their own title document. *Lincoln Lumber Co. v. Lancaster*, 260 Neb. 585, 618 N.W.2d 676 (2000).

The provisions of this section make it clear that a prime contractor is not entitled to payment from the owner until the

liens of the subcontractors are satisfied. *Action Heating & Air Cond. v. Petersen*, 229 Neb. 796, 429 N.W.2d 1 (1988).

Under this section, regardless of whether a claimant other than a prime contractor has substantially performed his or her contract, the claimant is entitled to a lien for the reasonable value of the labor he or she has performed and the material he or she has furnished. *Sorenson v. Dager*, 8 Neb. App. 729, 601 N.W.2d 564 (1999).

**52-137 Attachment and enforcement of lien; recording required; time limitation; attachment, when.**

(1) A claimant's lien does not attach and may not be enforced unless, after entering into the contract under which the lien arises and not later than one hundred twenty days after his or her final furnishing of services or materials, he or she has recorded a lien.

(2) If a lien is recorded while a notice of commencement is effective as to the improvement in connection with which the lien arises, the lien attaches as of the time the notice is recorded, even though visible commencement occurred before the notice is recorded. A notice of commencement is not effective until recording and, after recording, is effective until its lapse. A notice of commencement lapses at the earlier of its expiration as provided in subsection (2) of section 52-145 or the date it is terminated by a notice of termination as provided in section 52-146.

(3) If a lien is recorded while there is no recorded notice of commencement covering the improvement in connection with which the lien arises, the lien attaches at the earlier of visible commencement of the improvement or the recording of the lien, but if visible commencement has occurred before or within thirty days after the lapse of the last notice of commencement covering the improvement:

(a) The lien attaches at the time the lien is recorded if the lien is recorded within thirty days after lapse of the last effective notice of commencement; or

(b) The lien relates back to and attaches thirty-one days after the termination date if the lien is recorded more than thirty days after lapse of the last effective notice of commencement.

(4) If new construction is the principal improvement involved and the materials, excavation, preparation of an existing structure, or other preparation are readily visible on a reasonable inspection of the real estate, visible commencement occurs when:

(a) Materials are delivered to the real estate to which the lien attaches preparatory to construction;

(b) Excavation on the real estate to which the lien attaches is begun; or

(c) Preparation of an existing structure to receive the new construction, or other preparation of the real estate to which the lien attaches, is begun.

(5) In all cases not covered by subsection (4) of this section the time visible commencement occurs is to be determined by the circumstances of the case.

**Source:** Laws 1981, LB 512, § 13.

The prime purpose of a notice of commencement is to eliminate as a controvertible question of fact the time of visible commencement of operations by providing a method to deter-

mine this time with certainty. *Borrenpohl v. DaBeers Properties*, 276 Neb. 426, 755 N.W.2d 39 (2008).

#### **52-138 Priority among lien claimants.**

(1) All liens attaching at the same time have equal priority and share the amount received upon foreclosure of the liens and available for distribution to construction lien claimants in the same ratio as the ratio of the particular lien bears to the total of all liens attaching at the same time.

(2) Except as provided by subsection (3) of this section, liens attaching at different times have priority in the order of attachment.

(3) A claimant who records a notice of commencement after he or she has recorded a lien has only equal priority with claimants who record a lien while the notice of commencement is effective. Any priority which the claimant gained over third parties by recording his or her notice of lien is preserved for the benefit of all claimants having equal priority under this subsection.

**Source:** Laws 1981, LB 512, § 14.

#### **52-139 Priority of construction liens as against claims other than construction lien claims.**

(1) Except as provided in this section, a construction lien has priority over adverse claims against the real estate as if the construction-lien claimant were a purchaser for value without knowledge who had recorded at the time his or her lien attached.

(2) Except as provided in subsection (3) of this section, a construction lien has priority over subsequent advances made under a prior recorded security interest if the subsequent advances are made with knowledge that the lien has attached.

(3) Notwithstanding knowledge that the construction lien has attached, or the advance exceeds the maximum amount stated in the recorded security agreement and whether or not the advance is made pursuant to a commitment, a subsequent advance made under a security agreement recorded before the construction lien attached has priority over the lien if:

(a) The subsequent advance is made under a construction security agreement and is made in payment of the price of the agreed improvements;

(b) The subsequent advance is made or incurred for the reasonable protection of the security interest in the real estate, such as payment for real property taxes, hazard insurance premiums, or maintenance charges imposed under a condominium declaration or other covenant; or

(c) The subsequent advance was applied to the payment of any lien or encumbrance which was prior to the construction lien.

(4) To the extent that a subsequent security interest is given to secure funds used to pay a debt secured by a security interest having priority over a construction lien under this section, the subsequent security interest is also prior to the construction lien.

(5) Even though notice of commencement has been recorded, a buyer who is a protected party takes free of all construction liens that are not of record at the time his or her title document is recorded.

**Source:** Laws 1981, LB 512, § 15.

**52-140 Duration of lien; demand to institute judicial proceedings; continuation of lien during pendency of proceeding.**

(1) Except as provided in subsections (2) and (3) of this section, a lien that has become enforceable as provided in sections 52-125 to 52-159 continues enforceable for two years after recording of the lien.

(2) Except as provided in subsection (3) of this section, if an owner, holder of a security interest, or other person having an interest in the real estate gives the claimant written demand to institute a judicial proceeding within thirty days, the lien lapses unless within thirty days after receipt of the written demand, the claimant institutes judicial proceedings or records an affidavit that the total contract price is not yet due under the contract for which he or she recorded the lien.

(3) If a judicial proceeding to enforce a lien is instituted while a lien is effective under subsection (1) or (2) of this section, the lien continues during the pendency of the proceeding.

**Source:** Laws 1981, LB 512, § 16.

**52-141 Surety bond; notice recorded; no lien attaches to real estate; bond, requirements; copy to claimant; action against surety.**

(1) A lien does not attach to the real estate on behalf of any claimant claiming through a particular prime contractor if the owner or the prime contractor has procured from a surety company authorized to do business in this state a bond meeting the requirements of this section and has recorded a notice of surety bond.

(2) The bond must obligate the surety company, to the extent of the penal sum of the bond, to pay all sums due to construction lien claimants other than the prime contractor for services and materials supplied pursuant to the contract under which the lien would otherwise arise.

(3) The penal sum of the bond shall be not less than:

(a) Fifty percent of the contract price, if the prime contract price is not more than one million dollars;

(b) Forty percent of the contract price, if the prime contract price is more than one million dollars and not more than five million dollars;

(c) Two million, five hundred thousand dollars, if the prime contract price is more than five million dollars.

(4) The person procuring the bond shall furnish on request a true copy at cost of reproduction to any claimant and is liable to the requesting claimant for any damages caused by failure, without justification, to furnish a copy.

(5) A claimant may not recover under the bond provided for in this section unless he or she:

(a) Institutes suit against the surety within one year after the completion of his or her performance or within any longer period of time permitted by the terms of the bond; and

(b) If he or she is a claimant not having a direct contract relationship with the prime contractor, within ninety days after completion of his or her performance gives the prime contractor written notice of the amount due.

(6) A claimant having a claim under the bond may proceed directly against the surety. A judicial proceeding on the bond may be maintained separately from and without bringing a judicial proceeding against the prime contractor and without complying with the notice and recording procedures of sections 52-125 to 52-159. In any judicial proceeding brought on the bond the court shall award to the prevailing party reasonable attorney's fees and court costs.

(7) The obligation of a surety under this section is not affected by any change or modification of the contract between the prime contractor and the contracting owner, but the total liability of the surety may not exceed the penal sum of the bond.

**Source:** Laws 1981, LB 512, § 17.

#### **52-142 Substitution of collateral; release of lien; procedure.**

(1) Any person having an interest in real estate may release the real estate from liens which have attached to it by:

(a) Depositing in the office of the clerk of the district court of the county in which the lien is recorded a sum of money in cash, certified check, or other bank obligation, or a surety bond issued by a surety company authorized to do business in this state, in an amount sufficient to pay the total of the amounts claimed in the liens being released plus fifteen percent of such total; and

(b) Recording, as provided in section 52-151, a certificate of the clerk of the district court showing that the deposit has been made.

(2) The clerk of the district court has an obligation to accept the deposit and issue the certificate.

(3) Upon release of the real estate from a lien under this section, the claimant's rights are transferred from the real estate to the deposit or surety bond and the claimant may establish his or her claim under sections 52-125 to 52-159, and upon determination of the claim the court shall order the clerk of the district court to pay the sums due or render judgment against the surety company on the bond, as the case may be.

**Source:** Laws 1981, LB 512, § 18.

**52-143 Obligation of claimant to furnish information to other lien claimant; damages; applicability of section.**

(1) A prime contractor, on request, is obligated to furnish the following information within a reasonable time, not exceeding ten days, to any person entitled to claim a lien through him or her:

- (a) A description of the real estate being improved sufficient to identify it;
- (b) The name and address of the contracting owner with whom the prime contractor contracted; and
- (c) Whether there is a surety bond and, if so, the name of the surety.

(2) At the request of any person who may claim a lien through him or her, any claimant other than a prime contractor must furnish, within a reasonable time not exceeding five days, the name of the person who contracted for the furnishing by the claimant of the materials or services in connection with which the lien claim may arise.

(3) A person who fails to furnish information as required by this section is liable to the requesting party for actual damages or two hundred dollars as liquidated damages.

(4) This section shall apply only when the real estate improvement contract is with a protected party.

**Source:** Laws 1981, LB 512, § 19.

**52-144 Waiver of construction lien rights; what constitutes; validity; effect.**

(1) A written waiver of construction lien rights signed by a claimant requires no consideration and is valid and binding, whether signed before or after the materials or services were contracted for or furnished. Ambiguities in a written waiver are construed against the claimant.

(2) A written waiver waives all construction lien rights of the claimant as to the improvement to which the waiver relates unless the waiver is specifically limited to a particular lien right or a particular portion of the services or materials furnished.

(3) A waiver of lien rights does not affect any contract rights of the claimant otherwise existing.

(4) Acceptance of a promissory note or other evidence of debt is not a waiver of lien rights unless the note or other instrument expressly so declares.

**Source:** Laws 1981, LB 512, § 20.

**52-145 Notice of commencement; by whom filed; contents; recording; duration; extension.**

(1) A notice of commencement must be signed by the contracting owner, be denominated notice of commencement, and state:

- (a) The real estate being or intended to be improved or directly benefited, with a description thereof sufficient for identification;
- (b) The name and address of the contracting owner, his or her interest in the real estate, and the name and address of the fee simple title holder, if other than the contracting owner; and

(c) That if, after the notice of commencement is recorded, a lien is recorded as to an improvement covered by the notice of commencement, the lien has priority from the time the notice of commencement is recorded.

(2) The notice of commencement may state its duration, but if a duration is stated of less than six months from the time of recording, the duration of the notice is six months. If no duration is stated, the duration of the notice is one year after the recording.

(3) The notice of commencement may state that it is limited to a particular improvement project, or portion thereof, on the real estate. But the limitation is not effective unless the particular improvement, or portion thereof, to which it applies is stated with sufficient specificity that a claimant, by reasonable inquiry, can determine whether his or her contract is covered by the notice of commencement.

(4) A contracting owner may extend the duration of a notice of commencement by recording before the lapse thereof a continuation statement signed by him or her which refers to the record location and date of recording of the notice of commencement and states the date to which the notice of commencement's duration is extended.

(5) If no notice of commencement applies to an improvement, any claimant who is entitled to record a lien may record a notice of commencement denominated notice of commencement, claimant recording, signed by him or her, stating:

(a) In accordance with subsection (10) of this section, the real estate being or intended to be improved or directly benefited, with a description thereof sufficient for identification;

(b) The name and address of the contracting owner against whom the notice of commencement is effective;

(c) The name and address of the claimant recording the notice of commencement;

(d) The name and address of the person with whom the claimant contracted with respect to the improvement;

(e) A brief description of the services or materials provided, or to be provided, by the claimant for the improvement; and

(f) That if, after the notice of commencement is recorded, a lien is recorded as to an improvement covered by the notice of commencement, the lien has priority from the time the notice of commencement is recorded.

(6) A claimant recording a notice of commencement, not later than the day it is recorded, must send a copy thereof to the contracting owner. The claimant is liable to the contracting owner for any damages caused by failure to comply with this subsection.

(7) Sections 52-125 to 52-159 apply equally to all notices of commencement, but as to a notice of commencement recorded by a claimant:

(a) Notwithstanding any stated duration, the duration is one year after the recording; and

(b) The limitation under subsection (3) of this section is not effective.

(8) Unless a notice of commencement is limited to a particular improvement project, or portion thereof, it covers all improvements made on the real estate

described therein whether or not they were contemplated at the time of the recording.

(9) Unless a notice of commencement provides otherwise, it covers improvements made on real estate not owned by the contracting owner if, under subsection (4) of section 52-133, a lien arises against the contracting owner's real estate described in the notice of commencement as a result of the improvements.

(10) A notice of commencement recorded by a claimant under subsection (5) of this section may describe all or any part of the contracting owner's real estate being improved or directly benefited.

**Source:** Laws 1981, LB 512, § 21.

**52-146 Termination of notice of commencement; procedure.**

(1) A contracting owner may terminate a notice of commencement as to all or any identified portion of the real estate subject to the notice of commencement by:

(a) Recording a notice of termination denominated termination of notice of commencement and containing:

(i) The information required by subdivisions (1)(a) and (1)(b) of section 52-145 for a notice of commencement;

(ii) A reference to the recorded notice of commencement by its record location and a statement of its date of recording;

(iii) A statement of the date as of which the notice of commencement is terminated which date may not be earlier than thirty days after the notice of termination is recorded; and

(iv) If the notice of termination is to apply only to a portion of the real estate subject to the notice of commencement, a statement of that fact and a description of the portion of the real estate to which the notice of termination applies;

(b) Sending, at least three weeks before the effective date of the notice of termination, a copy of the notice of termination, showing the date it was recorded, to all claimants who have requested that the owner notify them of the recording of a notice of termination;

(c) Publishing a notice of the recording of the notice of termination, which notice must comply with the provisions of subsection (2) of this section and be published at least once a week for three consecutive weeks in a newspaper having general circulation in the county where the recording occurs, the last publication of which must be at least five days before the stated termination date; and

(d) Recording an affidavit stating that notice of the recorded notice of termination has been sent to all claimants who have requested notice and that publication has been made. The affidavit must state the newspaper and dates of publication and include a copy of the published notice.

(2) The published notice of the recording of the notice of termination must contain the information required for the notice of termination under subsection (1) of this section, a statement of the date on which the notice of termination was recorded, and a statement that all lien claims for which a notice of lien is not recorded by the termination date may be defeated by a transfer of the real estate.

(3) A purchaser, judgment creditor, or other person having a lien against the real estate may rely on the affidavit without obligation to inquire as to its accuracy, and is not prejudiced by its inaccuracy.

**Source:** Laws 1981, LB 512, § 22.

**52-147 Lien recording; contents.**

(1) A claimant may record a lien which shall be signed by the claimant and state:

(a) The real estate subject to the lien, with a description thereof sufficient for identification;

(b) The name of the person against whose interest in the real estate a lien is claimed;

(c) The name and address of the claimant;

(d) The name and address of the person with whom the claimant contracted;

(e) A general description of the services performed or to be performed or materials furnished or to be furnished for the improvement and the contract price thereof;

(f) The amount unpaid, whether or not due, to the claimant for the services or materials or if no amount is fixed by the contract a good faith estimate of the amount designated as an estimate; and

(g) The time the last services or materials were furnished or if that time has not yet occurred, an estimate of the time.

(2) The name given in the lien in accordance with the requirement of subdivision (1)(b) of this section may be the name of the contracting owner or the name of the record holder of the contracting owner's interest at the time of recording the lien.

**Source:** Laws 1981, LB 512, § 23.

**52-148 Amendment of recorded lien.**

(1) A recorded lien may be amended by an additional recording at any time during the period allowed for recording the original lien. An amendment adding real estate or increasing the amount of lien claimed is effective as to the additional real estate or increased amount only from the time the amendment is recorded.

(2) A recorded lien may be amended after the period allowed for recording the original lien for the purpose of:

(a) Reducing the amount of the lien;

(b) Reducing the real estate against which the lien is claimed; or

(c) Making an apportionment of the lien among lots of a platted subdivision of record.

(3) An amendment shall state the record location and date of recording of the notice of lien being amended and shall state the respects in which it is being amended.

**Source:** Laws 1981, LB 512, § 24.

**52-149 Assignment of lien rights; recording; effect.**

(1) A claimant having a recorded lien, or his or her assignee, may record an assignment signed by the claimant which sets forth the name of the claimant, the name and address of the assignee, the person against whom the lien is claimed, the real estate affected with a description thereof sufficient for identification, and the record location and date of the recording of the notice of lien.

(2) Even though an assignment has been recorded, an owner may continue to deal with the original claimant as to the claim until the owner receives notice of the assignment and a direction that no arrangements or payments may be made without the assignee's consent. If requested by the owner, the assignee must furnish reasonable proof that an assignment has been made and unless he or she does so, the owner may pay the assignor.

(3) Unless a statement of assignment is recorded, the assignee need not be a party to any judicial proceeding to foreclose a security interest, lien, or other encumbrance.

(4) The failure to record an assignment does not otherwise affect its validity.

**Source:** Laws 1981, LB 512, § 25.

**52-150 Notice of surety bond; recording; contents.**

(1) If a prime contractor or owner has secured a surety bond a notice of surety bond may be recorded.

(2) The notice shall be signed by the contractor or owner and by the surety company and state:

(a) The real estate being improved with a description thereof sufficient for identification;

(b) The names and addresses of the owner and the prime contractor;

(c) The name and address of the surety company and the name and address of a person on whom service of process may be made;

(d) The total sum of the bond and that the bond meets the requirements of section 52-141; and

(e) That the bond is for the purpose of relieving the real estate from construction liens arising under the contract between the named prime contractor and contracting owner.

**Source:** Laws 1981, LB 512, § 26.

**52-151 Substitution of collateral; certificate; recording; contents.**

(1) A person who has deposited money or a surety bond with the clerk of the district court in substitution of collateral as provided in section 52-142 may record a certificate of the clerk of the district court showing the deposit.

(2) The certificate, which shall be signed by the clerk of the district court, shall state the amount deposited, if money, or, if a surety bond, the amount of the bond and the name and address of the surety company.

(3) The certificate also shall state, on the basis of information supplied by the person making the deposit:

(a) The real estate being improved with a description thereof sufficient for identification;

(b) The name and address of the person in whose behalf the deposit was made;

(c) If a surety bond is deposited, the name and address of a person on whom service of process may be made; and

(d) The name of the claimants for whom the deposit is made, the amount of their claims, and the record location of their liens.

**Source:** Laws 1981, LB 512, § 27.

**52-152 Demand to institute judicial proceedings; recording; claimant's statement; recording.**

(1) A person giving a demand to institute judicial proceedings to enforce a lien, after giving the demand, may record a copy of the demand in the office in which the lien was recorded. The demand must refer by record location to the recorded lien under which it was given, and state the date demand was given to institute judicial proceedings and the names of the owner and the claimant.

(2) A claimant who has received demand to institute judicial proceedings may record, in the office in which the lien was recorded, a statement that the total contract price is not yet due under the contract for which the lien was recorded. The statement must refer to the recorded lien by its record location and give the names of the owner and the claimant.

**Source:** Laws 1981, LB 512, § 28.

**52-153 Owner's statement of apportionment of lien; recording; contents.**

An owner who is entitled to apportion a lien among lots of a platted subdivision of record may record a statement making the apportionment. The statement must refer to the record location of the lien being apportioned, state the name of the owner and the claimant, state the date on which the demand to apportion was made on the claimant and that he or she has not apportioned, and make the apportionment.

**Source:** Laws 1981, LB 512, § 29.

**52-154 Discharge of lien; partial release; procedure.**

(1) A lien provided by sections 52-125 to 52-159 may be discharged of record by:

(a) Recording a signed statement of the record claimant stating that the lien is released;

(b) Failing to record, within the time prescribed in the provisions on duration of lien under section 52-140, an affidavit that the total contract price is not yet due;

(c) Recording the original or certified copy of a final judgment or decree of a court of competent jurisdiction so providing; or

(d) Recording, as provided in section 52-151, a certificate of the clerk of the district court showing the deposit of substitute collateral.

(2) The lien claimant of record by partial release may reduce the amount of the lien claimed in the notice of lien or limit the notice of lien to a portion of the real estate described in the notice of commencement by recording an amendment to his or her lien showing the reduction in amount or limited portion of the real estate against which a lien is claimed.

(3) A statement under subdivision (1)(a) of this section or a judgment under subdivision (1)(c) of this section must refer by record location to the notice of lien to which it applies.

**Source:** Laws 1981, LB 512, § 30.

#### **52-155 Proceeding to enforce lien.**

(1) Except as otherwise provided in this section, the rules applicable to a civil action apply to a proceeding to foreclose liens under sections 52-125 to 52-159.

(2) In a proceeding to foreclose a lien, all claimants having recorded liens may join as plaintiffs and those who do not join as plaintiffs may be joined as defendants. Any person who records a lien or acquires an interest in real estate after the commencement of the foreclosure proceeding may be made a defendant before judgment.

(3) The court shall determine the amount due or owing to each claimant and direct foreclosure of the liens against the real estate. Foreclosure may be by any method available for foreclosure of security interests in real estate, or otherwise, as ordered by the court.

**Source:** Laws 1981, LB 512, § 31.

This section does not limit foreclosure on a construction lien to the mortgage foreclosure statutes, but instead provides that the court may utilize any method available for foreclosure, including but not limited to the mortgage foreclosure statutes. Tilt-Up Concrete, Inc. v. Star City/Federal, Inc., 261 Neb. 64, 621 N.W.2d 502 (2001).

#### **52-156 Recording of notice of termination before abandonment or completion; owner; liability.**

(1) If a contracting owner records a notice of termination before abandonment or substantial completion of all the improvements covered by the notice of commencement being terminated, he or she is personally liable to any lien claimant to the extent that the claimant is unable to realize on a lien because the notice of termination was recorded before abandonment or substantial completion.

(2) A notice of termination is effective even though the owner, under subsection (1) of this section, may be personally liable to lien claimants by reason of his or her recording the notice of termination.

**Source:** Laws 1981, LB 512, § 32.

#### **52-157 Remedies for wrongful conduct.**

(1) If a person is wrongfully deprived of benefits to which he or she is entitled under sections 52-125 to 52-159 by conduct other than that described in section 52-156:

(a) He or she is entitled to damages; and

(b) The court may make orders restraining the owner or other person, or ordering them to proceed on appropriate terms and conditions.

(2) If in bad faith a claimant records a lien, overstates the amount for which he or she is entitled to a lien, or refuses to execute a release of a lien, the court may:

(a) Declare his or her lien void; and

(b) Award damages to the owner or any other person injured thereby.

(3) Damages awarded under this section may include the costs of correcting the record and reasonable attorney's fees.

**Source:** Laws 1981, LB 512, § 33.

**52-158 Liens arising prior to January 1, 1982; enforcement.**

Any person performing any labor or furnishing any material, machinery, or fixtures before January 1, 1982, may enforce any lien authorized under any statute repealed by Laws 1981, LB 512, as though such repeal had not occurred.

**Source:** Laws 1981, LB 512, § 34.

**52-159 Substitution of terms; Revisor of Statutes; duties.**

Whenever in the statutes of Nebraska, unless the context otherwise requires, the term mechanic's lien or words referring to such term occur they shall be taken to mean and apply to construction lien as used in sections 52-125 to 52-159. The Revisor of Statutes shall substitute the appropriate term or words in the statutes necessitated by this section.

**Source:** Laws 1981, LB 512, § 35.

**ARTICLE 2  
ARTISAN'S LIEN**

Section

52-201. Creation of lien; retention of property authorized.

52-202. Lien; perfection; financing statement; filing.

52-203. Lien; effect; priority; limitation; enforcement; fee.

52-204. Termination statement; filing; procedure.

**52-201 Creation of lien; retention of property authorized.**

(1) Any person who makes, alters, repairs, or in any way enhances the value of any vehicle, automobile, machinery, farm implement, or tool or shoes a horse or mule at the request of or with the consent of the owner or owners thereof shall have a lien on such vehicle, automobile, machinery, farm implement, tool, horse, or mule while in such person's possession for the reasonable or agreed charges for the work done or material furnished and shall have the right to retain such property until such charges are paid.

(2) Any person who exercises the right to retain such property shall not assess any additional fee beyond the reasonable or agreed charges for the work done or material furnished unless the person first sends, by certified mail, (a) a notice of possession of such property, intent to assess an additional reasonable fee beginning with the date that the notice is sent, and the amount or rate of the additional reasonable fee to the owner or owners for whom the work was performed and (b) a copy of such notice to any lienholder noted on the certificate of title if applicable.

**Source:** Laws 1913, c. 123, § 1, p. 310; R.S.1913, § 3841; C.S.1922, § 3225; C.S.1929, § 52-201; R.S.1943, § 52-201; Laws 2003, LB 655, § 8.

Provision in lease-purchase agreement that lessee shall furnish maintenance and repair does not constitute consent of lessor-owner to repair ordered by lessee so as to subject vehicle to lien. *Gibreal Auto Sales, Inc. v. Missouri Valley Machinery Co.*, 186 Neb. 763, 186 N.W.2d 719 (1971).

Repairer of automobile has no possessory lien as against unpaid vendor of conditional sales contract whose lien is shown on certificate of title. *Allied Inv. Co. v. Shaneyfelt*, 161 Neb. 840, 74 N.W.2d 723 (1956).

Any person who repairs or enhances value of an automobile at request of or with the consent of the owner has an artisan's lien. *Hickman-Williams Agency v. Haney*, 152 Neb. 219, 40 N.W.2d 813 (1950).

Artisan's lien for repair of automobile is superior to chattel mortgage not recorded in the county, and of which the artisan had no knowledge. *National Bond & Investment Co. v. Haas*, 124 Neb. 631, 247 N.W. 563 (1933).

Repairer of automobile, sold under conditional sale contract, had no possessory lien hereunder as against unpaid conditional vendor, in absence of showing that repairs were made at request

of or with consent of conditional vendor or his assignee. *General Motors Acceptance Corp. v. Sutherland*, 122 Neb. 720, 241 N.W. 281 (1932).

In a replevin action, where the defendant's right of possession therein is created by virtue of a lien of truck repairs, the value of the right of possession and not the value of the truck is the measure of defendant's damage for failure to return truck. *Jackson v. Arndt-Snyder Motor Co.*, 122 Neb. 276, 240 N.W. 279 (1932).

Where distributor of motor vehicles put a body and cab upon truck chassis, and still had possession at time of commencing of action of replevin, distributor was entitled to lien as against manufacturer. *Fulton Motor Truck Co. v. Gordon Fire-Proof Warehouse & Van Co.*, 105 Neb. 515, 181 N.W. 162 (1920).

### 52-202 Lien; perfection; financing statement; filing.

Any person who makes, alters, repairs, or in any way enhances the value of any vehicle, automobile, machinery, or farm implement or tool or shoes any horse or mule, at the request of or with the consent of the owner or owners thereof, has a lien upon such property, in cases when he or she has parted with the possession of such property, for his or her reasonable or agreed charges for the work performed or material furnished. A lien created under this section shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed within sixty days after performing such work or furnishing such material and shall contain or have attached thereto (1) the name and address and the social security number or federal tax identification number of the person claiming the lien, (2) the name and address and the social security number or federal tax identification number, if known, of the person for whom the work was performed or material furnished, (3) a description of the work performed or material furnished, (4) a description of the property upon which such work was performed or material furnished, and (5) the amount due for such work performed or material furnished. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person for whom the work was performed or material furnished.

**Source:** Laws 1913, c. 123, § 2, p. 310; R.S.1913, § 3842; C.S.1922, § 3226; C.S.1929, § 52-202; R.S.1943, § 52-202; Laws 1988, LB 943, § 1; Laws 1998, LB 1321, § 79; Laws 2001, LB 54, § 1.

Under this section, an artisan's lien attaches if the necessary documents are filed within 60 days of the furnishing of an item of labor or material which is part of a simple contract or

undertaking. *Cool v. Sahling Trucks, Inc.*, 237 Neb. 541, 666 N.W.2d 796 (1991).

### 52-203 Lien; effect; priority; limitation; enforcement; fee.

A lien created under section 52-202 is in force from and after the date it is filed and is prior and paramount to all other liens upon such property except those previously filed against such property. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code, except that such enforcement proceedings shall be instituted within one year after the filing of such lien. The lien is subject to the rights of purchasers of the property against which the lien is filed when the purchasers acquired the property prior to the filing of the lien without knowledge or notice of the rights

of the persons performing the work or furnishing material. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

**Source:** Laws 1913, c. 123, § 3, p. 311; R.S.1913, § 3843; C.S.1922, § 3227; C.S.1929, § 52-203; R.S.1943, § 52-203; Laws 1969, c. 436, § 1, p. 1463; Laws 1984, LB 808, § 1; Laws 1998, LB 1321, § 80; Laws 1999, LB 550, § 11; Laws 2001, LB 54, § 2.

**52-204 Termination statement; filing; procedure.**

(1) When a lien created under section 52-202 is satisfied, the lienholder shall file in the office where the lien is filed a termination statement to the effect that he or she no longer claims an interest under the lien, which shall be identified by file number. A termination statement signed by a person other than the lienholder of record shall be accompanied by a separate written statement of assignment signed by the lienholder of record complying with subsection (b) of section 9-514, Uniform Commercial Code, including payment of the required fee, or reflect that the person signing the termination statement is a successor of the lienholder of record. If the affected lienholder fails to file such a termination statement within thirty days after such lienholder no longer claims an interest, he or she shall be liable to the person for whom the work was performed or material furnished for any losses caused to such person by such failure and for reasonable attorney's fees and court costs.

(2) On presentation to the filing officer of such a termination statement, he or she shall note it in the index. If the filing officer has received the termination statement in duplicate, he or she shall return one copy of the termination statement to the lienholder stamped to show the time of receipt.

(3) There is no fee for the filing of a termination statement.

(4) This section does not apply to a lien created under section 52-202 that is filed as an agricultural lien under article 9, Uniform Commercial Code, on or after July 1, 2001.

**Source:** Laws 1988, LB 943, § 2; Laws 1999, LB 550, § 12; Laws 2001, LB 54, § 3.

**ARTICLE 3  
JEWELER'S LIEN**

Section

52-301. Lien; scope.

52-302. Verified statement; filing.

52-303. Foreclosure; limitation; joinder of claims.

52-304. Foreclosure; sale; proceeds; excess; disposition.

**52-301 Lien; scope.**

Upon all articles left or given to jewelers, silversmiths, or watch and clock repairers, for repairs, parts or work thereon, the jeweler, silversmith, watch or clock repairer, shall have a lien on such article for the cost of repairs, parts or work thereon and material put on or in such article.

**Source:** Laws 1921, c. 175, § 1, p. 673; C.S.1922, § 3230; C.S.1929, § 52-301; R.S.1943, § 52-301.

**52-302 Verified statement; filing.**

When one year has elapsed after completion of repairs, work upon or material put on or in such article, if the indebtedness remains due, unpaid or owing, such jeweler, silversmith, watch or clock repairer may file with the county clerk of the county in which such jeweler, silversmith, watch or clock repairer resides, a list showing the name, the address if known, the article and the amount of the bill against the same, duly signed and sworn to before a person authorized to administer oaths.

**Source:** Laws 1921, c. 175, § 2, p. 673; C.S.1922, § 3231; C.S.1929, § 52-302; R.S.1943, § 52-302.

**52-303 Foreclosure; limitation; joinder of claims.**

If within thirty days after the filing of such lien with the county clerk as required by section 52-302, the owner fails to pay such charges, the lien shall be treated in all respects as a secured transaction as provided in article 9, Uniform Commercial Code, and may be foreclosed in the manner and form provided for the foreclosure of secured transactions as provided in article 9, Uniform Commercial Code, except that more than one article and charge may be filed in the same lien and foreclosed in the same proceeding, and a publication of a list of several articles and charges published together shall be deemed sufficient notice. Such foreclosure shall be instituted within one year after the filing of the lien.

**Source:** Laws 1921, c. 175, § 3, p. 673; C.S.1922, § 3232; C.S.1929, § 52-303; R.S.1943, § 52-303; Laws 1969, c. 436, § 2, p. 1463; Laws 1999, LB 550, § 13.

**52-304 Foreclosure; sale; proceeds; excess; disposition.**

If the property sold under foreclosure shall bring more than the charges and costs of foreclosure, the excess shall be paid to the county treasurer of the county in which the foreclosure is had, and a statement shall be made to the county treasurer of the amount of excess due to the owners of the articles sold, which sum may be procured by the owner by filing a claim with the county board in the usual manner.

**Source:** Laws 1921, c. 175, § 4, p. 674; C.S.1922, § 3233; C.S.1929, § 52-304; R.S.1943, § 52-304.

**ARTICLE 4**

**LIEN OF PHYSICIAN, NURSE, OR HOSPITAL**

Section

52-401. Lien; scope and operation; exception; reduction, when; claim of lien; notice; priority of claims; access to records.

52-402. Physician, defined.

**52-401 Lien; scope and operation; exception; reduction, when; claim of lien; notice; priority of claims; access to records.**

Whenever any person employs a physician, nurse, chiropractor, or hospital to perform professional service or services of any nature, in the treatment of or in connection with an injury, and such injured person claims damages from the party causing the injury, such physician, nurse, chiropractor, or hospital, as the case may be, shall have a lien upon any sum awarded the injured person in

judgment or obtained by settlement or compromise on the amount due for the usual and customary charges of such physician, nurse, chiropractor, or hospital applicable at the times services are performed, except that no such lien shall be valid against anyone coming under the Nebraska Workers' Compensation Act. For persons covered under private medical insurance or another private health benefit plan, the amount of the lien shall be reduced by the contracted discount or other limitation which would have been applied had the claim been submitted for reimbursement to the medical insurer or administrator of such other health benefit plan. The measure of damages for medical expenses in personal injury claims shall be the private party rate, not the discounted amount.

In order to prosecute such lien, it shall be necessary for such physician, nurse, chiropractor, or hospital to serve a written notice upon the person or corporation from whom damages are claimed that such physician, nurse, chiropractor, or hospital claims a lien for such services and stating the amount due and the nature of such services, except that whenever an action is pending in court for the recovery of such damages, it shall be sufficient to file the notice of such lien in the pending action.

A physician, nurse, chiropractor, or hospital claiming a lien under this section shall not be liable for attorney's fees and costs incurred by the injured person in securing the judgment, settlement, or compromise, but the lien of the injured person's attorney shall have precedence over the lien created by this section.

Upon a written request and with the injured person's consent, a lienholder shall provide medical records, answers to interrogatories, depositions, or any expert medical testimony related to the recovery of damages within its custody and control at a reasonable charge to the injured person.

**Source:** Laws 1927, c. 162, § 1, p. 425; C.S.1929, § 52-401; R.S.1943, § 52-401; Laws 1986, LB 811, § 138; Laws 1995, LB 172, § 1; Laws 2008, LB586, § 1.

#### Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

1. Lien attachment
2. Usual and customary charges
3. Miscellaneous

#### 1. Lien attachment

The lien of a service provider under this section attaches at the time the services are performed for purposes of the application of this section. In re Conservatorship of Holle, 254 Neb. 380, 576 N.W.2d 473 (1998).

A hospital lien under this section attaches on a patient's admission to the hospital for treatment. Ehlers v. Perry, 242 Neb. 208, 494 N.W.2d 325 (1993).

#### 2. Usual and customary charges

In this section, the phrase "usual and customary charges" acts as a cap; it prevents the lien from being an amount greater than what the health care provider typically charges other patients for the services that it provided to the injured party. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

Under this section, the lien is equal to the debt still owed to the health care provider for its usual and customary charges. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

Usual and customary charges are the charges of the service provider instead of the amount actually collected. Parnell v.

Madonna Rehab. Hosp., Inc., 258 Neb. 125, 602 N.W.2d 461 (1999).

The lien of a physician, nurse, hospital, or other health care provider cannot exceed the amount the health care provider agreed to accept for the services rendered to a patient, even if the usual and customary charge for such services is greater than that sum. Midwest Neurosurgery v. State Farm Ins. Cos., 12 Neb. App. 328, 673 N.W.2d 228 (2004).

#### 3. Miscellaneous

By perfecting the lien created under this section before the tort-feasor pays the judgment or settlement to the patient, the health care provider creates an obligation on the tort-feasor to ensure that the provider's bill will be satisfied from the funds that the tort-feasor owes to the patient. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

If a tort-feasor's insurer impairs a lien created under this section, then the insurer is directly liable to the health care provider for the amount that would have been necessary to satisfy the lien. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

A hospital lien which attaches prior to a patient's filing for bankruptcy relief is unaffected by the patient's discharge in bankruptcy. An insurance company breaches its duty to a hospital not to impair the hospital's rights under its lien by settling directly with a patient rather than making payment to the hospital. *Alegent Health v. American Family Ins.*, 265 Neb. 312, 656 N.W.2d 906 (2003).

The recovery of the full amount owed to a lienholder, less the lienholder's proportionate share for attorney fees and litigation expenses, operates to fully satisfy debt owed under this section. *National Acct. Sys. of Lincoln v. Glasscock*, 247 Neb. 620, 529 N.W.2d 529 (1995).

This section requires a pro rata reduction of medical provider's lien for any fees due patient's counsel. In re *Guardianship & Conservatorship of Bloomquist*, 246 Neb. 711, 523 N.W.2d 352 (1994).

The proper party defendant in a suit to enforce a hospital lien is generally the party responsible for the patient's injuries, not that party's insurer. A hospital lien attaches upon admission of the patient to the hospital for treatment and is thereafter enforceable against the patient, but perfection is required to enforce the lien against third parties. Upon perfection of a lien by a hospital, a duty arises on the part of the tort-feasor's insurer not to impair the hospital's lien, and if such an insurer settles directly with the injured party despite the existence of a perfected lien, it has breached that duty and is liable directly to the

hospital. At least substantial compliance with the notice requirements of the hospital lien statute is necessary to perfect such a lien, and actual knowledge that the hospital is treating the patient alone is not sufficient. *West Neb. Gen. Hosp. v. Farmers Ins. Exch.*, 239 Neb. 281, 475 N.W.2d 901 (1991).

The underlying common-law contractual obligation between a patient and a medical provider is not affected by a statutory lien. If a patient receives medical services, he or she is always responsible for payment irrespective of whether there is a financially responsible tort-feasor against whom a statutory lien can be asserted in the event of a settlement or judgment in the patient's favor. The patient's personal liability for medical services remains intact irrespective of the lien statute. In re *Conservatorship of Marshall*, 10 Neb. App. 589, 634 N.W.2d 300 (2001).

Under established rules of statutory construction, chiropractors are excluded by omission as health care professionals entitled to file a physician lien. *Nelsen v. Grzywa*, 9 Neb. App. 702, 618 N.W.2d 472 (2000).

A lien that has been perfected under the law of the state where the hospital service was rendered constitutes a valid lien upon any award, judgment, or settlement, regardless of where the event which caused the injury occurred or of the residence of the injured party or the party causing the injury. *AMISUB, Inc. v. Allied Prop. & Cas. Ins. Co.*, 6 Neb. App. 696, 576 N.W.2d 493 (1998).

**52-402 Physician, defined.**

The term physician shall include surgeon, and shall mean one legally authorized to practice his profession within the State of Nebraska and in good standing in his profession at the time.

**Source:** Laws 1915, c. 210, § 3, p. 469; C.S.1922, § 3236; C.S.1929, § 52-402; R.S.1943, § 52-402.

Under established rules of statutory construction, chiropractors are excluded by omission as health care professionals

entitled to file a physician lien. *Nelsen v. Grzywa*, 9 Neb. App. 702, 618 N.W.2d 472 (2000).

**ARTICLE 5  
THRESHER'S LIEN**

Section

- 52-501. Thresher's, combiner's, cornsheller's, or mechanical cornpicker's lien; perfection; financing statement; filing; enforcement; fee.
- 52-502. Lien; effect; not assignable; landlord's share exempt.
- 52-503. Repealed. Laws 2001, LB 54, § 33.
- 52-504. Lien satisfied; termination statement; procedure.

**52-501 Thresher's, combiner's, cornsheller's, or mechanical cornpicker's lien; perfection; financing statement; filing; enforcement; fee.**

(1)(a) The owner or operator of any threshing machine or combine used in threshing, combining, or hulling grain or seed, (b) the owner or operator of any mechanical cornpicker or mechanical cornhusker used in picking or husking corn, and (c) the owner or operator of any cornsheller used in shelling corn shall have and hold a lien upon such grain, seed, or corn which he or she shall thresh, combine, hull, pick, husk, or shell with such machine to secure the payment to him or her of the charges agreed upon by the person for whom the threshing, combining, hulling, picking, husking, or shelling was done or, if no charges are agreed upon, for such charges as may be reasonable for such threshing, combining, hulling, picking, husking, or shelling.

(2) A lien created under this section shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien

shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the owner or operator claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person for whom the threshing, combining, hulling, picking, husking, or shelling was done, (c) the amount due for such threshing, combining, hulling, picking, husking, or shelling, (d) the amount of grain, seed, or corn covered by the lien, (e) the place where the grain, seed, or corn is located, and (f) the date on which the threshing, combining, hulling, picking, husking, or shelling was done. Such financing statement shall be filed within thirty days after the threshing, combining, hulling, picking, husking, or shelling was done. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person for whom the threshing, combining, hulling, picking, husking, or shelling was done.

(3) In the event the person for whom the threshing, combining, hulling, picking, husking, or shelling was done desires to sell or deliver the grain, seed, or corn so threshed, combined, hulled, picked, husked, or shelled to a grain elevator or to any other person, such person desiring to sell or deliver the grain, seed, or corn shall notify the consignee or purchaser that the threshing, combining, hulling, picking, husking, or shelling bill has not been paid, and the lien created under this section on such grain, seed, or corn shall shift to the purchase price thereof in the hands of the purchaser or consignee. In the event the grain, seed, or corn is sold or consigned with the consent or knowledge of the person entitled to a lien created under this section within thirty days after the date of such threshing, combining, hulling, picking, husking, or shelling, such lien shall not attach to the grain, seed, or corn or to the purchase price thereof unless the person entitled to the lien notifies the purchaser in writing of the lien.

(4) A lien created under this section shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code, except that such enforcement shall be instituted within thirty days after the filing of the lien. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

**Source:** Laws 1923, c. 117, § 1, p. 278; C.S.1929, § 52-501; Laws 1939, c. 83, § 1, p. 266; C.S.Supp.,1941, § 52-501; R.S.1943, § 52-501; Laws 1945, c. 126, § 1, p. 406; Laws 1961, c. 257, § 5, p. 755; Laws 1965, c. 317, § 1, p. 883; Laws 1969, c. 436, § 3, p. 1463; Laws 1984, LB 808, § 2; Laws 1988, LB 943, § 3; Laws 1998, LB 1321, § 81; Laws 1999, LB 550, § 14; Laws 2001, LB 54, § 4.

An action to declare a lien void because there is no underlying debt is an action at law. *Lone Cedar Ranches v. Jandebour*, 246 Neb. 769, 523 N.W.2d 364 (1994).

The sole and only purpose of the thresher's lien law is to give notice of the existence of a lien by the person who combined the grain to all prospective purchasers of grain and to owners thereof within 30 days after completion of combining. The

holder of a thresher's lien has the same rights of enforcement given to owners of secured interests, including the remedy of replevin. A thresher's lien is remedial in nature and requires liberal construction so that a purchaser may not escape the statute by merely paying the seller in advance. *Honstein Trucking v. Sandhills Beef, Inc.*, 209 Neb. 422, 308 N.W.2d 331 (1981).

**52-502 Lien; effect; not assignable; landlord's share exempt.**

A lien created under section 52-501 shall not attach to such grain, seed, or corn in the hands of an innocent purchaser or dealer in the usual course of

trade unless all the notices provided for in such section shall have been given. In the event the threshing, combining, hulling, picking, husking, or shelling was done on rented or leased land, the lien shall not apply to the landlord's or lessor's share of the grain, seed, or corn. The lien shall not be assignable.

**Source:** Laws 1923, c. 117, § 2, p. 279; C.S.1929, § 52-502; Laws 1939, c. 63, § 2, p. 267; C.S.Supp.,1941, § 52-502; R.S.1943, § 52-502; Laws 1945, c. 126, § 2, p. 408; Laws 2001, LB 54, § 5.

**52-503 Repealed. Laws 2001, LB 54, § 33.**

**52-504 Lien satisfied; termination statement; procedure.**

(1) When a lien created under section 52-501 is satisfied, the lienholder shall file in the office where the lien is filed a termination statement to the effect that he or she no longer claims an interest under the lien, which shall be identified by file number. A termination statement signed by a person other than the lienholder of record shall be accompanied by a separate written statement of assignment signed by the lienholder of record complying with subsection (b) of section 9-514, Uniform Commercial Code, including payment of the required fee, or reflect that the person signing the termination statement is a successor of the lienholder of record. If the affected lienholder fails to file such a termination statement within thirty days after such lienholder no longer claims an interest, he or she shall be liable to the person for whom the threshing, combining, hulling, picking, husking, or shelling was done for any losses caused to such person by such failure and for reasonable attorney's fees and court costs.

(2) On presentation to the filing officer of such a termination statement, he or she shall note it in the index. If the filing officer has received the termination statement in duplicate, he or she shall return one copy of the termination statement to the lienholder stamped to show the time of receipt.

(3) There is no fee for the filing of a termination statement.

(4) This section does not apply to a lien created under section 52-501 that is filed as an agricultural lien under article 9, Uniform Commercial Code, on or after July 1, 2001.

**Source:** Laws 1985, LB 606, § 11; Laws 1988, LB 943, § 4; Laws 1999, LB 550, § 15; Laws 2001, LB 54, § 6.

**ARTICLE 6**

**LIEN FOR SERVICES PERFORMED UPON PERSONAL PROPERTY**

Section

- 52-601. Repealed. Laws 1974, LB 960, § 4.
- 52-601.01. Services performed upon personal property; disposition of property; when; notice.
- 52-602. Repealed. Laws 1974, LB 960, § 4.
- 52-603. Lien; how satisfied; sale.
- 52-604. Sale; proceeds; distribution.
- 52-605. Redemption.

**52-601 Repealed. Laws 1974, LB 960, § 4.**

**52-601.01 Services performed upon personal property; disposition of property; when; notice.**

A person who shall perform work or labor, or exert care or diligence, or who shall advance money or material upon personal property under a contract, expressed or implied, and who holds such property for a period of ninety days, may dispose of the property by sale or other manner. Such disposition shall not occur until thirty days after the mailing of a written notice of the intended disposition by certified mail, return receipt requested, to the last-known address of the owner of the personal property to be disposed of, and to any lien or security interest holder of record.

**Source:** Laws 1974, LB 960, § 4; Laws 1994, LB 1061, § 1.

**52-602 Repealed. Laws 1974, LB 960, § 4.**

**52-603 Lien; how satisfied; sale.**

In accordance with the terms of the notice given as provided by section 52-601.01, a sale of the goods for reasonable value may be had to satisfy any valid claim of the claimant for which he has a lien on the goods.

**Source:** Laws 1923, c. 118, § 3, p. 281; C.S.1929, § 52-603; R.S.1943, § 52-603; Laws 1974, LB 960, § 2.

**52-604 Sale; proceeds; distribution.**

From the proceeds of such sale the claimant shall satisfy his or her lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be delivered to the county treasurer of the county in which the sale was made. The treasurer of the county in which the property was sold shall issue his or her receipt therefor. The county treasurer shall make proper entry in the books of his or her office of all money so paid over to him or her, and shall hold the money for a period of five years, and immediately thereafter shall pay the same into the school fund of the proper county, to be appropriated for the support of the schools, unless the owner of the property sold, his or her legal representatives, or any lien or security interest holder of record, shall within such period of five years after such money shall have been deposited with the treasurer, furnish satisfactory evidence of the ownership of such property or satisfactory evidence of the lien or security interest, in which event he, she, or they shall be entitled to receive from such treasurer the amount so deposited with him or her.

**Source:** Laws 1923, c. 118, § 4, p. 281; C.S.1929, § 52-604; R.S.1943, § 52-604; Laws 1974, LB 960, § 3; Laws 2005, LB 82, § 1.

**52-605 Redemption.**

At any time before the goods are so sold, any person claiming a right of property or possession therein may pay the claimant the amount necessary to satisfy his lien, and pay the reasonable expenses and liabilities incurred in serving notices of advertising and preparing for sale up to the time of such payment. The claimant shall deliver the goods to the person making such payment if he is a person entitled to the possession of the goods on the payment of charges thereon.

**Source:** Laws 1923, c. 118, § 5, p. 282; C.S.1929, § 52-605; R.S.1943, § 52-605.

**ARTICLE 7**  
**VETERINARIAN'S LIEN**

## Section

52-701. Lien; perfection; financing statement; filing; enforcement; fee.

52-702. Lien satisfied; termination statement; procedure.

**52-701 Lien; perfection; financing statement; filing; enforcement; fee.**

Whenever any person procures, contracts with, or hires any person licensed to practice veterinary medicine and surgery to treat, relieve, or in any way take care of any kind of livestock, such veterinarian shall have a first, paramount, and prior lien upon such livestock so treated for the contract price agreed upon or, in case no price has been agreed upon, for the reasonable value of the services and any medicines or biologics furnished. A lien created under this section shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. A lien created under this section shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed within ninety days after the furnishing of the services and any medicines or biologics and shall contain or have attached thereto (1) the name and address and the social security number or federal tax identification number of the veterinarian claiming the lien, (2) the name and address and the social security number or federal tax identification number, if known, of the person to whom the services and medicines or biologics were furnished, (3) a correct description of the livestock to be charged with the lien, and (4) the amount of the services and any medicines or biologics furnished. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person to whom the services and medicines or biologics were furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

**Source:** Laws 1935, c. 117, § 1, p. 432; C.S.Supp.,1941, § 52-701; R.S. 1943, § 52-701; Laws 1969, c. 436, § 4, p. 1465; Laws 1984, LB 808, § 3; Laws 1988, LB 943, § 5; Laws 1998, LB 1321, § 82; Laws 1999, LB 550, § 16; Laws 2001, LB 54, § 7.

**52-702 Lien satisfied; termination statement; procedure.**

(1) When a lien created under section 52-701 is satisfied, the lienholder shall file in the office where the lien is filed a termination statement to the effect that he or she no longer claims an interest under the lien, which shall be identified by file number. A termination statement signed by a person other than the lienholder of record shall be accompanied by a separate written statement of assignment signed by the lienholder of record complying with subsection (b) of section 9-514, Uniform Commercial Code, including payment of the required fee, or reflect that the person signing the termination statement is a successor of the lienholder of record. If the affected lienholder fails to file such a termination statement within thirty days after such lienholder no longer claims an interest, he or she shall be liable to the person to whom the services and

medicines or biologics were furnished for any losses caused to such person by such failure and for reasonable attorney's fees and court costs.

(2) On presentation to the filing officer of such a termination statement, he or she shall note it in the index. If the filing officer has received the termination statement in duplicate, he or she shall return one copy of the termination statement to the lienholder stamped to show the time of receipt.

(3) There is no fee for the filing of a termination statement.

(4) This section does not apply to a lien created under section 52-701 that is filed as an agricultural lien under article 9, Uniform Commercial Code, on or after July 1, 2001.

**Source:** Laws 1985, LB 606, § 12; Laws 1988, LB 943, § 6; Laws 1999, LB 550, § 17; Laws 2001, LB 54, § 8.

### ARTICLE 8

#### SALE OF GOODS TO PAY FOR SERVICES RENDERED THEREON OR FOR STORAGE

##### Section

52-801. Clothing; household goods; services thereon; sale; notice.

52-802. Clothing; household goods; storage; sale; notice.

52-803. Sale; notice to owner; registered or certified mail; time of mailing.

52-804. Sale; disposition of proceeds; when payable to owner.

52-805. Notice to be posted in place of business.

52-806. Sale; where; when; notice by publication; notice by posting; contents.

##### **52-801 Clothing; household goods; services thereon; sale; notice.**

Any garment, clothing, wearing apparel, or household goods on which cleaning, pressing, glazing, or washing has been done, upon which alterations or repairs have been made, or on which materials or supplies have been used or furnished, remaining in the possession of a person, firm, partnership, limited liability company, or corporation for a period of ninety days or more, may be sold to pay the reasonable or agreed charges and the costs of notifying the owner or owners. The person, firm, partnership, limited liability company, or corporation to whom such charges are payable and owing shall first notify the owner or owners of the time and place of such sale. Property that is to be placed in storage after any of the services or labors mentioned in this section shall not be affected by the provisions of this section.

**Source:** Laws 1943, c. 120, § 1, p. 416; R.S.1943, § 52-801; Laws 1993, LB 121, § 309.

##### **52-802 Clothing; household goods; storage; sale; notice.**

All garments, clothing, wearing apparel, or household goods placed in storage or on which any of the services or labors mentioned in section 52-801 have been performed and then placed in storage by agreement and remaining in the possession of a person, firm, partnership, limited liability company, or corporation without the reasonable or agreed charges having been paid for a period of twelve months may be sold to pay the charges. The person, firm, partnership, limited liability company, or corporation to whom the charges are payable shall first notify the owner or owners thereof of the time and place of such sale. Persons, firms, partnerships, limited liability company, or corpora-

tions operating as warehouses or warehousemen shall not be affected by this section.

**Source:** Laws 1943, c. 120, § 2, p. 416; R.S.1943, § 52-802; Laws 1993, LB 121, § 310.

**52-803 Sale; notice to owner; registered or certified mail; time of mailing.**

The posting or mailing of either a registered or certified letter, with a return address marked thereon, addressed to the owner or owners at his, her, its, or their address, given at the time of the delivery of the article or articles to a person, firm, partnership, limited liability company, or corporation to render any of the services or labors as set out in sections 52-801 to 52-806, stating the time and place of sale, shall constitute notice under such sections. The notice shall be posted or mailed at least thirty days before the date of sale. The costs of posting or mailing the letter shall be added to the charges.

**Source:** Laws 1943, c. 120, § 3, p. 417; R.S.1943, § 52-803; Laws 1957, c. 242, § 44, p. 855; Laws 1993, LB 121, § 311.

**52-804 Sale; disposition of proceeds; when payable to owner.**

The person, firm, partnership, limited liability company, or corporation to whom the charges are payable shall (1) deduct the charges due plus the costs of notifying the owner and the costs, if any, of publishing the notice of sale from the proceeds of such sale, (2) hold the overplus, if any, subject to the order of the owner, (3) immediately thereafter mail to the owner or owners thereof at such owner's or owners' address, if known, a notice stating the sale has been had, and (4) the amount of overplus, if any, due such owner or owners and, at any time within twelve months, upon demand by the owner or owners pay to the owner or owners the balance or overplus in the hands of such person, firm, partnership, limited liability company, or corporation.

**Source:** Laws 1943, c. 120, § 4, p. 417; R.S.1943, § 52-804; Laws 1993, LB 121, § 312.

**52-805 Notice to be posted in place of business.**

All persons, firms, partnerships, limited liability companies, or corporations taking advantage of sections 52-801 to 52-806 must keep posted at all times in a prominent place in their receiving office or offices two notices which shall read as follows: All articles cleaned, pressed, glazed, laundered, washed, altered, or repaired and not called for in ninety days will be sold to pay charges. All articles which are stored by agreement and upon which the charges are not paid for twelve months will be sold to pay charges.

**Source:** Laws 1943, c. 120, § 5, p. 417; R.S.1943, § 52-805; Laws 1993, LB 121, § 313.

**52-806 Sale; where; when; notice by publication; notice by posting; contents.**

The sale of garments, clothing, wearing apparel or household goods, for failure to pay any of the charges provided for in sections 52-801 and 52-802, shall be held at the place where the work was done or the goods described therein were stored or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place, after the time for the payment of the claim, specified in the notice to the debtor, has lapsed and an advertisement or notice of sale

has been published or posted as hereinafter provided. Notice of such sale shall be given by publication two successive weeks in a legal newspaper, of general circulation in the community in which such sale is to be held, or by posting such notice in not less than three conspicuous places in such community. Such notice of sale shall state the name of the owner or owners or the person or persons on whose account the goods are held, the nature of the personal property to be sold and the time and place of sale. The sale shall be held not less than fifteen days after the first publication or posting of such notice.

**Source:** Laws 1943, c. 120, § 6, p. 418; R.S.1943, § 52-806.

## ARTICLE 9

### PETROLEUM PRODUCTS LIEN

#### Section

52-901. Lien; scope.

52-902. Lien; perfection; financing statement; filing; fee.

52-903. Lien; effect of filing; sale of crop, effect; enforcement.

52-904. Lien; innocent purchaser protected; not applicable to landlord's share; not assignable.

52-905. Lien satisfied; termination statement; procedure.

#### **52-901 Lien; scope.**

Any person who furnishes gasoline, diesel fuel, tractor fuel, oil, grease, or other petroleum products to another to be used in farm machinery for power or lubricating purposes in the production of any agricultural crop shall be entitled to a lien upon all such crops produced and owned by the person to whom such fuel or lubricant was furnished to secure the payment of the purchase price thereof, upon compliance with sections 52-901 to 52-904.

**Source:** Laws 1957, c. 226, § 1, p. 775; Laws 2001, LB 54, § 9.

Cattle may not be included within the meaning of "crops" as set out in statute providing that any person who furnishes petroleum products to another to be used in farm machinery for the production of any agricultural crops shall be entitled to a lien upon all such crops produced. O'Neill Production Credit Assn. v. Schnoor, 208 Neb. 105, 302 N.W.2d 376 (1981).

#### **52-902 Lien; perfection; financing statement; filing; fee.**

A lien created under section 52-901 shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed within six months after the fuel or lubricant was furnished and shall contain or have attached thereto (1) the name and address and the social security number or federal tax identification number of the person claiming the lien, (2) the name and address and the social security number or federal tax identification number, if known, of the person to whom such fuel or lubricant was furnished for use in farm machinery in the production of crops, (3) the amount of fuel or lubricant furnished, and (4) the amount due for furnishing such fuel or lubricant. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person to whom the fuel or lubricant was furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

**Source:** Laws 1957, c. 226, § 2, p. 775; Laws 1984, LB 808, § 4; Laws 1988, LB 943, § 7; Laws 1998, LB 1321, § 83; Laws 1999, LB 550, § 18; Laws 2001, LB 54, § 10.

This section requires a provider of petroleum products to file this lien within six months after the fuel or lubricants are provided. Circle 76 Fertilizer v. Nelsen, 219 Neb. 661, 365 N.W.2d 460 (1985).

**52-903 Lien; effect of filing; sale of crop, effect; enforcement.**

From and after the date of the filing of the lien as provided in section 52-902, the person claiming the lien shall have a lien upon the crops produced and owned by the person to whom the fuel or lubricant was furnished to the amount of the purchase price of such fuel or lubricant so furnished to such person. In the event the person to whom such fuel or lubricant was furnished desires to sell or deliver any portion of the crops so produced, such person shall notify the purchaser or consignee that such fuel or lubricant bill has not been paid. Such lien shall shift to the purchase price thereof in the hands of such purchaser or consignee. In the event any portion of such crops is sold or consigned with the consent or knowledge of the person entitled to a lien thereon within six months after the date such fuel or lubricant was furnished, such lien shall not attach to any portion of such crops or to the purchase price thereof unless the person entitled to such lien notifies the purchaser in writing thereof. A lien created under section 52-901 shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code, except that such enforcement proceedings shall be instituted within ninety days after the filing of the lien.

**Source:** Laws 1957, c. 226, § 3, p. 776; Laws 1969, c. 436, § 5, p. 1465; Laws 1987, LB 314, § 1; Laws 1999, LB 550, § 19; Laws 2001, LB 54, § 11.

Purchase price, under this section, means more than money and may include credits applied to a debt. Galyen Petroleum Co. v. Svoboda, 222 Neb. 268, 383 N.W.2d 49 (1986). days after the filing of the lien. Circle 76 Fertilizer v. Nelsen, 219 Neb. 661, 365 N.W.2d 460 (1985).

Under former law, this section required that proceedings to foreclose a petroleum products lien be instituted within thirty

**52-904 Lien; innocent purchaser protected; not applicable to landlord's share; not assignable.**

A lien created under section 52-901 shall not attach to any portion of such crops, in the hands of an innocent purchaser or dealer in the usual course of trade, unless all the notices provided for shall have been given. In the event the fuel or lubricant was furnished to a person on rented or leased land, the lien shall not apply to the landlord's or lessor's share of the crops produced. The lien shall not be assignable.

**Source:** Laws 1957, c. 226, § 4, p. 776; Laws 2001, LB 54, § 12.

**52-905 Lien satisfied; termination statement; procedure.**

(1) When a lien created under section 52-901 is satisfied, the lienholder shall file in the office where the lien is filed a termination statement to the effect that he or she no longer claims an interest under the lien, which shall be identified by file number. A termination statement signed by a person other than the lienholder of record shall be accompanied by a separate written statement of assignment signed by the lienholder of record complying with subsection (b) of section 9-514, Uniform Commercial Code, including payment of the required fee, or reflect that the person signing the termination statement is a successor of the lienholder of record. If the affected lienholder fails to file such a

termination statement within thirty days after such lienholder no longer claims an interest, he or she shall be liable to the person to whom the fuel or lubricant was furnished for any losses caused to such person by such failure and for reasonable attorney's fees and court costs.

(2) On presentation to the filing officer of such termination statement, he or she shall note it in the index. If the filing officer has received the termination statement in duplicate, he or she shall return one copy of the termination statement to the lienholder stamped to show the time of receipt.

(3) There is no fee for the filing of a termination statement.

(4) This section does not apply to a lien created under section 52-901 that is filed as an agricultural lien under article 9, Uniform Commercial Code, on or after July 1, 2001.

**Source:** Laws 1985, LB 606, § 13; Laws 1988, LB 943, § 8; Laws 1999, LB 550, § 20; Laws 2001, LB 54, § 13.

## ARTICLE 10

### UNIFORM FEDERAL LIEN REGISTRATION ACT

#### Section

- 52-1001. Federal liens; notice; filing.  
 52-1002. Certifications; filing.  
 52-1003. Notice; filing officer; duties; liability.  
 52-1004. Notice; filing; fees; billing.  
 52-1005. Lien, notice, certificate; filed on or before January 1, 1970; filing officer; duties.  
 52-1006. Act, how construed.  
 52-1007. Act, how cited.  
 52-1008. Lien satisfied; termination statement; procedure.

#### **52-1001 Federal liens; notice; filing.**

(1) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be presented in the office of the Secretary of State and may be presented by electronic means. Such notices of liens and certificates and notices affecting the liens 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 or certificate or notice affecting the lien. A lien subject to this subsection shall be effective upon real property when filed by the register of deeds as provided in this subsection.

(2) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the Secretary of State and may be filed by electronic means.

**Source:** Laws 1969, c. 433, § 1, p. 1456; Laws 1971, LB 89, § 1; Laws 1988, LB 933, § 3; Laws 1993, LB 121, § 314; Laws 1998, LB 1321, § 84; Laws 1999, LB 550, § 21.

#### **52-1002 Certifications; filing.**

Certification of notices of liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States or his or her delegate or by any official or entity of the United States responsible for filing or

certifying notice of any other lien shall entitle them to be filed, and no other attestation, certification, or acknowledgment shall be necessary.

**Source:** Laws 1969, c. 433, § 2, p. 1457; Laws 1988, LB 933, § 4.

**52-1003 Notice; filing officer; duties; liability.**

(1)(a) If a notice of federal lien upon real property, a refiling of a notice of federal lien upon real property, or a notice of revocation of any certificate described in subdivision (2)(a) of this section is transmitted to the register of deeds, he or she shall endorse thereon his or her identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director or title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(b) If a notice of federal lien upon personal property, a refiling of a notice of federal lien upon personal property, or a notice of revocation of any certificate described in subdivision (2)(b) of this section is filed in the office of the Secretary of State, he or she shall endorse thereon his or her identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director or title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(2)(a) If a refiled notice of federal lien referred to in subdivision (1)(a) of this section is transmitted for filing to the register of deeds as specified in subsection (1) of section 52-1001, he or she shall file the refiled notice or the certificate with the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in an alphabetical lien index on the line where the original notice of lien is entered.

(b) If a refiled notice of federal lien referred to in subdivision (1)(b) of this section is filed in the office of the Secretary of State as specified in subsection (2) of section 52-1001, he or she shall file the refiled notice or the certificate and cross reference the original notice of lien on the state's central index system and shall enter the refiled notice or the certificate with the date of filing in an alphabetical lien index.

(3)(a) Upon request of any person, the register of deeds shall issue his or her certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien, filed under the Uniform Federal Tax Lien Registration Act on or after January 1, 1970, or under the Uniform Federal Lien Registration Act on or after July 9, 1988, naming a particular person and, if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate shall be one dollar and fifty cents. Upon request the register of deeds shall furnish a copy of any notice of federal lien or notice or certificate affecting a federal lien for a fee of one dollar per page.

(b)(i) Prior to July 1, 2001, upon the request of any person, the Secretary of State shall provide information as provided in section 9-411, Uniform Commercial Code, and charge such fees provided in such section, on any notice of lien or certificate or notice affecting any lien filed under the Uniform Federal Lien Registration Act on or after July 1, 1999.

(ii) On and after July 1, 2001, upon the request of any person, the Secretary of State shall provide information as provided in the Uniform Commercial Code and charge such fees provided in section 9-525, Uniform Commercial Code, on any notice of lien or certificate or notice affecting any lien filed under the Uniform Federal Lien Registration Act on or after July 1, 1999.

(4) The register of deeds and his or her employees or the Secretary of State and his or her employees or agents shall be exempt from all personal liability as a result of any error or omission in providing information as required by this section except in cases of willful misconduct or gross negligence.

**Source:** Laws 1969, c. 433, § 3, p. 1457; Laws 1971, LB 89, § 2; Laws 1973, LB 224, § 9; Laws 1988, LB 933, § 5; Laws 1998, LB 1321, § 85; Laws 1999, LB 550, § 22.

**52-1004 Notice; filing; fees; billing.**

(1) Beginning July 1, 1999, the uniform fee, payable to the Secretary of State, for presenting for filing and indexing and for filing and indexing each notice of lien or certificate or notice affecting the lien pursuant to the Uniform Federal Lien Registration Act shall be six dollars. There shall be no fee for the filing of a termination statement. The uniform fee for each county more than one designated pursuant to subsection (1) of section 52-1001 shall be three dollars. The Secretary of State shall deposit each fee received pursuant to this section in the Uniform Commercial Code Cash Fund. Of the fees received and deposited pursuant to this section, the Secretary of State shall remit three dollars to the register of deeds of a county for each designation of such county in a filing pursuant to subsection (1) of section 52-1001.

(2) The Secretary of State shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents presented or filed by them.

**Source:** Laws 1969, c. 433, § 4, p. 1458; Laws 1984, LB 808, § 5; Laws 1988, LB 933, § 6; Laws 1998, LB 1321, § 86; Laws 1999, LB 550, § 23.

**52-1005 Lien, notice, certificate; filed on or before January 1, 1970; filing officer; duties.**

Filing officers with whom notices of federal tax liens, certificates and notices affecting such liens have been filed on or before January 1, 1970, shall, after that date, continue to maintain a file labeled: Federal Tax Lien Notices Filed Prior to January 1, 1970; containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before January 1, 1970, any certificate or notice affecting the lien shall be filed in the same office.

**Source:** Laws 1969, c. 433, § 5, p. 1459.

**52-1006 Act, how construed.**

The Uniform Federal Lien Registration Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of such act among states enacting it.

**Source:** Laws 1969, c. 433, § 6, p. 1459; Laws 1988, LB 933, § 7.

**52-1007 Act, how cited.**

Sections 52-1001 to 52-1008 shall be known and may be cited as the Uniform Federal Lien Registration Act.

**Source:** Laws 1969, c. 433, § 7, p. 1459; Laws 1988, LB 933, § 8.

**52-1008 Lien satisfied; termination statement; procedure.**

When a federal lien registered pursuant to the Uniform Federal Lien Registration Act is satisfied, the holder of the lien may on written demand by the debtor send the debtor a termination statement to the effect that he or she no longer claims a security interest under the lien, which shall be identified by file number.

On presentation to the register of deeds or to the Secretary of State of such a termination statement, he or she shall note it in the index. If the register of deeds or the Secretary of State has received the termination statement in duplicate, he or she shall return one copy of the termination statement to the lienholder stamped to show the time of receipt.

**Source:** Laws 1985, LB 606, § 14; Laws 1988, LB 933, § 9; Laws 1998, LB 1321, § 87; Laws 1999, LB 550, § 24.

**ARTICLE 11**

**FERTILIZER AND AGRICULTURAL CHEMICAL LIENS**

Section

52-1101. Lien; scope.

52-1102. Lien; perfection; financing statement; filing; fee.

52-1103. Lien; time for filing; date of attachment; enforcement.

52-1104. Lien satisfied; termination statement; procedure.

**52-1101 Lien; scope.**

A person, including a firm or corporation, who contracts or agrees with another (1) to furnish any fertilizer, soil conditioner, or agricultural chemical, (2) to furnish machinery and equipment for the application of such products, or (3) to perform work or labor in the application of such products shall have a lien for the agreed charges, or in the absence of an agreement, for the reasonable charges and costs of satisfying such lien, upon the crops produced within one year upon the land where such product was applied, the machinery or equipment for application was used, or the work or labor of application was performed, upon the proceeds from the sale of the crops, and upon livestock and the proceeds from the sale of such livestock when the crops have been fed to such livestock in a way that the identity of the crops has been lost.

**Source:** Laws 1977, LB 218, § 1; Laws 1999, LB 550, § 25; Laws 2001, LB 54, § 14.

Under this section, a valid fertilizer lien is created at the time products, labor, or machinery is supplied, and section 52-1103 establishes the priority of that lien. A lien must be filed within sixty days of the delivery, or that lien, though still valid on crops

produced within one year of the date the product was supplied and on proceeds for the sale of such crops, will not have priority over subsequent lienholders. *Commerce Sav. Scottsbluff v. F.H. Schafer Elev.*, 231 Neb. 288, 436 N.W.2d 151 (1989).

**52-1102 Lien; perfection; financing statement; filing; fee.**

A lien created under section 52-1101 shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall contain or have attached thereto (1) the name and address and the social security number or federal tax identification number, if known, of the person to

whom any product, machinery, or equipment was furnished or for whom work or labor was performed, (2) the name and address and the social security number or federal tax identification number of the person claiming the lien, (3) the last date upon which such product, machinery, or equipment was furnished or work or labor was performed under the contract, and (4) the amount due for the product, machinery, or equipment furnished or work or labor performed. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person to whom the product, machinery, or equipment was furnished or for whom the work or labor was performed. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

**Source:** Laws 1977, LB 218, § 2; Laws 1984, LB 808, § 6; Laws 1988, LB 943, § 9; Laws 1998, LB 1321, § 88; Laws 1999, LB 550, § 26; Laws 2001, LB 54, § 15.

**52-1103 Lien; time for filing; date of attachment; enforcement.**

In order to be valid against subsequent lienholders, any lien created under section 52-1101 shall be filed within sixty days after the last date upon which the product, machinery, or equipment was furnished or work or labor was performed under the contract, but in no event shall it have priority over prior lienholders unless prior lienholders have agreed to the contract in writing. Such lien shall attach as of the date of filing. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code.

**Source:** Laws 1977, LB 218, § 3; Laws 1999, LB 550, § 27; Laws 2001, LB 54, § 16.

Under section 52-1101, a valid fertilizer lien is created at the time products, labor, or machinery is supplied, and this section establishes the priority of that lien. A lien must be filed within sixty days of the delivery, or that lien, though still valid on crops produced within one year of the date the product was supplied and on proceeds for the sale of such crops, will not have priority over subsequent lienholders. Commerce Sav. Scottsbluff v. F.H. Schafer Elev., 231 Neb. 288, 436 N.W.2d 151 (1989).

**52-1104 Lien satisfied; termination statement; procedure.**

(1) When a lien created under section 52-1101 is satisfied, the lienholder shall file in the office where the lien is filed a termination statement to the effect that he or she no longer claims an interest under the lien, which shall be identified by file number. A termination statement signed by a person other than the lienholder of record shall be accompanied by a separate written statement of assignment signed by the lienholder of record complying with subsection (b) of section 9-514, Uniform Commercial Code, including payment of the required fee, or reflect that the person signing the termination statement is a successor of the lienholder of record. If the affected lienholder fails to file such a termination statement within thirty days after such lienholder no longer claims an interest, he or she shall be liable to the person to whom the product, machinery, or equipment was furnished or for whom the work or labor was performed for any losses caused to such person by such failure and for reasonable attorney's fees and court costs.

(2) On presentation to the filing officer of such a termination statement, he or she shall note it in the index. If the filing officer has received the termination

statement in duplicate, he or she shall return one copy of the termination statement to the lienholder stamped to show the time of receipt.

(3) There is no fee for the filing of a termination statement.

(4) This section does not apply to a lien created under section 52-1101 filed as an agricultural lien under article 9, Uniform Commercial Code, on or after July 1, 2001.

**Source:** Laws 1985, LB 606, § 15; Laws 1988, LB 943, § 10; Laws 1999, LB 550, § 28; Laws 2001, LB 54, § 17.

## ARTICLE 12

### SEED OR ELECTRICAL POWER AND ENERGY LIENS

#### Section

52-1201. Lien on crops; authorized.

52-1202. Lien; perfection; financing statement; filing; fee.

52-1203. Lien; date of attachment; enforcement.

52-1204. Lien; priority.

52-1205. Lien satisfied; termination statement; procedure.

#### **52-1201 Lien on crops; authorized.**

Any person, including any public power district, cooperative, firm, or corporation, who contracts or agrees to furnish (1) seed to be sown or planted or (2) electrical power or energy, or both, used in the production of crops shall have a lien upon all crops produced from the seed furnished or produced with the electrical power or energy furnished to secure the payment of the purchase price of the seed or the cost of the electrical power or energy used.

**Source:** Laws 1985, LB 503, § 1; Laws 2001, LB 54, § 18.

#### **52-1202 Lien; perfection; financing statement; filing; fee.**

(1) A lien created under section 52-1201 shall be perfected as provided in article 9, Uniform Commercial Code. Such lien shall be perfected within sixty days after the last date on which (a) the seed was furnished or (b) the meter was read with respect to the electrical power or energy furnished.

(2) Any financing statement filed to perfect a lien created under section 52-1201 shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the person claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person to whom the seed or electrical power or energy was furnished, (c) the contract price or reasonable value of the seed or electrical power or energy, and (d)(i) the type and amount of the seed and the date of delivery of the seed or (ii) the type and amount of the electrical power or energy and the period during which such power or energy was furnished. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person to whom the seed or electrical power or energy was furnished. The fee for filing, amending, or releasing the lien shall be as provided in section 9-525, Uniform Commercial Code.

**Source:** Laws 1985, LB 503, § 2; Laws 1988, LB 943, § 11; Laws 1998, LB 1321, § 89; Laws 1999, LB 550, § 29; Laws 2001, LB 54, § 19.

**52-1203 Lien; date of attachment; enforcement.**

A lien created under section 52-1201 shall attach on the date of filing and time thereof if shown. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code.

**Source:** Laws 1985, LB 503, § 3; Laws 1999, LB 550, § 30; Laws 2001, LB 54, § 20.

**52-1204 Lien; priority.**

A lien created under section 52-1201 shall have its priority established by the date and time of filing and shall not be prior to a properly attached and perfected lien or security interest created under the Uniform Commercial Code unless such priority shall be agreed upon in writing by the prior attached and perfected lienholder or secured party.

**Source:** Laws 1985, LB 503, § 4; Laws 2001, LB 54, § 21.

**52-1205 Lien satisfied; termination statement; procedure.**

(1) When a lien created under section 52-1201 is satisfied, the lienholder shall file in the office where the lien is filed a termination statement to the effect that he or she no longer claims an interest under the lien, which shall be identified by file number. A termination statement signed by a person other than the lienholder of record shall be accompanied by a separate written statement of assignment signed by the lienholder of record complying with subsection (b) of section 9-514, Uniform Commercial Code, including payment of the required fee, or reflect that the person signing the termination statement is a successor of the lienholder of record. If the affected lienholder fails to file such a termination statement within thirty days after such lienholder no longer claims an interest, he or she shall be liable to the person to whom the seed or electrical power or energy was furnished for any losses caused to such person by such failure and for reasonable attorney's fees and court costs.

(2) On presentation to the filing officer of such a termination statement, he or she shall note it in the index. If the filing officer has received the termination statement in duplicate, he or she shall return one copy of the termination statement to the lienholder stamped to show the time of receipt.

(3) There is no fee for the filing of a termination statement.

(4) This section does not apply to a lien created under section 52-1201 filed as an agricultural lien under article 9, Uniform Commercial Code, on or after July 1, 2001.

**Source:** Laws 1988, LB 943, § 12; Laws 1999, LB 550, § 31; Laws 2001, LB 54, § 22.

**ARTICLE 13****FILING SYSTEM FOR FARM PRODUCT SECURITY INTERESTS**

Section	
52-1301.	Legislative intent.
52-1302.	Definitions, where found.
52-1302.01.	Approved unique identifier, defined.
52-1303.	Buyer in the ordinary course of business, defined.

**FILING SYSTEM FOR FARM PRODUCT SECURITY INTERESTS § 52-1303**

- Section  
52-1304. Central filing system, defined.  
52-1305. Commission merchant, defined.  
52-1306. Debtor, defined.  
52-1307. Effective financing statement, defined.  
52-1308. Farm product, defined.  
52-1309. Person, defined.  
52-1310. Security interest, defined.  
52-1311. Selling agent, defined.  
52-1312. Central filing system; Secretary of State; duties; system requirements; fees.  
52-1313. Filing of effective financing statement; fees.  
52-1313.01. Effective financing statements; electronic access; fees.  
52-1314. Filing of continuation statement; requirements; insolvency proceedings; effect.  
52-1315. Notice of lapse of effective financing statement; waiver of notice; effect.  
52-1316. Information provided by filing; oral and written inquiries; duties; fees; liability.  
52-1317. Verification of security interest; seller; duty.  
52-1318. Rules and regulations; federal provisions adopted; Secretary of State; duties.  
52-1319. Receipt of written notice, defined.  
52-1320. Buyer subject to security interest; when; waiver or release.  
52-1321. Filing prior to December 24, 1986; effect.  
52-1322. Filing prior to July 1, 1999; effect.

**52-1301 Legislative intent.**

It is the intent of the Legislature to adopt a central filing system for security interests relating to farm products pursuant to section 1324 of the Food Security Act of 1985, Public Law 99-198. It is also the intent of the Legislature that upon the adoption of the central filing system that security interest holders be encouraged to use such system in lieu of any other notice provided by section 1324 for farm products produced or located in the State of Nebraska which are included in the central filing system.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 1; Laws 2007, LB124, § 58.

Sections 52-1301 through 52-1321 were not intended to remove regular U.C.C. provisions regarding the creation, perfection, or priority of security interests. Battle Creek State Bank v. Preusker, 253 Neb. 502, 571 N.W.2d 294 (1997).

**52-1302 Definitions, where found.**

For purposes of sections 52-1301 to 52-1322, unless the context otherwise requires, the definitions found in sections 52-1302.01 to 52-1311 shall be used.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 2; Laws 1998, LB 924, § 19; Laws 2003, LB 4, § 1; Laws 2007, LB124, § 59.

**52-1302.01 Approved unique identifier, defined.**

Approved unique identifier means a number, combination of numbers and letters, or other identifier selected by the Secretary of State using a selection system or method approved by the Secretary of the United States Department of Agriculture.

**Source:** Laws 2007, LB124, § 60.

**52-1303 Buyer in the ordinary course of business, defined.**

Buyer in the ordinary course of business shall mean a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations who is in the business of selling farm products.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 3.

**52-1304 Central filing system, defined.**

Central filing system shall mean the system for filing effective financing statements or notice of such financing statements established pursuant to section 52-1312 pursuant to section 1324 of the Food Security Act of 1985, Public Law 99-198.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 4.

**52-1305 Commission merchant, defined.**

Commission merchant shall mean any person engaged in the business of receiving any farm product for sale, on commission, or for or on behalf of another person.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 5.

**52-1306 Debtor, defined.**

Debtor shall mean the person subjecting a farm product to a security interest.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 6.

**52-1307 Effective financing statement, defined.**

Effective financing statement means a statement that:

- (1) Is an original or reproduced copy thereof;
- (2) Is filed by the secured party in the office of the Secretary of State;
- (3) Is signed, authorized, or otherwise authenticated by the debtor, unless filed electronically, in which case the signature of the debtor shall not be required;
- (4) Contains (a) the name and address of the secured party, (b) the name and address of the debtor, (c) the social security number or other approved unique identifier of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtor, (d) a description of the farm products subject to the security interest, (e) each county in Nebraska where the farm product is produced or located, (f) crop year unless every crop of the farm product in question, for the duration of the effective financing statement, is to be subject to the particular security interest, (g) further details of the farm product subject to the security interest if needed to distinguish it from other quantities of such product owned by the same person or persons but not subject to the particular security interest, and (h) such other information that the Secretary of State may require to comply with section 1324 of the Food Security Act of 1985, Public Law 99-198, or to more efficiently carry out his or her duties under sections 52-1301 to 52-1322;
- (5) Shall be amended in writing, within three months, and signed, authorized, or otherwise authenticated by the debtor and filed, to reflect material changes. If the statement is filed electronically, the signature of the debtor shall not be required;

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(6) Remains effective for a period of five years from the date of filing, subject to extensions for additional periods of five years each by refileing or filing a continuation statement within six months before the expiration of the five-year period;

(7) Lapses on either the expiration of the effective period of the statement or the filing of a notice signed by the secured party that the statement is terminated, whichever occurs first;

(8) Is accompanied by the requisite filing fee set by section 52-1313; and

(9) Substantially complies with the requirements of this section even though the statement contains minor errors that are not seriously misleading.

An effective financing statement may, for any given debtor or debtors, cover more than one farm product located in more than one county.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 7; Laws 1998, LB 924, § 20; Laws 1998, LB 1321, § 90; Laws 1999, LB 552, § 1; Laws 2002, LB 1105, § 439; Laws 2003, LB 4, § 2; Laws 2007, LB124, § 61.

**52-1308 Farm product, defined.**

Farm product shall mean an agricultural commodity, a species of livestock used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state, that is in the possession of a person engaged in farming operations. Farm products shall include, but are not limited to, apples, artichokes, asparagus, barley, bees, buffalo, bull semen, cantaloupe, carrots, cattle and calves, chickens, corn, cucumbers, dry beans, eggs, embryos or genetic products, emu, fish, flax seed, grapes, hay, hogs, honey, honeydew melon, horses, legumes, milk, millet, muskmelon, oats, onions, ostrich, popcorn, potatoes, pumpkins, raspberries, rye, safflower, seed crops, sheep and lambs, silage, sorghum grain, soybeans, squash, strawberries, sugar beets, sunflower seeds, sweet corn, tomatoes, trees, triticale, turkeys, vetch, walnuts, watermelon, wheat, and wool. The Secretary of State may, by rule and regulation, add other farm products to the list specified in this section if such products are covered by the general definition provided by this section.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 8; Laws 2007, LB124, § 62.

**52-1309 Person, defined.**

Person shall mean any individual, partnership, limited liability company, corporation, trust, or any other business entity.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 9; Laws 1993, LB 121, § 315.

**52-1310 Security interest, defined.**

Security interest shall mean an interest in farm products that secures payment or performance of an obligation.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 10.

**52-1311 Selling agent, defined.**

Selling agent shall mean any person, other than a commission merchant, who is engaged in the business of negotiating the sale and purchase of any farm product on behalf of a person engaged in farming operations.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 11.

**52-1312 Central filing system; Secretary of State; duties; system requirements; fees.**

The Secretary of State shall design and implement a central filing system for effective financing statements. The Secretary of State shall be the system operator. The system shall provide a means for filing effective financing statements or notices of such financing statements on a statewide basis. The system shall include requirements:

(1) That an effective financing statement or notice of such financing statement shall be filed in the office of the Secretary of State. A debtor's residence shall be presumed to be the residence shown on the filing. The showing of an improper residence shall not affect the validity of the filing. The filing officer shall mark the statement or notice with a consecutive file number and with the date and hour of filing and shall hold the statement or notice or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements and notices according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement;

(2) That the Secretary of State compile information from all effective financing statements or notices filed with the Secretary of State into a master list (a) organized according to farm product, (b) arranged within each such product (i) in alphabetical order according to the last name of the individual debtors or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors, (ii) in numerical order according to the social security number or other approved unique identifier of the individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtors, (iii) geographically by county, and (iv) by crop year, and (c) containing the information referred to in subdivision (4) of section 52-1307;

(3) That the Secretary of State cause the information on the master list to be published in lists (a) by farm product arranged alphabetically by debtor and (b) by farm product arranged numerically by the debtor's social security number or other approved unique identifier for individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtors. If a registered buyer so requests, the list or lists for such buyer may be limited to any county or group of counties where the farm product is produced or located or to any crop year or years or a combination of such identifiers;

(4) That all buyers of farm products, commission merchants, selling agents, and other persons may register with the Secretary of State to receive lists described in subdivision (3) of this section. Any buyer of farm products, commission merchant, selling agent, or other person conducting business from multiple locations shall be considered as one entity. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration which shall include the name and address of the registrant and the list or

lists described in subdivision (3) of this section which such registrant desires to receive. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars.

A registrant shall pay an additional annual fee to receive quarterly lists described in subdivision (3) of this section. For each farm product list provided on microfiche, the annual fee shall be twenty-five dollars. For each farm product list provided on paper, the annual fee shall be two hundred dollars. The annual fee for a special list which is a list limited to fewer than all counties or less than all crop years shall be one hundred fifty dollars for each farm product.

The Secretary of State shall maintain a record of the registrants and the lists and contents of the lists received by the registrants for a period of five years;

(5) That the lists as identified pursuant to subdivision (4) of this section be distributed by the Secretary of State on a quarterly basis and be in written or printed form. A registrant may choose in lieu of receiving a written or printed form to receive statewide lists on microfiche. The Secretary of State may provide for the distribution of the lists on any other medium and establish reasonable charges therefor. The distribution shall be made by either certified or registered mail, return receipt requested.

The Secretary of State shall, by rule and regulation, establish the dates upon which the quarterly distributions will be made, the dates after which a filing of an effective financing statement will not be reflected on the next quarterly distribution of lists, and the dates by which a registrant must complete a registration to receive the next quarterly list; and

(6) That the Secretary of State remove lapsed and terminated effective financing statements or notices of such financing statements from the master list prior to preparation of the lists required to be distributed by subdivision (5) of this section.

Effective financing statements or any amendments or continuations of effective financing statements originally filed in the office of the county clerk that have been indexed and entered on the Secretary of State's central filing system need not be retained by the county filing office and may be disposed of or destroyed.

The Secretary of State shall apply to the Secretary of the United States Department of Agriculture for (a) certification of the central filing system and (b) approval of the system or method of selecting an approved unique identifier.

The Secretary of State shall deposit any funds received pursuant to subdivision (4) of this section in the Uniform Commercial Code Cash Fund.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 12; Laws 1988, LB 943, § 13; Laws 1998, LB 924, § 21; Laws 1998, LB 1321, § 91; Laws 2005, LB 451, § 1; Laws 2007, LB124, § 63.

Sections 52-1301 through 52-1321 were not intended to remove regular U.C.C. provisions regarding the creation, perfection, or priority of security interests. Battle Creek State Bank v. Preusker, 253 Neb. 502, 571 N.W.2d 294 (1997).

**52-1313 Filing of effective financing statement; fees.**

(1) Presentation for filing of an effective financing statement and the acceptance of the statement by the Secretary of State constitutes filing under sections 52-1301 to 52-1322.

(2) The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing of an effective financing

statement, an amendment, or a continuation statement shall be ten dollars. There shall be no fee for the filing of a termination statement.

(3) The fee for attachments to all instruments submitted for filing shall be fifty cents per page.

(4) The Secretary of State shall deposit any fees received pursuant to this section in the Uniform Commercial Code Cash Fund.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 13; Laws 1998, LB 924, § 22; Laws 1998, LB 1321, § 92; Laws 2003, LB 4, § 3; Laws 2004, LB 1099, § 1; Laws 2007, LB124, § 64.

**52-1313.01 Effective financing statements; electronic access; fees.**

The record of effective financing statements maintained by the Secretary of State may be made available electronically through the gateway or electronic network established under section 84-1204. For batch requests, there shall be a fee of two dollars per requested effective financing statement record accessed through the electronic network, except that the fee for a batch request for one thousand or more effective financing statements shall be two thousand dollars. Effective financing statement data accessed through the gateway shall be for informational purposes only and shall not provide the protection afforded a buyer registered pursuant to section 52-1312.

All fees collected pursuant to this section shall be deposited in the Records Management Cash Fund and shall be distributed as provided in any agreements between the State Records Board and the Secretary of State.

**Source:** Laws 1998, LB 924, § 23.

**52-1314 Filing of continuation statement; requirements; insolvency proceedings; effect.**

(1) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subdivision (6) of section 52-1307. Any such continuation statement shall be signed, authorized, or otherwise authenticated by the secured party, identify the original statement by file number, and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement shall be continued for five years after the last date to which the filing was effective whereupon it shall lapse unless another continuation statement is filed prior to such lapse. If an effective financing statement exists at the time insolvency proceedings are commenced by or against the debtor, the effective financing statement shall remain effective until termination of the insolvency proceedings and thereafter for a period of sixty days or until the expiration of the five-year period, whichever occurs later. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

(2) Any continuation statement that is filed electronically shall include an electronic signature of the secured party which may consist of a signature recognized under section 86-611 or an access code or any other identifying word or number assigned by the Secretary of State that is unique to a particular filer.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 14; Laws 1999, LB 552, § 2; Laws 2002, LB 1105, § 440; Laws 2007, LB124, § 65.

**52-1315 Notice of lapse of effective financing statement; waiver of notice; effect.**

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party shall notify the debtor in writing of his or her right to have a notice of lapse of his or her effective financing statement filed which shall lead to the removal of his or her name from the files and lists compiled by the Secretary of State. In lieu of such notice, the secured party may acquire a waiver of the debtor of such right and a request by the debtor that his or her effective financing statement be retained on file. Such notice may be given or waiver acquired by the secured party at any time prior to the time specified in this subsection for giving the notice.

(2) If the secured party does not furnish the notice or obtain the waiver specified in subsection (1) of this section, the secured party shall, within ten days of final payment of all secured obligations, provide the debtor with a written notification of the debtor's right to have a notice of lapse filed. The secured party shall on written demand by the debtor send the debtor a notice of lapse to the effect that he or she no longer claims a security interest under the effective financing statement, which shall be identified by file number. The notice of lapse need only be signed, authorized, or otherwise authenticated by the secured party.

(3) If the affected secured party fails to send a notice of lapse within ten days after proper demand, pursuant to subsection (2) of this section, he or she shall be liable to the debtor for any loss caused to the debtor by such failure.

(4) On presentation to the Secretary of State of a notice of lapse, he or she shall treat it as a termination statement and note it in the index. If he or she has received the notice of lapse in duplicate, he or she shall return one copy of the notice of lapse to the filing party stamped to show the time of receipt thereof.

(5) There shall be no fee for filing a notice of lapse or termination statement.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 15; Laws 1988, LB 943, § 14; Laws 1998, LB 1321, § 93; Laws 2007, LB124, § 66.

**52-1316 Information provided by filing; oral and written inquiries; duties; fees; liability.**

(1) Oral and written inquiries regarding information provided by the filing of effective financing statements may be made at any county clerk's office or the office of the Secretary of State during regular business hours. The fee for furnishing file information shall be four dollars and fifty cents for each debtor name searched by the county clerk or Secretary of State. Written confirmation of an oral or written inquiry shall be mailed no later than the end of the next business day after the inquiry is received.

(2) The Secretary of State shall provide a system that assigns an identifying number to each inquiry made pursuant to subsection (1) of this section. Such number shall be given to the inquiring party at the time of the oral response and shall be included in the written confirmation. The Secretary of State and the county clerks shall maintain a record of inquiries made under this section identifying who made the inquiry, on whom the inquiry was made, and the date of the inquiry.

(3) The Secretary of State may provide for a computerized system for inquiry and confirmation which may be used in lieu of the inquiry and confirmation under subsection (1) of this section. When such a system is implemented and used, it shall have the same effect as an inquiry and confirmation under subsection (1) of this section.

(4) There shall be no fee charged for actual inspection of records of effective financing statements kept by the county clerk or the Secretary of State for the inspection of ten names or less per day by a single person. There shall be a uniform fee, in addition to any other charge for services payable to the county clerk or the Secretary of State, of one dollar per name for each inspection in excess of ten names per day by a single person.

(5) The county clerk and Secretary of State and their employees or agents shall be exempt from all personal liability as a result of any error or omission in providing information as required by this section except in cases of willful misconduct or gross negligence.

(6) Fees received pursuant to this section by county clerks shall be deposited in the county general fund. Of the fees received pursuant to this section by the Secretary of State for furnishing file information by electronic or other means, three dollars and fifty cents of each fee shall be deposited in the Uniform Commercial Code Cash Fund and one dollar of each fee shall be deposited in the Records Management Cash Fund.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 16; Laws 1987, LB 101, § 12; Laws 1997, LB 590, § 1; Laws 1998, LB 1321, § 94; Laws 2004, LB 1099, § 2.

#### **52-1317 Verification of security interest; seller; duty.**

In order to verify the existence or nonexistence of a security interest, a buyer, commission merchant, or selling agent may request a seller to disclose such seller's social security number or approved unique identifier or, in the case of a seller doing business other than as an individual, the Internal Revenue Service taxpayer identification number or approved unique identifier of such seller.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 17; Laws 2007, LB124, § 67.

#### **52-1318 Rules and regulations; federal provisions adopted; Secretary of State; duties.**

(1) The State of Nebraska hereby adopts the federal rules and regulations in effect on September 1, 2007, adopted and promulgated to implement section 1324 of the Food Security Act of 1985, Public Law 99-198. If there is a conflict between such rules and regulations and sections 52-1301 to 52-1322, the federal rules and regulations shall apply.

(2) The Secretary of State shall adopt and promulgate rules and regulations necessary to implement sections 52-1301 to 52-1322 pursuant to the Administrative Procedure Act. If necessary to obtain federal certification of the central filing system, additional or alternative requirements made in conformity with section 1324 of the Food Security Act of 1985, Public Law 99-198, may be imposed by the Secretary of State by rule and regulation.

(3) The Secretary of State shall prescribe all forms to be used for filing effective financing statements and subsequent actions.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 18; Laws 1998, LB 924, § 24; Laws 2003, LB 4, § 4; Laws 2007, LB124, § 68.

**Cross References**

Administrative Procedure Act, see section 84-920.

**52-1319 Receipt of written notice, defined.**

For purposes of section 1324 of the Food Security Act of 1985, Public Law 99-198, receipt of written notice shall mean the date the notice is actually received by a buyer in the ordinary course of business or the first date upon which delivery is attempted by a carrier. A buyer in the ordinary course of business shall act in good faith. In all cases a buyer in the ordinary course of business shall be presumed to have received the notice ten days after it was mailed.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 19.

**52-1320 Buyer subject to security interest; when; waiver or release.**

(1) A buyer in the ordinary course of business buying farm products covered by the central filing system shall take subject to the security interest identified under such system, except that a registrant or a buyer in the ordinary course of business making an inquiry under section 52-1316 shall not take subject to the security interest if the central filing system does not correctly identify the debtor.

(2) A buyer in the ordinary course of business buying farm products covered by an effective financing statement takes free of any security interest on such products if such buyer secures a waiver or release of the security interest specified in such effective financing statement from the secured party. If a buyer in the ordinary course of business buying farm products covered by the central filing system tenders to the seller the total purchase price by means of a check or other instrument payable to such seller and each security interest holder of the seller identified in the central filing system for such products and if such security interest holder authorizes the negotiation of such check or other instrument, such authorization or endorsement and payment thereof shall constitute a waiver or release of the security interest specified to the extent of the amount of the instrument. Such waiver or release of the security interest shall not serve to establish or alter in any way security interest or lien priorities under Nebraska law.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 20.

**52-1321 Filing prior to December 24, 1986; effect.**

An effective financing statement filed prior to December 24, 1986, shall be considered as filed on such date.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 21.

Sections 52-1301 through 52-1321 were not intended to remove regular U.C.C. provisions regarding the creation, perfection, or priority of security interests. Battle Creek State Bank v. Preusker, 253 Neb. 502, 571 N.W.2d 294 (1997).

**52-1322 Filing prior to July 1, 1999; effect.**

An effective financing statement filed on or before July 1, 1999, in accordance with section 52-1307, which has not lapsed on or before July 1, 1999,

may be continued by the filing of a continuation statement in accordance with section 52-1314 in the office of the Secretary of State.

**Source:** Laws 1998, LB 1321, § 95.

#### ARTICLE 14

### AGRICULTURAL PRODUCTION LIENS

#### Section

- 52-1401. Terms, defined.
- 52-1402. Lien-notification statement; requirements; contents.
- 52-1403. Lien-notification statement; lender response.
- 52-1404. Lender response; effect.
- 52-1405. Lender; failure to respond; effect.
- 52-1406. Lien; attachment; when.
- 52-1407. Lien; perfection; financing statement; filing; priority; enforcement; fee.
- 52-1408. Lien; enforcement procedures; extinguishment.
- 52-1409. Lien satisfied; termination statement; procedure.
- 52-1410. Sections, how construed.
- 52-1411. Bankruptcy; effect.

#### **52-1401 Terms, defined.**

As used in sections 52-1401 to 52-1411, unless the context otherwise requires:

(1) Agricultural chemical shall mean a fertilizer or agricultural chemical which is applied to crops or land which is used for the raising of crops;

(2) Feed shall mean a commercial feed, a feed ingredient, a mineral feed, a drug, an animal health product, or a customer-formula feed which is used for the feeding of livestock;

(3) Petroleum product shall mean motor vehicle fuel, oil, grease, propane or other compressed fuel, and diesel fuel which is used in the production of crops and livestock;

(4) Seed shall mean agricultural seed which is used in the production of crops;

(5) Electricity shall mean electrical energy which is used in the production of crops and livestock;

(6) Labor shall mean labor performed in the application, delivery, or preparation of a product defined in subdivisions (1) through (4) of this section;

(7) Person shall mean an individual, partnership, limited liability company, corporation, company, cooperative, society, or association;

(8) Lender shall mean a person in the business of lending money identified in a lien-notification statement;

(9) Letter of commitment shall mean a binding, irrevocable, and unconditional agreement by a lender to honor drafts or other demands for payment upon the supplier presenting invoices signed by the purchaser or other proof of delivery; and

(10) Agricultural production input shall mean any agricultural chemical, feed, seed, petroleum product, electricity, or labor used in preparing the land for planting, cultivating, growing, producing, harvesting, drying, and storing crops or crop products or for feeding, producing, or delivering livestock.

**Source:** Laws 1987, LB 101, § 1; Laws 1993, LB 121, § 316; Laws 1994, LB 1160, § 52; Laws 1995, LB 182, § 25.

**52-1402 Lien-notification statement; requirements; contents.**

(1) A person supplying an agricultural production input may notify a lender of an agricultural production input lien by providing a lien-notification statement to the lender in an envelope marked IMPORTANT — LEGAL NOTICE and sent by certified mail or another verifiable method.

(2) The lien-notification statement shall be in the form approved by the Secretary of State and shall disclose the following:

- (a) The name and business address of any lender;
- (b) The name, address, and signature of the supplier claiming the lien;
- (c) A description and the date or anticipated date or dates of the transaction or transactions and the retail cost or anticipated costs of the agricultural production input;
- (d) The name, residential address, and signature of the person to whom the agricultural production input was furnished or is to be furnished;
- (e) The name and residential address of the owner and a description of the real estate sufficient to identify the same where the crops to which the lien attaches are growing or are to be grown or, if livestock, the name and residential address of the owner of the livestock, the location where the livestock will be raised, and a description of the livestock;
- (f) A statement that the products and proceeds of the crops or livestock are covered by the agricultural input lien;
- (g) The social security number or federal tax identification number of the person to whom the agricultural production input was furnished, if known; and
- (h) The social security number or federal tax identification number of the supplier claiming the lien.

**Source:** Laws 1987, LB 101, § 2; Laws 1988, LB 943, § 15.

**52-1403 Lien-notification statement; lender response.**

Within fifteen calendar days after receiving a lien-notification statement, the lender shall respond to the supplier with either:

- (1) A letter of commitment for part or all of the amount in the lien-notification statement and, if the letter of commitment is for only part of the amount in the lien-notification statement, then a copy of the partial commitment shall be sent to the person to whom the agricultural production input was furnished or is to be furnished; or
- (2) A written refusal to issue a letter of commitment, and a copy of such refusal shall be sent to the person to whom the agricultural production input was furnished or is to be furnished.

**Source:** Laws 1987, LB 101, § 3.

**52-1404 Lender response; effect.**

If the lender responds with a letter of commitment, the supplier may not obtain a lien for the amount stated in the letter of commitment. If the lender responds with a written refusal to issue a letter of commitment, the rights of the lender and the supplier are not affected by sections 52-1401 to 52-1411, and

any prior perfected lien of the lender under the Uniform Commercial Code shall retain its established priority.

**Source:** Laws 1987, LB 101, § 4.

**52-1405 Lender; failure to respond; effect.**

If a lender does not respond to the supplier within fifteen calendar days after receiving the lien-notification statement:

(1) If the agricultural production input is feed for livestock, a supplier who furnishes the feed has an agricultural production input lien which has priority over any security interest of the lender for the unpaid retail cost of such feed. Such lien may not exceed the amount, if any, that the sales price of the livestock exceeds the greater of the fair market value of the livestock at the time the lien attaches or the acquisition price of the livestock; or

(2) For all other agricultural production input, a supplier who furnishes such agricultural production input has an agricultural production input lien which has priority over any security interest of the lender in the specified crops or their proceeds for the lesser of:

(a) The amount stated in the lien-notification statement; or

(b) The unpaid retail cost of the agricultural production input identified in the lien-notification statement.

**Source:** Laws 1987, LB 101, § 5.

**52-1406 Lien; attachment; when.**

(1) The agricultural production input lien attaches to:

(a) The existing crops upon the land where a furnished agricultural chemical was applied or, if crops are not planted, the next production crop where a furnished agricultural chemical was applied within sixteen months following the last date on which the agricultural chemical was applied;

(b) The crops produced from furnished seed;

(c) The crops produced, harvested, or processed using a furnished petroleum product or furnished electricity. If the crops are grown on leased land and the lease provides for payment in crops, the lien does not attach to the lessor's portion of the crops. The lien continues in crop products and proceeds, except the lien does not continue in grain after a cash sale; or

(d) All livestock consuming the feed and continues in livestock products and proceeds.

(2) An agricultural production input lien attaches when the agricultural production input is furnished by the supplier to the purchaser.

**Source:** Laws 1987, LB 101, § 6.

**52-1407 Lien; perfection; financing statement; filing; priority; enforcement; fee.**

(1) An agricultural production input lien shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall contain or have attached thereto the information required in subsection (2) of section 52-1402 and shall be filed within three months after the last date that the agricultural production input was furnished. The failure to include the social security number or federal tax identification number shall not

render any filing unperfected. Perfection occurs as of the date such financing statement is filed.

(2) An agricultural production input lien that is not perfected has the priority of an unperfected security interest under section 9-322, Uniform Commercial Code.

(3) An agricultural production input lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. For purposes of enforcement of the lien, the lienholder is the secured party and the person to whom the agricultural production input was furnished is the debtor, and each has the respective rights and duties of a secured party and a debtor under article 9, Uniform Commercial Code.

(4) The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

**Source:** Laws 1987, LB 101, § 7; Laws 1988, LB 943, § 16; Laws 1999, LB 550, § 32; Laws 2001, LB 54, § 23.

#### **52-1408 Lien; enforcement procedures; extinguishment.**

An action to enforce an agricultural production input lien may be brought in the district court in a county where some part of the crop or livestock was located after the lien is perfected. A lien-notification statement may be amended, except for the amount demanded, by leave of the court in the furtherance of justice. An agricultural production input lien is extinguished if an action to enforce the lien is not brought within eighteen months after the date the lien-notification statement is filed.

**Source:** Laws 1987, LB 101, § 8.

#### **52-1409 Lien satisfied; termination statement; procedure.**

(1) When an agricultural production input lien is satisfied, the lienholder shall file in the office where the lien is filed a termination statement to the effect that he or she no longer claims an interest under the lien, which shall be identified by file number. A termination statement signed by a person other than the lienholder of record shall be accompanied by a separate written statement of assignment signed by the lienholder of record complying with subsection (b) of section 9-514, Uniform Commercial Code, including payment of the required fee, or reflect that the person signing the termination statement is a successor of the lienholder of record. If the affected lienholder fails to file such a termination statement within thirty days after such lienholder no longer claims an interest, he or she shall be liable to the person to whom the agricultural production input was furnished for any losses caused to such person by such failure and for reasonable attorney's fees and court costs.

(2) On presentation to the filing officer of such a termination statement, he or she shall note it in the index. If the filing officer has received the termination statement in duplicate, he or she shall return one copy of the termination statement to the lienholder stamped to show the time of receipt.

(3) There is no fee for the filing of a termination statement.

(4) This section does not apply to an agricultural production input lien filed as an agricultural lien under article 9, Uniform Commercial Code, on or after July 1, 2001.

**Source:** Laws 1987, LB 101, § 9; Laws 1988, LB 943, § 17; Laws 1999, LB 550, § 33; Laws 2001, LB 54, § 24.

**52-1410 Sections, how construed.**

Nothing in sections 52-1401 to 52-1410 shall be construed to negate or affect the provisions of Chapter 52, articles 2, 5, 7, 9, 11, 12, and 15, and Chapter 54, article 2.

**Source:** Laws 1987, LB 101, § 10.

**52-1411 Bankruptcy; effect.**

The filing of a petition for relief under any bankruptcy law of the United States shall render any unperformed letter of commitment under sections 52-1401 to 52-1408 null and void.

**Source:** Laws 1987, LB 101, § 11.

**ARTICLE 15**

**SERVICE OF ANIMALS**

Section

- 52-1501. Stallion, jack, or bull; lien for service.
- 52-1502. Liens; list of animals served; filing.
- 52-1503. Lien; period enforceable.
- 52-1504. Lien; foreclosure.
- 52-1505. Lien; sale or removal of animals prohibited; exception.
- 52-1506. Violations; penalty.

**52-1501 Stallion, jack, or bull; lien for service.**

Every owner, lessee, agent or manager of any stallion, jack or bull shall have a lien upon any mare and her colt or upon any cow and her calf served by such stallion, jack or bull for the full amount of the reasonable or agreed value or price of such service. Every such owner, lessee, agent or manager of such stallion, jack or bull desiring to perfect a lien upon any mare and her colt, or upon any cow and her calf, shall at any time after breeding any such animal to any such male, file with the county clerk of the county a verified notice of lien describing such animal with reasonable certainty, giving the name of the owner and his place of residence if known, and the name and residence of the person having the possession of such animal, the location of such animal, the terms of payment for such service, the amount thereof, the name of the male, the date of service, and the time or event when the same shall become due and payable and such other matters as to make the same more certain. Thereafter such lienor shall have a first lien upon such animal or animals described therein, and their offspring as soon as the same may be born, subject, however, to the lien of record of any prior mortgage in good faith.

**Source:** Laws 1913, c. 49, § 1, p. 155; R.S.1913, § 90; C.S.1922, § 98; C.S.1929, § 54-202; R.S.1943, § 54-202; R.S.1943, (1984), § 54-202.

**52-1502 Liens; list of animals served; filing.**

Any owner of any stallion, jack or bull within the state may file with the county clerk of any county therein on or before October 1 of each year, a full and complete list of the mares or cows served by such male within such county during that year. Such list shall contain the name of and a brief description of all animals so served, the owners thereof, the terms on which each was bred, and the time when payment thereof becomes due; and it shall be verified by the owner of such stallion, jack or bull, or his lawfully authorized agent.

**Source:** Laws 1913, c. 49, § 2, p. 156; R.S.1913, § 91; C.S.1922, § 99; C.S.1929, § 54-203; R.S.1943, § 54-203; R.S.1943, (1984), § 54-203.

**52-1503 Lien; period enforceable.**

From the time of filing such lien upon any such mare or cow the lienor shall have the right to hold the same on such mare or cow and its offspring for a period of twelve months from and after the birth of such offspring; but if such lien shall not be foreclosed within that time the same shall expire and be of no force or effect.

**Source:** Laws 1913, c. 49, § 3, p. 156; R.S.1913, § 92; C.S.1922, § 100; C.S.1929, § 54-204; Laws 1935, c. 120, § 1, p. 438; C.S.Supp.,1941, § 54-204; R.S.1943, § 54-204; R.S.1943, (1984), § 54-204.

**52-1504 Lien; foreclosure.**

Every such lienor may foreclose such lien by delivering to any sheriff or constable a true copy of such lien certified by the clerk of the county, together with an affidavit of the lienor or any agent or attorney having knowledge of the facts, stating the amount due and unpaid on such lien, with direction to such officer to foreclose such lien. Thereupon such officer shall seize such mare or cow and its offspring and sell the same in the manner provided by law for the sale of personal property on execution, and retain the principal and interest and expenses of such seizure and sale, and the overplus, if any, pay over to the owner of such mare or cow, or deposit the same for him with the county clerk, and make and file due return thereof with the county clerk.

**Source:** Laws 1913, c. 49, § 4, p. 156; R.S.1913, § 93; C.S.1922, § 101; C.S.1929, § 54-205; R.S.1943, § 54-205; R.S.1943, (1984), § 54-205.

**52-1505 Lien; sale or removal of animals prohibited; exception.**

It shall be unlawful for any owner of any mare or cow or its offspring, or any person having the possession of such mare or cow, or its offspring, upon which there is any lien of record in the county, to sell or permanently remove the same from the county or state before said lien is paid; *Provided*, such owner may remove the same to an adjoining county by first filing in such adjoining county a certified copy of such lien and notifying such lienor in writing of the exact location of such mare or cow and its offspring in such adjoining county.

**Source:** Laws 1913, c. 49, § 5, p. 156; R.S.1913, § 94; C.S.1922, § 102; C.S.1929, § 54-206; R.S.1943, § 54-206; R.S.1943, (1984), § 54-206.

**52-1506 Violations; penalty.**

Any person or persons knowingly or willfully violating any of the provisions of sections 52-1501 to 52-1505 shall be punished by a fine of not less than twenty-five dollars nor more than fifty dollars.

**Source:** Laws 1913, c. 49, § 6, p. 157; R.S.1913, § 95; C.S.1922, § 103; C.S.1929, § 54-207; R.S.1943, § 54-207; R.S.1943, (1984), § 54-207.

## ARTICLE 16 MASTER LIEN LIST

### Section

- 52-1601. Master lien list; Secretary of State; compilation.  
 52-1602. Master lien list; distribution; registration to receive list; fee.  
 52-1603. Buyer of farm products; purchase subject to lien; when; waiver or release of lien.  
 52-1604. Errors or omissions; exempt from liability.  
 52-1605. Rules and regulations.

### **52-1601 Master lien list; Secretary of State; compilation.**

(1) Prior to July 1, 2001, the Secretary of State shall compile lien information received by his or her office pursuant to subsection (2) of section 9-414, Uniform Commercial Code, into a master lien list in alphabetical order according to the last name of the individual against whom such lien is filed or, in the case of an entity doing business other than as an individual, the first word in the name of the debtor. Such master lien list shall contain the name and address of the debtor, the name and address of the lienholder, and the type of such lien.

(2) On and after July 1, 2001, the Secretary of State shall compile lien information relative to liens created under Chapter 52, articles 2, 5, 7, 9, 11, 12, and 14, and Chapter 54, article 2, received by his or her office pursuant to subsection (a) of section 9-530, Uniform Commercial Code, into a master lien list in alphabetical order according to the last name of the individual against whom such lien is filed or, in the case of an entity doing business other than as an individual, the first word in the name of the debtor. Such master lien list shall contain the name and address of the debtor, the name and address of the lienholder, and the type of such lien.

**Source:** Laws 1988, LB 987, § 1; Laws 1999, LB 550, § 34; Laws 2002, LB 957, § 24.

### **52-1602 Master lien list; distribution; registration to receive list; fee.**

(1) The master lien list prescribed in section 52-1601 shall be distributed by the Secretary of State on a quarterly basis corresponding to the date on which the lists provided pursuant to sections 52-1301 to 52-1322 are distributed. Such master lien list may be mailed with the list provided pursuant to sections 52-1301 to 52-1322. If mailed separately, the master lien list shall be mailed by either certified or registered mail, return receipt requested.

(2) Any person may register with the Secretary of State to receive the master lien list prescribed in section 52-1601. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee.

The fee for annual registration shall be thirty dollars, except that a registrant under sections 52-1301 to 52-1322 shall not be required to pay the registration fee provided by this section in addition to the registration fee paid pursuant to sections 52-1301 to 52-1322 for the same annual registration period. Beginning for calendar year 1989, a registrant under sections 52-1601 to 52-1605 shall pay an additional annual fee to receive quarterly master lien lists prescribed in section 52-1601. For each master lien list provided on microfiche, the annual fee shall be twenty-five dollars. For each master lien list provided on paper, the annual fee shall be two hundred dollars. The Secretary of State may provide for the distribution of master lien lists on any other medium and may establish reasonable charges therefor.

(3) The Secretary of State, by rule and regulation, shall establish the dates after which a filing of liens will not be reflected on the next quarterly distribution of the master lien list and the date by which a registrant shall complete a registration in order to receive the next quarterly master lien list.

(4) The Secretary of State shall deposit any funds received pursuant to subsection (2) of this section in the Uniform Commercial Code Cash Fund.

**Source:** Laws 1988, LB 987, § 2; Laws 1998, LB 924, § 25; Laws 2003, LB 4, § 5; Laws 2007, LB124, § 69.

**52-1603 Buyer of farm products; purchase subject to lien; when; waiver or release of lien.**

(1) A buyer of farm products who is registered to receive the master lien list as provided in section 52-1602 and who, in the ordinary course of business, buys farm products from a seller engaged in farming operations shall take free of any lien created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14, if such lien is not on the most recent master lien list received by the buyer pursuant to sections 52-1601 to 52-1605, except that such buyer shall take subject to any such lien if the lien was filed after the last date for inclusion in the most recent quarterly distribution of the master lien list and if the buyer has received from the lienholder or seller written notice of the lien. For purposes of this subsection, the form of such written notice of the lien may be a copy of the lien filing. For purposes of this subsection, received by the buyer shall mean the first date upon which delivery of the master lien list is attempted by a carrier, and in all cases a buyer shall be presumed to have received the master lien list ten days after it was mailed.

(2) If a buyer buying property subject to a lien created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14, tenders to the seller the total purchase price by means of a check or other instrument payable to such seller and the lienholder of any such lien for such property and if such lienholder authorizes the negotiation of such check or other instrument, such authorization or endorsement and payment thereof shall constitute a waiver or release of the lien specified to the extent of the amount of the check or instrument. Such waiver or release of the lien shall not serve to establish or alter in any way security interest or lien priorities under Nebraska law.

(3) Except as otherwise provided in the provisions of subsections (1) and (2) of this section, sections 52-1601 to 52-1605 shall not be interpreted or construed to alter liability of buyers of property subject to liens created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14.

**Source:** Laws 1988, LB 987, § 3; Laws 2003, LB 70, § 1.

**52-1604 Errors or omissions; exempt from liability.**

The Secretary of State, all county clerks, and their employees or agents shall be exempt from all personal liability as a result of any error or omission in providing information of such statutory liens except in cases of willful misconduct or gross negligence.

**Source:** Laws 1988, LB 987, § 4.

**52-1605 Rules and regulations.**

The Secretary of State shall adopt and promulgate rules and regulations necessary to implement sections 52-1601 to 52-1605.

**Source:** Laws 1988, LB 987, § 5.

**ARTICLE 17****SECURITY INTEREST IN RENTS**

## Section

- 52-1701. Terms, defined.
- 52-1702. Assignment instrument; terms.
- 52-1703. Security interest; when valid.
- 52-1704. Security interest; perfection.
- 52-1705. Security interest; enforcement by assignee.
- 52-1706. Assignee; collection of rents; lease terms ineffective; when.
- 52-1707. Priority.
- 52-1708. Applicability of sections.

**52-1701 Terms, defined.**

For purposes of sections 52-1701 to 52-1708:

(1) Assignee shall mean the holder, and his or her successors and assigns, of a security interest in rents which has been created, provided, assigned, or granted by an assignor;

(2) Assignment instrument shall mean any mortgage, trust deed, assignment of leases, assignment of rents, or other instrument or agreement which creates, provides, assigns, or grants a security interest in rents;

(3) Assignor shall mean a person, and his or her successors and assigns, who has created, provided, assigned, or granted a security interest in rents to an assignee;

(4) Lease shall mean any license, lease, contract, or other agreement for the use or possession of real estate;

(5) Rent party shall mean the party that is obligated under a lease to pay rents;

(6) Rents shall mean any right to income, rents, proceeds, issues, profits, royalties, or any other payment or benefit derived under a present or future lease; and

(7) Security interest in rents shall mean any interest in rents or leases which secures payment or performance of an obligation.

**Source:** Laws 1993, LB 14, § 1.

**52-1702 Assignment instrument; terms.**

An assignment instrument may provide that any or all obligations covered by, described in, or identified by the assignment instrument are to be secured by

present, future, or after-arising rents or leases. The obligations covered by, described in, or identified by an assignment instrument may include future advances or other value whether or not the future advances or value are given pursuant to an existing commitment to loan additional funds.

**Source:** Laws 1993, LB 14, § 2.

**52-1703 Security interest; when valid.**

A security interest in rents shall be valid and binding between the parties to an assignment instrument upon the execution and delivery of the assignment instrument by the assignor to the assignee.

**Source:** Laws 1993, LB 14, § 3.

**52-1704 Security interest; perfection.**

A security interest in rents shall be perfected upon the recording of an assignment instrument with the register of deeds in the county in which the real estate, or any part thereof, described in the assignment instrument is situated. Upon the recording of the assignment instrument, the security interest in rents shall be valid, enforceable, and binding against, unavoidable by, and fully perfected as to all parties, including any subsequent purchaser, mortgagee, trustee in bankruptcy, general creditor, lien creditor, and other lienholder or claimant, from the time of the recording of the assignment instrument. It shall not be necessary for an assignee to take actual or constructive possession or control of the real estate or rents related thereto, to secure the appointment of a receiver, to take any action tantamount to taking of such possession or control, or to take any other action whatsoever to perfect a security interest in rents.

**Source:** Laws 1993, LB 14, § 4.

**52-1705 Security interest; enforcement by assignee.**

An assignee may enforce a security interest in rents by (1) the appointment of a receiver under applicable law, (2) the recovery of rents as part of the enforcement of an assignment instrument, or (3) as provided in section 52-1706 or under other applicable law. The collection of rents by an assignee in accordance with section 52-1706 shall not be deemed to impose the obligations of a mortgagee or any other person in possession of the real estate on the assignee.

**Source:** Laws 1993, LB 14, § 5.

**52-1706 Assignee; collection of rents; lease terms ineffective; when.**

If agreed in an assignment instrument or on default by the assignor whether agreed in the assignment instrument or not, the assignee shall be entitled to notify any rent party to make payment of rents due or to become due to the assignee whether or not the assignor was previously receiving or collecting rents. A rent party may pay rents to the assignor until the rent party receives notification that the rents due or to become due have been assigned and that payment is to be made to the assignee. If requested by the rent party, the assignee shall furnish reasonable proof that the assignment has been made, and unless the assignee furnishes the proof, the rent party may pay the assignor. A term in any lease between a rent party and an assignor is ineffective if it prohibits assignment of a lease or rents due or to become due pursuant to the

lease, if it prohibits creation of a security interest in rents due or to become due, or if it requires the consent of the rent party to such assignment or a security interest in rents.

**Source:** Laws 1993, LB 14, § 6.

**52-1707 Priority.**

Priority between conflicting security interests in rents shall be ranked according to priority in the time of recording of an assignment instrument.

**Source:** Laws 1993, LB 14, § 7.

**52-1708 Applicability of sections.**

Sections 52-1701 to 52-1707 shall be applicable to any assignment instrument properly recorded prior to, on, or after February 17, 1993.

**Source:** Laws 1993, LB 14, § 8.

**ARTICLE 18**

**MOBILE HOMES**

Section

52-1801. Mobile home security interest; perfection; mobile home certificate of title; notation of lien; laws applicable.

**52-1801 Mobile home security interest; perfection; mobile home certificate of title; notation of lien; laws applicable.**

(1) Any security interest in a mobile home perfected on or after July 15, 1992, and prior to April 8, 1993, shall continue to be perfected:

(a) Until the financing statement perfecting such security interest is terminated or would have lapsed in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code; or

(b) Until a lien is noted on the face of the certificate of title for the mobile home pursuant to section 60-164.

(2) Any lien noted on the face of a mobile home certificate of title on or after April 8, 1993, pursuant to subdivision (1)(b) of this section on behalf of the holder of a security interest in the mobile home which was perfected on or after July 15, 1992, and prior to April 8, 1993, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a mobile home certificate of title shall, upon request, surrender the mobile home certificate of title to a holder of a security interest in the mobile home which was perfected on or after July 15, 1992, and prior to April 8, 1993, to permit notation of a lien on the mobile home certificate of title and shall do such other acts as may be required to permit such notation.

(4) If the owner of a mobile home subject to a security interest perfected on or after July 15, 1992, and prior to April 8, 1993, fails or refuses to obtain a certificate of title after April 8, 1993, the security interest holder may obtain a certificate of title in the name of the owner of the mobile home following the procedures of subsection (2) of section 60-147 and may have a lien noted on the certificate of title pursuant to section 60-164.

(5) The assignment, release, or satisfaction of a security interest in a mobile home shall be governed under the laws under which it was perfected.

(6) This section shall not affect the validity or priority of a lien established against a mobile home by the notation of such lien on the mobile home certificate of title prior to July 15, 1992.

**Source:** Laws 1993, LB 340, § 3; Laws 1999, LB 550, § 35; Laws 2005, LB 276, § 101.

## ARTICLE 19

### NONCONSENSUAL COMMON-LAW LIENS

#### Section

- 52-1901. Nonconsensual common-law lien, defined.  
52-1902. Submission for filing or recording; liability.  
52-1903. Filing officer; duty to refuse.  
52-1904. Lien; strike from record; when.

#### **52-1901 Nonconsensual common-law lien, defined.**

For purposes of sections 52-1901 to 52-1904, nonconsensual common-law lien means a document that purports to assert a lien against real or personal property of any person or entity and:

- (1) Is not expressly provided for by a specific state or federal statute;
- (2) Does not depend on the consent of the owner of the real or personal property affected; and
- (3) Is not an equitable or constructive lien imposed by a state or federal court of competent jurisdiction.

**Source:** Laws 2003, LB 655, § 1.

#### **52-1902 Submission for filing or recording; liability.**

If a person submits for filing or recording to the Secretary of State, county clerk, register of deeds, or clerk of any court any document purporting to create a nonconsensual common-law lien against real or personal property in violation of this section or section 76-296 and such document is so filed or recorded, the person submitting the document is liable to the person or entity against whom the lien is claimed for actual damages plus costs and reasonable attorney's fees.

**Source:** Laws 2003, LB 655, § 2.

#### **52-1903 Filing officer; duty to refuse.**

The Secretary of State, county clerk, register of deeds, or clerk of any court shall refuse to accept for filing any nonconsensual common-law lien.

**Source:** Laws 2003, LB 655, § 3.

#### **52-1904 Lien; strike from record; when.**

Any lien determined to be a nonconsensual common-law lien pursuant to any proceeding shall be stricken from the record of the Secretary of State, county clerk, register of deeds, or clerk of any court upon the issuing of a valid court order from a court of competent jurisdiction. There shall be no filing fee for a court order issued pursuant to this section.

**Source:** Laws 2003, LB 655, § 4.

## ARTICLE 20

## HOMEOWNERS' ASSOCIATION

## Section

52-2001. Lien; foreclosure; notice; priority; costs and attorney's fees; homeowners' association; furnish statement.

**52-2001 Lien; foreclosure; notice; priority; costs and attorney's fees; homeowners' association; furnish statement.**

(1) A homeowners' association has a lien on a member's real estate for any assessment levied against real estate or fines imposed against its owner from the time the assessment or fine becomes due and a notice containing the dollar amount of such lien is recorded in the office where mortgages or deeds of trust are recorded. The homeowners' association's lien may be foreclosed in like manner as a mortgage on real estate but the homeowners' association shall give reasonable notice of its action to all lienholders of real estate whose interest would be affected. Unless the homeowners' association declaration or agreement otherwise provides, fees, charges, late charges, fines, and interest charged are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment may be a lien from the time the first installment thereof becomes due.

(2) A lien under this section is prior to all other liens and encumbrances on real estate except (a) liens and encumbrances recorded before the recordation of the declaration or agreement, (b) a first mortgage or deed of trust on real estate recorded before the date on which the assessment sought to be enforced became delinquent, and (c) liens for real estate taxes and other governmental assessments or charges against real estate. The lien under this section is not subject to the homestead exemption pursuant to section 40-101.

(3) Unless the declaration or agreement otherwise provides, if two or more homeowners' associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(4) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(5) This section does not prohibit actions to recover sums for which subsection (1) of this section creates a lien or prohibit a homeowners' association from taking a deed in lieu of foreclosure.

(6) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(7) The homeowners' association, upon written request, shall furnish to a homeowners' association member a recordable statement setting forth the amount of unpaid assessments against his or her real estate. The statement must be furnished within ten business days after receipt of the request and is binding on the homeowners' association, the governing board, and every homeowners' association member.

(8) For purposes of this section:

(a) Declaration means any instruments, however denominated, that create the homeowners' association and any amendments to those instruments;

(b)(i) Homeowners' association means an association whose members consist of a private group of fee simple owners of residential real estate formed for the purpose of imposing and receiving payments, fees, or other charges for:

(A) The use, rental, operation, or maintenance of common elements available to all members and services provided to the member for the benefit of the member or his or her real estate;

(B) Late payments of assessments and, after notice and opportunity to be heard, the levying of fines for violations of homeowners' association declarations, agreements, bylaws, or rules and regulations; or

(C) The preparation and recordation of amendments to declarations, agreements, resale statements, or statements for unpaid assessments; and

(ii) Homeowners' association does not include a unit owners association organized under the Nebraska Condominium Act; and

(c) Real estate means the real estate of a homeowners' association member as such real estate is specifically described in the member's homeowners' association declaration or agreement.

**Source:** Laws 2010, LB736, § 1.

**Cross References**

Nebraska Condominium Act, see section 76-825.



**LIQUORS**

**CHAPTER 53**  
**LIQUORS**

Article.

1. Nebraska Liquor Control Act.
  - (a) General Provisions. 53-101 to 53-104.
  - (b) Nebraska Liquor Control Commission; Organization. 53-105 to 53-115.
  - (c) Nebraska Liquor Control Commission; General Powers. 53-116 to 53-119.01.
  - (d) Licenses; Issuance and Revocation. 53-120 to 53-150.
  - (e) Bonded Warehouses. 53-151 to 53-159. Transferred or Repealed.
  - (f) Tax. 53-160 to 53-164.02.
  - (g) Manufacturer's and Wholesaler's Record and Report. 53-165 to 53-166.17.
  - (h) Keg Sales. 53-167 to 53-167.04.
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  - (j) Penalties. 53-1,100 to 53-1,104.
  - (k) Prosecution and Enforcement. 53-1,105 to 53-1,122.
2. Beer Distribution. 53-201 to 53-223.
3. Nebraska Grape and Winery Board. 53-301 to 53-305.
4. Minor Alcoholic Liquor Liability Act. 53-401 to 53-409.

Cross References

**ARTICLE 1**

**NEBRASKA LIQUOR CONTROL ACT**

Cross References

**Constitutional provisions:**

- License fees, disposition of, see Article VII, section 5, Constitution of Nebraska.
- Licenses, powers of municipalities and counties, see Article XV, section 19, Constitution of Nebraska.
- Taxation, legislative powers, see Article VIII, section 1, Constitution of Nebraska.

**Aircraft**, operation under the influence of alcoholic liquor, prohibited, see sections 28-1465 to 28-1474.

**Alcoholics:**

- Jurors, challenges for cause in criminal cases, see section 29-2006.
- Military exemption of, see section 55-106.

**Cigarette sales by vending machine on licensed premises**, see section 28-1429.02.

**Discrimination by licensees prohibited**, see section 20-113.

**Fairs**, state, district, or county agricultural society, sale of liquor, see section 2-219.

**Fire safety investigations of liquor establishments**, State Fire Marshal, duties, see section 81-502.

**Motor vehicles:**

- Implied consent to blood, breath, or urine test, see sections 60-4,164 and 60-6,197 to 60-6,200.
- Nebraska Liquor Control Commission inspectors' vehicles, exemption from state marking requirements, see section 81-1021.
- Operation under the influence of alcoholic liquor, see sections 60-6,196 to 60-6,211.09.
  - Commercial motor vehicle, see sections 60-4,163 to 60-4,168.
  - Military, court-martial offense, see section 55-470.
  - Minors, zero tolerance, see sections 60-6,211.01 to 60-6,211.07.
- Points, operator's license, see section 60-4,182.

**Pickle card operator**, liquor licensee eligibility, see section 9-329.03.

**Poisons**, sale or delivery to intoxicated persons prohibited, see section 71-2508.

**Roadhouse**, defined, see section 23-818.

**Schools:**

- Instruction on effect of alcoholic drinks required, see section 79-712.
- Students, possession, sale, dispensing, or use, grounds for discipline, when, see section 79-267.

**Sickness and accident insurance policies**, standard provision relating to use of intoxicants by insured, see section 44-710.04.

**Snowmobile**, operation under the influence of alcoholic liquor, prohibited, see section 60-6,337.

**State Lottery tickets**, prohibition on sales by certain licensees, see section 9-823.

**Voter registration**, deputy registrar, penalty for bringing liquor into registration site, see section 32-1505.

(a) GENERAL PROVISIONS

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- 53-101. Act, how cited.
- 53-101.01. Statement of policy.
- 53-101.02. Farm wineries; legislative intent.

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### Section

- 53-101.03. Repealed. Laws 1989, LB 781, § 20; Laws 1993, LB 183, § 20.
- 53-101.04. Transferred to section 53-148.01.
- 53-101.05. Act to be liberally construed.
- 53-102. Transferred to section 53-168.06.
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- 53-103.02. Alcoholic liquor, defined.
- 53-103.03. Beer, defined.
- 53-103.04. Brand, defined.
- 53-103.05. Brewpub, defined.
- 53-103.06. Campus, defined.
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- 53-103.08. Cigar bar, defined.
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- 53-103.10. Commission, defined.
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- 53-103.12. Craft brewery, defined.
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- 53-103.14. Franchise or agreement, defined.
- 53-103.15. Generic label, defined.
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- 53-103.17. Local governing body, defined.
- 53-103.18. Manager, defined.
- 53-103.19. Manufacture, defined.
- 53-103.20. Manufacturer, defined.
- 53-103.21. Microbrewery, defined.
- 53-103.22. Microdistillery, defined.
- 53-103.23. Minor, defined.
- 53-103.24. Near beer, defined.
- 53-103.25. Nonbeverage user, defined.
- 53-103.26. Nonprofit corporation, defined.
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- 53-103.29. Private label, defined.
- 53-103.30. Restaurant, defined.
- 53-103.31. Retailer, defined.
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- 53-103.33. Sale, defined.
- 53-103.34. Sampling, defined.
- 53-103.35. Sell, defined.
- 53-103.36. Sell at retail and sale at retail, defined.
- 53-103.37. Shipping license, defined.
- 53-103.38. Spirits, defined.
- 53-103.39. Suspend, defined.
- 53-103.40. Territory or sales territory, defined.
- 53-103.41. Wholesaler, defined.
- 53-103.42. Wine, defined.
- 53-104. Repealed. Laws 1991, LB 344, § 75.
- (b) **NEBRASKA LIQUOR CONTROL COMMISSION; ORGANIZATION**
- 53-105. Nebraska Liquor Control Commission; creation; members; appointment; qualifications.
- 53-106. Commission; members; term; removal; not to hold other office.
- 53-107. Commission; quorum; executive director; duties.
- 53-108. Employees; appointment.
- 53-109. Commissioners and employees; bonds or insurance.
- 53-110. Commissioners and employees; qualifications.
- 53-111. Gifts and gratuities forbidden; violation; penalty.
- 53-112. Commissioners and executive director; compensation.
- 53-112.01. Repealed. Laws 1957, c. 227, § 3.
- 53-112.02. Repealed. Laws 1959, c. 266, § 1.

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- 53-112.03. Repealed. Laws 1989, LB 1, § 1.
- 53-112.04. Repealed. Laws 1989, LB 1, § 1.
- 53-113. Commissioners and employees; expenses and mileage.
- 53-114. Meetings; office; branch offices; seal; certified copies of records as evidence.
- 53-115. Assistant attorney general assigned to commission; compensation; payment.

### (c) NEBRASKA LIQUOR CONTROL COMMISSION; GENERAL POWERS

- 53-116. Power to regulate and control alcoholic liquor.
- 53-116.01. Retail licensees; inspection of premises; suspend, cancel, or revoke license; when.
- 53-116.02. Licensee; violations; forfeiture or revocation of license.
- 53-117. Powers, functions, and duties.
- 53-117.01. Subpoenas; issuance; witnesses; documents.
- 53-117.02. Disobedience to subpoena; refusal to testify; proceedings for contempt.
- 53-117.03. Employee and management training; commission; powers and duties; fees; certification.
- 53-117.04. Repealed. Laws 1989, LB 70, § 5; Laws 1989, LB 781, § 20; Laws 1993, LB 183, § 20.
- 53-117.05. Rules and regulations; statutes; commission; provide copies; fee authorized.
- 53-117.06. Nebraska Liquor Control Commission Rule and Regulation Cash Fund; created; use; investment.
- 53-117.07. Proceedings to suspend, cancel, or revoke licenses before commission.
- 53-117.08. License; suspend, cancel, or revoke; hearing; conviction; court; duty.
- 53-118. Rules and regulations.
- 53-119. Repealed. Laws 1991, LB 344, § 75.
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### (d) LICENSES; ISSUANCE AND REVOCATION

- 53-120. Repealed. Laws 1991, LB 344, § 75.
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- 53-122. Sale of liquor by drink; election; submission; procedure; when not required; prohibited acts; penalties.
- 53-123. Licenses; types.
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- 53-123.02. Alcoholic liquor wholesale license, except beer; rights of licensee; sampling.
- 53-123.03. Beer wholesale license; rights of licensee; designated territory.
- 53-123.04. Retail license; rights of licensee; sampling; removal of unsealed bottle of wine; conditions.
- 53-123.05. Railroad or airline license; rights of licensee.
- 53-123.06. Boat license; rights of licensee.
- 53-123.07. Nonbeverage user's license; rights of licensee; importation of alcohol; classes of license.
- 53-123.08. Repealed. Laws 2004, LB 485, § 33.
- 53-123.09. Beer wholesaler; delivery outside territory; unlawful; penalty.
- 53-123.10. Farm winery license; when issued.
- 53-123.11. Farm winery license; rights of licensee; removal of unsealed bottle of wine; conditions.
- 53-123.12. Farm winery license; application requirements; renewal; fees.
- 53-123.13. Farm winery; waiver of requirement; when; conditions.
- 53-123.14. Craft brewery license; rights of licensee.
- 53-123.15. Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action.
- 53-123.16. Microdistillery license; rights of licensee.
- 53-124. Licenses; types; classification; fees; where paid; license year.
- 53-124.01. Fees for annual licenses.
- 53-124.02. Holder of license under prior law; how treated.
- 53-124.03. Repealed. Laws 1986, LB 871, § 4.
- 53-124.04. Repealed. Laws 1986, LB 871, § 4.
- 53-124.05. Repealed. Laws 1986, LB 871, § 4.
- 53-124.06. Repealed. Laws 1967, c. 333, § 1.
- 53-124.07. Repealed. Laws 1986, LB 871, § 4.

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- 53-124.08. Repealed. Laws 1983, LB 213, § 21.
  - 53-124.09. Repealed. Laws 1986, LB 871, § 4.
  - 53-124.10. Repealed. Laws 1983, LB 213, § 21.
  - 53-124.11. Special designated license; issuance; procedure; fee.
  - 53-124.12. Annual catering license; issuance; procedure; fee; occupation tax.
  - 53-124.13. Catering licensee; special designated license; application; procedure; proceeds; violation; penalty.
  - 53-124.14. Applicants outside cities and villages; airport authorities; Nebraska State Fair Board; issuance of licenses; when permitted.
  - 53-124.15. Community college culinary education program; catering license.
  - 53-125. Classes of persons to whom no license issued.
  - 53-126. License to corporation; conditions.
  - 53-127. Repealed. Laws 1989, LB 781, § 20; Laws 1993, LB 183, § 20.
  - 53-128. Transferred to section 53-116.02.
  - 53-129. Retail, craft brewery, and microdistillery licenses; premises to which applicable.
  - 53-130. Licenses; manufacturers, wholesalers, railroads, airlines, boats, and non-beverage users; conditions on issuance; fees; renewal.
  - 53-130.01. Beer; manufacturers and shippers; file notice; contents.
  - 53-131. Retail, craft brewery, and microdistillery licenses; application; fees; notice of application to city, village, or county; renewal; fee.
  - 53-131.01. License; application; form; contents; criminal history record check; verification; false statement; penalty.
  - 53-132. Retail, craft brewery, or microdistillery license; commission; duties.
  - 53-133. Retail, craft brewery, and microdistillery licenses; hearing; when held; procedure.
  - 53-134. Retail, craft brewery, and microdistillery licenses; city and village governing bodies; county boards; powers, functions, and duties.
  - 53-134.01. Repealed. Laws 1989, LB 781, § 20; Laws 1993, LB 183, § 20.
  - 53-134.02. Local governing bodies; authority under act.
  - 53-134.03. Retail, craft brewery, and microdistillery licenses; regulation by cities and villages.
  - 53-134.04. Violations by retail licensee; complaints of residents; hearings.
  - 53-135. Retail licenses; automatic renewal; conditions; licensed premises within annexed area; effect.
  - 53-135.01. Retail licenses; renewal; notice.
  - 53-135.02. Licenses; renewal; no vested right.
  - 53-136. Repealed. Laws 1959, c. 249, § 18.
  - 53-137. Repealed. Laws 1959, c. 249, § 18.
  - 53-138. Repealed. Laws 1959, c. 249, § 18.
  - 53-138.01. Licenses; disposition of fees.
  - 53-138.02. Repealed. Laws 1991, LB 344, § 75.
  - 53-138.03. Nonprofit corporations; license; required.
  - 53-139. Retail licenses to restaurants and clubs; conditions.
  - 53-140. Transferred to section 53-117.07.
  - 53-140.01. Repealed. Laws 1991, LB 344, § 75; Laws 1991, LB 586, § 4.
  - 53-141. Repealed. Laws 1980, LB 848, § 25.
  - 53-142. Transferred to section 53-131.01.
  - 53-143. Repealed. Laws 1980, LB 848, § 25.
  - 53-144. Repealed. Laws 1991, LB 344, § 75.
  - 53-145. Transferred to section 53-160.02.
  - 53-146. Transferred to section 53-116.01.
  - 53-147. Transferred to section 53-134.03.
  - 53-148. Licenses; display.
  - 53-148.01. Retail licensee; warning sign; commission; duties.
  - 53-149. Licenses; term; sale of premises; temporary operating permit; false information; penalty; license not assignable or inheritable; exception; effect of death or bankruptcy of licensee.
  - 53-150. Transferred to section 53-135.02.

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#### (e) BONDED WAREHOUSES

- 53-151. Repealed. Laws 1991, LB 344, § 75.
- 53-152. Repealed. Laws 1991, LB 344, § 75.
- 53-153. Repealed. Laws 1991, LB 344, § 75.
- 53-154. Repealed. Laws 1991, LB 344, § 75.
- 53-155. Repealed. Laws 1991, LB 344, § 75.
- 53-156. Repealed. Laws 1991, LB 344, § 75.
- 53-157. Transferred to section 53-164.02.
- 53-158. Repealed. Laws 1991, LB 344, § 75.
- 53-159. Transferred to section 53-130.01.

#### (f) TAX

- 53-160. Tax on manufacturer and wholesaler; amount; exemption; duties of commission.
- 53-160.01. Tax on manufacturer and wholesaler; instrumentality of armed forces of United States; resale; exemption.
- 53-160.02. Near beer; regulation.
- 53-160.03. Repealed. Laws 1981, LB 497, § 1.
- 53-160.04. Repealed. Laws 1981, LB 497, § 1.
- 53-160.05. Repealed. Laws 1981, LB 497, § 1.
- 53-160.06. Repealed. Laws 1981, LB 497, § 1.
- 53-160.07. Repealed. Laws 1981, LB 497, § 1.
- 53-160.08. Transferred to section 53-178.01.
- 53-160.09. Repealed. Laws 1989, LB 1, § 1.
- 53-161. Beer; credit for tax paid; when allowed.
- 53-162. Alcoholic liquor shipped from another state; tax imposed.
- 53-162.01. Repealed. Laws 1963, c. 311, § 7.
- 53-163. Commission; rounding of amounts on returns or reports; authorized.
- 53-164. Repealed. Laws 1963, c. 311, § 7.
- 53-164.01. Alcoholic liquor; tax; payment; report; penalty; bond; sale to instrumentality of armed forces; credit for tax paid.
- 53-164.02. Evasion of liquor tax; acts forbidden; violations; penalty.

#### (g) MANUFACTURER'S AND WHOLESALER'S RECORD AND REPORT

- 53-165. Manufacturer and wholesaler; monthly report to commission of manufacture and sale; manufacturer or shipper; certification; record keeping.
- 53-166. Repealed. Laws 1991, LB 344, § 75.
- 53-166.01. Unconstitutional.
- 53-166.02. Unconstitutional.
- 53-166.03. Unconstitutional.
- 53-166.04. Unconstitutional.
- 53-166.05. Unconstitutional.
- 53-166.06. Unconstitutional.
- 53-166.07. Unconstitutional.
- 53-166.08. Unconstitutional.
- 53-166.09. Unconstitutional.
- 53-166.10. Unconstitutional.
- 53-166.11. Unconstitutional.
- 53-166.12. Unconstitutional.
- 53-166.13. Unconstitutional.
- 53-166.14. Unconstitutional.
- 53-166.15. Unconstitutional.
- 53-166.16. Unconstitutional.
- 53-166.17. Unconstitutional.

#### (h) KEG SALES

- 53-167. Repealed. Laws 1977, LB 176, § 2.
- 53-167.01. Legislative findings.
- 53-167.02. Keg sales; requirements; keg identification number; violation; penalty.
- 53-167.03. Keg identification number; prohibited acts; violation; penalty; deposit.
- 53-167.04. Repealed. Laws 2006, LB 562, § 8.

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#### (i) PROHIBITED ACTS

- 53-168. Receiving money, credit, discounts, rebates, or other inducement; unlawful acts; penalty; private or generic label permitted.
- 53-168.01. Repealed. Laws 1991, LB 344, § 75.
- 53-168.02. Repealed. Laws 1985, LB 183, § 7.
- 53-168.03. Repealed. Laws 1985, LB 183, § 7.
- 53-168.04. Repealed. Laws 1985, LB 183, § 7.
- 53-168.05. Violations; procedure.
- 53-168.06. General prohibition; exceptions.
- 53-169. Manufacturer or wholesaler; craft brewery or microdistillery licensee; limitations.
- 53-169.01. Manufacturer; interest in licensed wholesaler; prohibitions.
- 53-170. Violations; effect.
- 53-170.01. Repealed. Laws 1991, LB 344, § 75.
- 53-170.02. Repealed. Laws 1991, LB 344, § 75.
- 53-170.03. Repealed. Laws 1991, LB 344, § 75.
- 53-170.04. Repealed. Laws 1991, LB 344, § 75.
- 53-171. Licenses; issuance of more than one kind to same person; when unlawful; craft brewery or microdistillery licensee; limitations.
- 53-172. Original packages; labels; seals; requirements.
- 53-173. Repealed. Laws 1991, LB 344, § 75.
- 53-174. Repealed. Laws 2010, LB 861, § 85.
- 53-175. Liquor; acquisition from other than licensed dealer; when unlawful; limitation; records.
- 53-176. Sale or delivery to unauthorized person forbidden; suspension, cancellation, or revocation of license.
- 53-177. Sale at retail; restrictions as to locality.
- 53-178. Sale at retail; forbidden in dwelling or lodging house; exceptions.
- 53-178.01. Licensee; sale to person within motor vehicle; prohibited; exception.
- 53-179. Sale or dispensing of alcoholic liquor; forbidden during certain hours; exceptions; alcoholic liquor in open containers; unlawful after hours.
- 53-180. Sale to minors and incompetents; prohibited.
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- 53-180.02. Minor; prohibited acts; exception; governing bodies; powers.
- 53-180.03. Minor; sale or gift to; misrepresenting age; parent or guardian; duties.
- 53-180.04. Minors; warning notice; posting.
- 53-180.05. Minors and incompetents; violations; penalties; false identification; penalty; law enforcement agency; duties.
- 53-180.06. Documentary proof of age; separate book; record; contents.
- 53-180.07. Minors; licensee charged with sale; defenses.
- 53-181. Person eighteen years of age or younger; penalty; copy of abstract to Director of Motor Vehicles.
- 53-182. Repealed. Laws 1977, LB 93, § 1.
- 53-183. Sale on credit or for goods or services forbidden; exceptions.
- 53-184. Sale only in original package; refilling forbidden; exception.
- 53-185. Contract to sell for only one manufacturer or wholesaler; void.
- 53-186. Consumption of liquor on public property; forbidden; exceptions; license authorized.
- 53-186.01. Consumption of liquor in public places; license required; exception; violations; penalty.
- 53-187. Nonbeverage licensee forbidden to give or sell alcoholic liquor; violation; penalty.
- 53-188. Governmental subdivision under prohibition; effect on licenses.
- 53-189. Giving or selling liquor to evade law declared unlawful.
- 53-190. Premises violating law declared common nuisances.
- 53-191. Prohibited areas; sales; railroad licensees excepted.
- 53-192. Transportation of liquor into state forbidden; when.
- 53-192.01. Wholesale licensee; purchases and imports; restrictions.
- 53-193. Repealed. Laws 1991, LB 344, § 75.
- 53-194. Repealed. Laws 1991, LB 344, § 75.

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- 53-194.01. Repealed. Laws 1983, LB 213, § 21.
- 53-194.02. Repealed. Laws 1983, LB 213, § 21.
- 53-194.03. Transportation of liquor into state; forbidden; when; penalty.
- 53-194.04. Sale of confections or candy; license requirements; label.
- 53-195. Repealed. Laws 1991, LB 344, § 75.
- 53-196. Repealed. Laws 1978, LB 593, § 5.
- 53-197. Violations; peace officer; duties; neglect of duty; penalty.
- 53-198. Places operated in violation of act; declared common nuisances; violations; penalty.
- 53-199. Nuisance; abatement; procedure; owner or lessee may give bond.

## (j) PENALTIES

- 53-1,100. Violations; general penalty.
- 53-1,101. Owner of premises or agent knowing of violations; penalty.
- 53-1,102. Violations by agent or employee of licensee; deemed act of licensee, when.
- 53-1,103. False branding; penalty.
- 53-1,104. Violations by licensee; suspension, cancellation, or revocation of license; cash penalty in lieu of suspending sales; election authorized.

## (k) PROSECUTION AND ENFORCEMENT

- 53-1,105. Sufficiency of charge of violation; sufficiency of proof.
- 53-1,106. Charge of violation; sufficiency of allegations; second offense; proof; former conviction.
- 53-1,107. Complaint, indictment, or information; contents; sufficiency.
- 53-1,108. Search warrants issued on complaint; form.
- 53-1,109. Search warrants; contents; directed to peace officer.
- 53-1,110. Arrest of persons found violating act.
- 53-1,111. Search warrants; search and seizure of property; sale; disposition of proceeds; arrests.
- 53-1,112. Search warrant; return; form and contents.
- 53-1,113. Search warrant; sale of property seized; procedure; destruction, when required.
- 53-1,114. Transferred to section 53-134.04.
- 53-1,115. Proceedings before commission; service upon parties; rehearings; costs.
- 53-1,116. Appeal; procedure.
- 53-1,117. Repealed. Laws 1991, LB 344, § 75.
- 53-1,118. Transferred to section 53-101.05.
- 53-1,119. Local law, ordinance, resolution, or rule; penalty for drinking or intoxication; prohibited.
- 53-1,120. Alcohol-related offenses; law, ordinance, resolution, or rule; effect.
- 53-1,120.01. County resolution or city ordinance prohibiting smoking; not applicable to cigar bars.
- 53-1,121. Law enforcement officer; intoxicated person; removal; civil protective custody; procedure.
- 53-1,122. Compliance checks; participation by minors; when.

## (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.

Liquor Control Act provides comprehensive authority and procedure relating to the granting, renewing, or revoking of liquor licenses without recourse to courts. *Leeman v. Vocelka*, 149 Neb. 702, 32 N.W.2d 274 (1948).

#### **53-101.01 Statement of policy.**

It is declared to be the policy of the Legislature to (1) regulate the transportation or importation of alcoholic liquor into this state when such alcoholic liquor is intended for delivery or use within the state, (2) promote adequate, economical, and efficient service by licensees selling alcoholic liquor within the State of Nebraska without unjust or undue discrimination, preference, or advantage, (3) generate revenue by imposing an excise tax upon alcoholic liquor, and (4) promote the health, safety, and welfare of the people of the state and encourage temperance in the consumption of alcoholic liquor by sound and careful control and regulation of the manufacture, distribution, and sale of alcoholic liquor.

**Source:** Laws 1981, LB 124, § 1; Laws 1989, LB 781, § 2; Laws 1991, LB 344, § 3; Laws 1993, LB 183, § 2; Laws 1999, LB 267, § 1.

#### **53-101.02 Farm wineries; legislative intent.**

It is the intent of the Legislature to encourage the production, use in manufacturing, and consumption of agricultural products grown within the state by providing for the existence of farm winery operations. The Legislature recognizes that the creation of farm wineries will stimulate the creation of jobs and investments in small communities, encourage the use of lands upon which grapes and other wine-related crops may be grown, and provide tax revenue which would not otherwise be realized.

**Source:** Laws 1985, LB 279, § 1; Laws 2003, LB 536, § 1.

#### **53-101.03 Repealed. Laws 1989, LB 781, § 20; Laws 1993, LB 183, § 20.**

#### **53-101.04 Transferred to section 53-148.01.**

#### **53-101.05 Act to be liberally construed.**

The Nebraska Liquor Control Act shall be liberally construed to the end that the health, safety, and welfare of the people of the State of Nebraska are protected and temperance in the consumption of alcoholic liquor is fostered and promoted by sound and careful control and regulation of the manufacture, sale, and distribution of alcoholic liquor.

**Source:** Laws 1935, c. 116, § 97, p. 427; C.S.Supp.,1941, § 53-397; R.S.1943, § 53-1,118; R.S.1943, (1988), § 53-1,118; Laws 1991, LB 344, § 4.

To comply with legislative policy licensee or agent of corporate licensee must be satisfactory to and approved by the commission with respect to his character. *C & L Co. v. Nebraska Liquor Control Commission*, 190 Neb. 91, 206 N.W.2d 49 (1973).

It is not the court's duty to read a meaning into a statute not warranted by legislative language. *Calvary Baptist Church v. Coonrad*, 163 Neb. 25, 77 N.W.2d 821 (1956).

Liquor Control Act is to be liberally construed. *Allen v. Tobin*, 155 Neb. 212, 51 N.W.2d 338 (1952).

Text of Liquor Control Act evidences legislative interest to authorize adoption of regulations by commission. *Griffin v. Gass*, 133 Neb. 56, 274 N.W. 193 (1937).

#### **53-102 Transferred to section 53-168.06.**

#### **53-103 Definitions, where found.**

For purposes of the Nebraska Liquor Control Act, the definitions found in sections 53-103.01 to 53-103.42 apply.

**Source:** Laws 1935, c. 116, § 2, p. 374; C.S.Supp.,1941, § 53-302; R.S. 1943, § 53-103; Laws 1961, c. 258, § 1, p. 757; Laws 1963, c. 310, § 1, p. 919; Laws 1963, Spec. Sess., c. 4, § 1, p. 66; Laws 1963, Spec. Sess., c. 5, § 1, p. 71; Laws 1965, c. 318, § 2, p. 886; Laws 1965, c. 319, § 1, p. 904; Laws 1969, c. 298, § 1, p. 1072; Laws 1971, LB 234, § 2; Laws 1971, LB 752, § 1; Laws 1972, LB 1086, § 2; Laws 1973, LB 111, § 1; Laws 1980, LB 221, § 2; Laws 1980, LB 848, § 1; Laws 1981, LB 483, § 1; Laws 1983, LB 213, § 2; Laws 1984, LB 56, § 1; Laws 1985, LB 183, § 1; Laws 1985, LB 279, § 2; Laws 1986, LB 871, § 1; Laws 1986, LB 911, § 2; Laws 1987, LB 468, § 1; Laws 1988, LB 490, § 4; Laws 1988, LB 901, § 2; Laws 1988, LB 1089, § 2; Laws 1989, LB 154, § 1; Laws 1989, LB 441, § 2; Laws 1991, LB 344, § 5; Laws 1993, LB 121, § 317; Laws 1994, LB 859, § 2; Laws 1994, LB 1313, § 2; Laws 1996, LB 750, § 1; Laws 1996, LB 1090, § 1; Laws 1999, LB 267, § 2; Laws 2001, LB 114, § 2; Laws 2001, LB 278, § 1; Laws 2003, LB 536, § 2; Laws 2004, LB 485, § 3; Laws 2006, LB 562, § 1; Laws 2007, LB549, § 2; Laws 2008, LB1103, § 1; Laws 2009, LB137, § 1; Laws 2009, LB355, § 2; Laws 2010, LB788, § 1; Laws 2010, LB861, § 8.

The portion of this section amended by 1986 Neb. Laws, L.B. 911, is declared unconstitutional. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988).

The change in definition of minor did not relieve from penalty one who was twenty years of age at time of commission of offense but was not sentenced until after the definition was changed. *State v. Duitsman*, 186 Neb. 39, 180 N.W.2d 685 (1970).

Amendment to this section, made by Chapter 5, Seventy-fourth Extraordinary Session of the Legislature, 1963, was unconstitutional because not within the Governor's call. *Arrow Club, Inc. v. Nebraska Liquor Control Commission*, 177 Neb. 686, 131 N.W.2d 134 (1964).

Although organized as private club, evidence established that it was operated as private business of an individual. *State ex rel. Fitzgerald v. Kubik*, 167 Neb. 219, 92 N.W.2d 533 (1958).

Definition of term alcoholic liquors includes beer. *Phelps Inc. v. City of Hastings*, 152 Neb. 651, 42 N.W.2d 300 (1950).

Plaintiff did not come within statutory definition of club. *Griffin v. Gass*, 133 Neb. 56, 274 N.W. 193 (1937).

The Liquor Control Act provides for the issuance by Liquor Control Commission of a license to sell alcoholic liquors which are defined by the act to include alcohol, spirits, wine and beer. *Hanson v. Gass*, 130 Neb. 685, 267 N.W. 403 (1936).

Despite absence of severance clause, ordinance which provided several distinct and separate grounds upon which to base revocation of liquor licenses was not rendered invalid in its entirety by reason of invalidity of some portions. *Clark v. City of Fremont*, 377 F.Supp. 327 (D. Neb. 1974).

### 53-103.01 Alcohol, defined.

Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol and alcohol processed or sold in a gaseous form. Alcohol does not include denatured alcohol or wood alcohol.

**Source:** Laws 2010, LB861, § 9.

### 53-103.02 Alcoholic liquor, defined.

(1) Alcoholic liquor includes alcohol, spirits, wine, beer, and any liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor also includes confections or candy that contains more than one-half of one percent alcohol.

(2) The Nebraska Liquor Control Act does not apply to (a) alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations adopted and promulgated pursuant to such acts, (b) flavoring extracts, syrups, medicinal, mechanical, scientific, culinary, or toilet

preparations, or food products unfit for beverage purposes, but the act applies to alcoholic liquor used in the manufacture, preparation, or compounding of such products or confections or candy that contains more than one-half of one percent alcohol, or (c) wine intended for use and used by any church or religious organization for sacramental purposes.

**Source:** Laws 2010, LB861, § 10.

**53-103.03 Beer, defined.**

Beer means a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water and includes, but is not limited to, beer, ale, stout, lager beer, porter, and near beer.

**Source:** Laws 2010, LB861, § 11.

**53-103.04 Brand, defined.**

Brand means alcoholic liquor identified as the product of a specific manufacturer.

**Source:** Laws 2010, LB861, § 12.

**53-103.05 Brewpub, defined.**

Brewpub means any restaurant or hotel which produces on its premises a maximum of ten thousand barrels of beer per year.

**Source:** Laws 2010, LB861, § 13.

**53-103.06 Campus, defined.**

Campus, as it pertains to the southern boundary of the main campus of the University of Nebraska-Lincoln, means the south right-of-way line of R Street and abandoned R Street from 10th to 17th streets and, as it pertains to the western boundary of the main campus of the University of Nebraska-Lincoln, means the east right-of-way line of 10th Street from R Street to Holdrege Street (Salt Creek Roadway).

**Source:** Laws 2010, LB861, § 14.

**53-103.07 Cancel, defined.**

Cancel means to discontinue all rights and privileges of a license.

**Source:** Laws 2010, LB861, § 15.

**53-103.08 Cigar bar, defined.**

Cigar bar means an establishment operated by a holder of a Class C liquor license which:

- (1) Does not sell food;
- (2) In addition to selling alcohol, annually receives ten percent or more of its gross revenue from the sale of cigars and other tobacco products and tobacco-related products, except from the sale of cigarettes as defined in section 69-2702. A cigar bar shall not discount alcohol if sold in combination with cigars or other tobacco products and tobacco-related products;
- (3) Has a walk-in humididor on the premises; and

(4) Does not permit the smoking of cigarettes.

**Source:** Laws 2010, LB861, § 16.

**53-103.09 Club, defined.**

(1) Club means a corporation (a) which is organized under the laws of this state, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquor, (b) which is kept, used, and maintained by its members through the payment of annual dues, (c) which owns, hires, or leases a building or space in a building suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, and (d) which has suitable and adequate kitchen and dining room space and equipment and a sufficient number of servants and employees for cooking, preparing, and serving food and meals for its members and their guests.

(2) The affairs and management of such club shall be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting, and no member, officer, agent, or employee of the club shall be paid or shall directly or indirectly receive, in the form of salary or other compensation, any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members other than any salary fixed and voted at any annual meeting by the members or by the governing body of the club out of the general revenue of the club.

**Source:** Laws 2010, LB861, § 17.

**53-103.10 Commission, defined.**

Commission means the Nebraska Liquor Control Commission.

**Source:** Laws 2010, LB861, § 18.

**53-103.11 Consume, defined.**

Consume means knowingly and intentionally drinking or otherwise ingesting alcoholic liquor.

**Source:** Laws 2010, LB861, § 19.

**53-103.12 Craft brewery, defined.**

Craft brewery means a brewpub or a microbrewery.

**Source:** Laws 2010, LB861, § 20.

**53-103.13 Farm winery, defined.**

Farm winery means any enterprise which produces and sells wines produced from grapes, other fruit, or other suitable agricultural products of which at least seventy-five percent of the finished product is grown in this state or which meets the requirements of section 53-123.13.

**Source:** Laws 2010, LB861, § 21.

**53-103.14 Franchise or agreement, defined.**

Franchise or agreement, with reference to the relationship between a manufacturer and wholesaler, includes one or more of the following:

(1) A commercial relationship of a definite duration or continuing indefinite duration which is not required to be in writing;

(2) A relationship by which the wholesaler is granted the right to offer and sell the manufacturer's brands by the manufacturer;

(3) A relationship by which the franchise, as an independent business, constitutes a component of the manufacturer's distribution system;

(4) A relationship by which the operation of the wholesaler's business is substantially associated with the manufacturer's brand, advertising, or other commercial symbol designating the manufacturer; and

(5) A relationship by which the operation of the wholesaler's business is substantially reliant on the manufacturer for the continued supply of beer.

**Source:** Laws 2010, LB861, § 22.

**53-103.15 Generic label, defined.**

Generic label means a label which is not protected by a registered trademark, either in whole or in part, or to which no person has acquired a right pursuant to state or federal statutory or common law.

**Source:** Laws 2010, LB861, § 23.

**53-103.16 Hotel, defined.**

Hotel means any building or other structure (1) which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, (2) in which twenty-five or more rooms are used for the sleeping accommodations of such guests, and (3) which has one or more public dining rooms where meals are served to such guests, such sleeping accommodations and dining rooms being conducted in the same buildings in connection therewith and such building or buildings or structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity.

**Source:** Laws 2010, LB861, § 24.

**53-103.17 Local governing body, defined.**

Local governing body means (1) the city council or village board of trustees of a city or village within which the licensed premises are located or (2) if the licensed premises are not within the corporate limits of a city or village, the county board of the county within which the licensed premises are located.

**Source:** Laws 2010, LB861, § 25.

**53-103.18 Manager, defined.**

Manager means a person appointed by a corporation or limited liability company to oversee the daily operation of the business licensed in Nebraska. A manager shall meet all the requirements of the Nebraska Liquor Control Act as though he or she were the applicant, including residency and citizenship.

**Source:** Laws 2010, LB861, § 26.

**53-103.19 Manufacture, defined.**

Manufacture means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor and includes blending but does not include the mixing or other preparation of drinks for serving by those persons authorized and permitted in the Nebraska Liquor Control Act to serve drinks for consumption on the premises where sold.

**Source:** Laws 2010, LB861, § 27.

**53-103.20 Manufacturer, defined.**

Manufacturer means every brewer, fermenter, distiller, rectifier, winemaker, blender, processor, bottler, or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying, or bottling alcoholic liquor, including a wholly owned affiliate or duly authorized agent for a manufacturer.

**Source:** Laws 2010, LB861, § 28.

**53-103.21 Microbrewery, defined.**

Microbrewery means any small brewery producing a maximum of ten thousand barrels of beer per year.

**Source:** Laws 2010, LB861, § 29.

**53-103.22 Microdistillery, defined.**

Microdistillery means a distillery located in Nebraska that is licensed to distill liquor on the premises of the distillery licensee and produces ten thousand or fewer gallons of liquor annually.

**Source:** Laws 2010, LB861, § 30.

**53-103.23 Minor, defined.**

Minor means any person, male or female, under twenty-one years of age, regardless of marital status.

**Source:** Laws 2010, LB861, § 31.

**53-103.24 Near beer, defined.**

Near beer means beer containing less than one-half of one percent of alcohol by volume.

**Source:** Laws 2010, LB861, § 32.

**53-103.25 Nonbeverage user, defined.**

Nonbeverage user means every manufacturer of any of the products set forth and described in subsection (4) of section 53-160, when such product contains alcoholic liquor, and all laboratories, hospitals, and sanatoria using alcoholic liquor for nonbeverage purposes.

**Source:** Laws 2010, LB861, § 33.

**53-103.26 Nonprofit corporation, defined.**

Nonprofit corporation means any corporation organized under the laws of this state, not for profit, which has been exempted from the payment of federal income taxes.

**Source:** Laws 2010, LB861, § 34.

**53-103.27 Original package, defined.**

Original package means any bottle, flask, jug, can, cask, barrel, keg, hogshead, or other receptacle or container used, corked or capped, sealed, and labeled by the manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor.

**Source:** Laws 2010, LB861, § 35.

**53-103.28 Person, defined.**

Person means any natural person, trustee, corporation, partnership, or limited liability company.

**Source:** Laws 2010, LB861, § 36.

**53-103.29 Private label, defined.**

Private label means a label which the purchasing wholesaler or retailer has protected, in whole or in part, by a trademark registration or which the purchasing wholesaler or retailer has otherwise protected pursuant to state or federal statutory or common law.

**Source:** Laws 2010, LB861, § 37.

**53-103.30 Restaurant, defined.**

Restaurant means any public place (1) which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, (2) which has no sleeping accommodations, and (3) which has adequate and sanitary kitchen and dining room equipment and capacity and a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests.

**Source:** Laws 2010, LB861, § 38.

**53-103.31 Retailer, defined.**

Retailer means a person who sells or offers for sale alcoholic liquor for use or consumption and not for resale in any form except as provided in section 53-175.

**Source:** Laws 2010, LB861, § 39.

**53-103.32 Revoke, defined.**

Revoke means to permanently void and recall all rights and privileges of a license.

**Source:** Laws 2010, LB861, § 40.

**53-103.33 Sale, defined.**

Sale means any transfer, exchange, or barter in any manner or by any means for a consideration and includes any sale made by any person, whether principal, proprietor, agent, servant, or employee.

**Source:** Laws 2010, LB861, § 41.

**53-103.34 Sampling, defined.**

Sampling means consumption on the premises of a retail licensee of not more than five samples of one fluid ounce or less of alcoholic liquor by the same person in a twenty-four-hour period.

**Source:** Laws 2010, LB861, § 42.

**53-103.35 Sell, defined.**

Sell means to solicit or receive an order for, to keep or expose for sale, or to keep with intent to sell.

**Source:** Laws 2010, LB861, § 43.

**53-103.36 Sell at retail and sale at retail, defined.**

Sell at retail and sale at retail means sale for use or consumption and not for resale in any form except as provided in section 53-175.

**Source:** Laws 2010, LB861, § 44.

**53-103.37 Shipping license, defined.**

Shipping license means a license granted pursuant to section 53-123.15.

**Source:** Laws 2010, LB861, § 45.

**53-103.38 Spirits, defined.**

Spirits means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances.

**Source:** Laws 2010, LB861, § 46.

**53-103.39 Suspend, defined.**

Suspend means to cause a temporary interruption of all rights and privileges of a license.

**Source:** Laws 2010, LB861, § 47.

**53-103.40 Territory or sales territory, defined.**

Territory or sales territory means the wholesaler's area of sales responsibility for the brand or brands of the manufacturer.

**Source:** Laws 2010, LB861, § 48.

**53-103.41 Wholesaler, defined.**

Wholesaler means a person importing or causing to be imported into the state or purchasing or causing to be purchased within the state alcoholic liquor for sale or resale to retailers licensed under the Nebraska Liquor Control Act, whether the business of the wholesaler is conducted under the terms of a

franchise or any other form of an agreement with a manufacturer or manufacturers, or who has caused alcoholic liquor to be imported into the state or purchased in the state from a manufacturer or manufacturers and was licensed to conduct such a business by the commission on May 1, 1970, or has been so licensed since that date.

Wholesaler does not include any retailer licensed to sell alcoholic liquor for consumption off the premises who sells alcoholic liquor other than beer or wine to another retailer pursuant to section 53-175, except that any such retailer shall obtain the required federal wholesaler's basic permit and federal wholesale liquor dealer's special tax stamp. Wholesaler includes a distributor, distributorship, and jobber.

**Source:** Laws 2010, LB861, § 49.

**53-103.42 Wine, defined.**

Wine means any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits.

**Source:** Laws 2010, LB861, § 50.

**53-104 Repealed. Laws 1991, LB 344, § 75.**

(b) NEBRASKA LIQUOR CONTROL COMMISSION; ORGANIZATION

**53-105 Nebraska Liquor Control Commission; creation; members; appointment; qualifications.**

There is hereby created the Nebraska Liquor Control Commission, consisting of three members to be appointed by the Governor, subject to confirmation by a majority of the members elected to the Legislature, no more than two of whom shall be members of the same political party, and no two shall be citizens of the same congressional district.

**Source:** Laws 1935, c. 116, § 6, p. 379; C.S.Supp.,1941, § 53-306; R.S. 1943, § 53-105; Laws 1965, c. 318, § 3, p. 890.

Under former act, it did not provide for, or require, confirmation by the Legislature. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

**53-106 Commission; members; term; removal; not to hold other office.**

The Governor shall appoint three members of the commission, one of whom he shall designate as chairman. One member shall be appointed every two years and shall hold office for a period of six years. Any appointee may be removed by the Governor, after an opportunity to be heard, for malfeasance, misfeasance or neglect in office. No person shall be appointed to the commission, or continue to hold that office after appointment, while holding any other office or position under the laws of this state, any other state, or of the United States.

**Source:** Laws 1935, c. 116, § 7, p. 379; C.S.Supp.,1941, § 53-307; R.S. 1943, § 53-106.

Term of office of member of Liquor Control Commission is six years. State ex rel. Meyer v. Sorrell, 174 Neb. 340, 117 N.W.2d 872 (1962).

Authority to remove member of Liquor Control Commission is declaratory of power granted by the Constitution. State ex rel. Beck v. Young, 154 Neb. 588, 48 N.W.2d 677 (1951).

Member of Liquor Control Commission can only be removed by the Governor for cause, after an opportunity to be heard, and for the reasons set forth in this section. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

### **53-107 Commission; quorum; executive director; duties.**

A majority of the commission shall constitute a quorum to transact business, but no vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission. Every act of a majority of the members of the commission shall be deemed to be the act of the commission. The commission shall have an executive director, to be appointed by it subject to the approval of the Governor, who shall keep a record of all proceedings, transactions, communications, and official acts of the commission. The executive director shall be the custodian of all records and perform such other duties as the commission may prescribe.

**Source:** Laws 1935, c. 116, § 8, p. 380; C.S.Supp.,1941, § 53-308; R.S. 1943, § 53-107; Laws 1989, LB 780, § 1.

Appointment of secretary is subject to approval of Governor. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

### **53-108 Employees; appointment.**

The commission may, with the advice and approval of the Governor, appoint or employ such clerks and other employees as may be necessary to carry out the Nebraska Liquor Control Act or to perform the duties and exercise the powers conferred by law upon the commission.

**Source:** Laws 1935, c. 116, § 9, p. 380; C.S.Supp.,1941, § 53-309; R.S. 1943, § 53-108; Laws 1945, c. 238, § 22, p. 714; Laws 1951, c. 311, § 4, p. 1067; Laws 1991, LB 344, § 6.

Employment of subordinate employees is subject to approval of Governor. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

### **53-109 Commissioners and employees; bonds or insurance.**

Before entering upon the duties of his or her office, each commissioner shall be bonded or insured as required by section 11-201. Employees of the commission who are accountable for public funds shall be bonded or insured as required by section 11-201 to secure the safety of such funds. The premium shall be paid by the State of Nebraska out of the General Fund. Before entering upon the duties of his or her office, the executive director of the commission shall be bonded or insured as required by section 11-201.

**Source:** Laws 1935, c. 116, § 10, p. 380; C.S.Supp.,1941, § 53-310; R.S.1943, § 53-109; Laws 1953, c. 180, § 1, p. 569; Laws 1978, LB 653, § 14; Laws 1989, LB 780, § 2; Laws 2004, LB 884, § 25.

Bond required of member of Liquor Control Commission is different than that required of head of executive department. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

### **53-110 Commissioners and employees; qualifications.**

No person shall be appointed as a commissioner, the executive director of the commission, or an employee of the commission who is not a citizen of the United States and who has not resided within the State of Nebraska successively for two years next preceding the date of his or her appointment. No person (1) convicted of or who has pleaded guilty to a felony or any violation of any

federal or state law concerning the manufacture or sale of alcoholic liquor prior or subsequent to the passage of the Nebraska Liquor Control Act, (2) who has paid a fine or penalty in settlement of any prosecution against him or her for any violation of such laws, or (3) who has forfeited his or her bond to appear in court to answer charges for any such violation shall be appointed commissioner. No commissioner or employee of the commission may, directly or indirectly, individually, as a member of a partnership, as a member of a limited liability company, or as a shareholder of a corporation, have any interest whatsoever in the manufacture, sale, or distribution of alcoholic liquor, receive any compensation or profit from such manufacture, sale, or distribution, or have any interest whatsoever in the purchases or sales made by the persons authorized by the act to purchase or to sell alcoholic liquor. This section shall not prevent any commissioner, the executive director, or any employee from purchasing and keeping in his or her possession for the use of himself, herself, or members of his or her family or guests any alcoholic liquor which may be purchased or kept by any person pursuant to the act.

**Source:** Laws 1935, c. 116, § 11, p. 380; C.S.Supp.,1941, § 53-311; R.S.1943, § 53-110; Laws 1989, LB 780, § 3; Laws 1991, LB 344, § 7; Laws 1993, LB 121, § 318.

**53-111 Gifts and gratuities forbidden; violation; penalty.**

A commissioner, the executive director of the commission, or any person appointed or employed by the commission shall not solicit or accept any gift, gratuity, emolument, or employment from any person subject to the Nebraska Liquor Control Act or from any officer, agent, or employee thereof or solicit, request from, or recommend, directly or indirectly, to any such person or to any officer, agent, or employee thereof the appointment of any person to any place or position. Any such person and every officer, agent, or employee thereof may not offer to any commissioner, the executive director, or any person appointed or employed by the commission any gift, gratuity, emolument, or employment. If a commissioner, the executive director, or any person appointed or employed by the commission violates this section, he or she shall be removed from his or her office or employment. Every person violating this section shall be guilty of a Class II misdemeanor.

**Source:** Laws 1935, c. 116, § 12, p. 381; C.S.Supp.,1941, § 53-312; R.S.1943, § 53-111; Laws 1977, LB 40, § 310; Laws 1989, LB 780, § 4.

A violation of this section affords an adequate basis for an order of removal from office. State ex rel. Meyer v. Sorrell, 174 Neb. 340, 117 N.W.2d 872 (1962).

Violation of this section constitutes ground for removal of member of Liquor Control Commission. State ex rel. Beck v. Young, 154 Neb. 588, 48 N.W.2d 677 (1951).

**53-112 Commissioners and executive director; compensation.**

Each member of the commission shall receive an annual salary of not to exceed twelve thousand five hundred dollars, to be fixed by the Governor, payable monthly, and in addition actual and necessary expenses incurred on behalf of the commission. The salary of the executive director of the commission shall be fixed by the commission, payable monthly.

**Source:** Laws 1935, c. 116, § 13, p. 382; C.S.Supp.,1941, § 53-313; R.S.1943, § 53-112; Laws 1951, c. 338, § 2, p. 1116; Laws 1955, c. 200, § 1, p. 568; Laws 1957, c. 227, § 1, p. 777; Laws 1959, c.

339, § 1, p. 1222; Laws 1967, c. 330, § 1, p. 876; Laws 1969, c. 438, § 1, p. 1468; Laws 1973, LB 111, § 2; Laws 1974, LB 681, § 3; Laws 1989, LB 780, § 5.

Cited in making comparison of powers and duties of Liquor Control Commission with those of heads of executive departments. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

**53-112.01 Repealed. Laws 1957, c. 227, § 3.**

**53-112.02 Repealed. Laws 1959, c. 266, § 1.**

**53-112.03 Repealed. Laws 1989, LB 1, § 1.**

**53-112.04 Repealed. Laws 1989, LB 1, § 1.**

**53-113 Commissioners and employees; expenses and mileage.**

The commissioners, the executive director of the commission, and all employees of the commission shall be reimbursed for all actual and necessary traveling expenses and disbursements incurred or made by them in the discharge of their official duties as provided in sections 81-1174 to 81-1177. The commission may also incur necessary expenses for office furniture and other incidental expenses. No commissioner, executive director, or employee of the commission shall request or be allowed mileage or other traveling expenses unless such sections are strictly complied with.

**Source:** Laws 1935, c. 116, § 14, p. 382; Laws 1941, c. 180, § 15, p. 709; C.S.Supp.,1941, § 53-314; R.S.1943, § 53-113; Laws 1981, LB 204, § 94; Laws 1988, LB 864, § 8; Laws 1989, LB 780, § 6; Laws 1991, LB 344, § 8.

**53-114 Meetings; office; branch offices; seal; certified copies of records as evidence.**

The office of the commission shall be in Lincoln, but the commission may, with the approval of the Governor, establish and maintain branch offices at places other than the seat of government. The commission shall hold regular meetings at least once a month and may hold such special meetings as it deems necessary at any time and at any place within the state. The commission may, for authentication of its records, process, and proceedings, adopt, keep, and use a common seal, of which seal judicial notice shall be taken in all of the courts of the state. Any process, notice, or other paper which the commission is authorized by law to issue shall be deemed sufficient if signed by the chairperson and executive director of the commission and authenticated by such seal. All acts, orders, proceedings, rules, regulations, entries, minutes, and other records of the commission and all reports and documents filed with the commission may be proved in any court of this state by copy thereof certified to by the executive director attached.

**Source:** Laws 1935, c. 116, § 15, p. 382; C.S.Supp.,1941, § 53-315; R.S.1943, § 53-114; Laws 1988, LB 1089, § 4; Laws 1989, LB 780, § 7.

Member of Liquor Control Commission is not required to reside in Lincoln. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

**53-115 Assistant attorney general assigned to commission; compensation; payment.**

The Attorney General of Nebraska shall designate an assistant attorney general or assistant attorneys general, when requested by the commission and directed by the Governor, and the services of such assistant attorney general or assistant attorneys general shall be available to the commission whenever demanded. The compensation of such assistant attorney general or assistant attorneys general as are assigned to the commission shall be paid by the office of the Attorney General.

**Source:** Laws 1935, c. 116, § 24, p. 389; C.S.Supp.,1941, § 53-324; R.S.1943, § 53-115; Laws 1988, LB 1089, § 5.

(c) NEBRASKA LIQUOR CONTROL COMMISSION; GENERAL POWERS

**53-116 Power to regulate and control alcoholic liquor.**

The power to regulate all phases of the control of the manufacture, distribution, sale, and traffic of alcoholic liquor, except as specifically delegated in the Nebraska Liquor Control Act, is vested exclusively in the commission.

**Source:** Laws 1935, c. 116, § 4, p. 378; C.S.Supp.,1941, § 53-304; R.S. 1943, § 53-116; Laws 1989, LB 781, § 3; Laws 1993, LB 183, § 3; Laws 1999, LB 267, § 3.

1. Commission, powers and duties
2. Local controls
3. Miscellaneous

**1. Commission, powers and duties**

Nowhere in the statutes relating to the liquor laws is there any requirement that an applicant show need before obtaining a license and the Nebraska Liquor Control Commission cannot do so by rule; therefore, rules 2 and 13, which require such a showing, are invalid. *Bond v. Nebraska Liquor Control Comm.*, 210 Neb. 663, 316 N.W.2d 600 (1982).

The power to regulate liquor business, except as specifically delegated in Chapter 53, R.R.S.1943, is vested exclusively in the Nebraska Liquor Control Commission. *J K & J, Inc. v. Nebraska Liquor Control Commission*, 194 Neb. 413, 231 N.W.2d 694 (1975).

Nebraska Liquor Control Commission has power to regulate distribution and sale of alcoholic liquors. *T & N P Co., Inc. v. Nebraska Liquor Control Commission*, 189 Neb. 708, 204 N.W.2d 809 (1973).

Power to regulate all phases of control of manufacture, distribution, sale and traffic in intoxicating liquors is vested exclusively in the Liquor Control Commission. *City of Lincoln v. Nebraska Liquor Control Commission*, 181 Neb. 277, 147 N.W.2d 803 (1967).

The Liquor Control Commission has the power to regulate all phases of the control of manufacture, distribution, sale, and traffic in intoxicating liquors. *State ex rel. Nebraska Beer Wholesalers Assn. v. Young*, 153 Neb. 395, 44 N.W.2d 806 (1950).

Liquor Control Commission has power to regulate liquor traffic except as such power is specifically delegated elsewhere. *Phelps Inc. v. City of Hastings*, 152 Neb. 651, 42 N.W.2d 300 (1950).

Cited in making comparison of powers and duties of Liquor Control Commission with those of heads of executive departments. *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1946).

The Nebraska Liquor Control Commission is empowered to determine, by reasonable regulations, the hours for sale of beer outside the corporate limits of cities and villages, regardless of its alcoholic content. *Griffin v. Gass*, 133 Neb. 56, 274 N.W. 193 (1937).

The Nebraska Liquor Control Act empowers the Nebraska Liquor Control Commission to issue a license subject to certain restrictions and conditions, including barring a person with a past history of problems controlling the patrons and the establishment, as long as those conditions or restrictions are reasonably necessary to protect the health, safety, and welfare of the people of the State of Nebraska and to promote and foster temperance in the consumption of alcohol. *F & T, Inc. v. Nebraska Liquor Control Comm.*, 7 Neb. App. 973, 587 N.W.2d 700 (1998).

**2. Local controls**

A city is not prohibited from adopting reasonable regulations beyond those of the Liquor Control Commission if not in conflict therewith. *Bali Hai', Inc. v. Nebraska Liquor Control Commission*, 195 Neb. 1, 236 N.W.2d 614 (1975).

Ordinance of city in conflict with Liquor Control Act was unenforceable. *State v. Kubik*, 159 Neb. 509, 67 N.W.2d 755 (1954).

Despite absence of severance clause, ordinance which provided several distinct and separate grounds upon which to base revocation of liquor licenses was not rendered invalid in its entirety by reason of invalidity of some portions. *Clark v. City of Fremont*, 377 F.Supp. 327 (D. Neb. 1974).

**3. Miscellaneous**

Where applicant for license not afforded opportunity to explore an issue material to the license, court should direct a new hearing. *72nd Street Pizza, Inc. v. Nebraska Liquor Control Commission*, 199 Neb. 729, 261 N.W.2d 614 (1978).

Where licensee stored alcoholic beverages in an unauthorized area without permission of the commission and permitted part of licensed premises to be used for gambling, suspension of license was authorized and reasonable. *O'Connor v. Nebraska Liquor Control Commission*, 191 Neb. 436, 215 N.W.2d 635 (1974).

Rule of Liquor Control Commission prescribing price at which liquors should be sold at retail was unconstitutional. *Terry Carpenter, Inc. v. Nebraska Liquor Control Commission*, 175 Neb. 26, 120 N.W.2d 374 (1963).

**53-116.01 Retail licensees; inspection of premises; suspend, cancel, or revoke license; when.**

The commission and local governing bodies shall cause frequent inspection to be made on the premises of all retail licensees, and if it is found that any such licensee is violating any provision of the Nebraska Liquor Control Act or the rules and regulations of the commission adopted and promulgated under the act or is failing to observe in good faith the purposes of the act, the license may be suspended, canceled, or revoked after the licensee is given an opportunity to be heard in his or her defense.

**Source:** Laws 1935, c. 116, § 103, p. 429; C.S.Supp.,1941, § 53-3,103; R.S.1943, § 53-146; Laws 1957, c. 231, § 1, p. 790; Laws 1959, c. 249, § 15, p. 873; Laws 1977, LB 176, § 1; Laws 1980, LB 848, § 10; R.S.1943, (1988), § 53-146; Laws 1991, LB 344, § 9; Laws 2004, LB 485, § 4.

The authority of the Nebraska Liquor Control Commission to cancel a liquor license is set forth in this section and section 53-117.08. Each of these sections gives the commission authority to revoke, cancel, or suspend a liquor license where, after a proper hearing, the licensee has been found to have violated a

provision of the Nebraska Liquor Control Act, a regulation adopted pursuant to the act, or a lawful ordinance of a local governing body. *Grand Island Latin Club v. Nebraska Liq. Cont. Comm.*, 251 Neb. 61, 554 N.W.2d 778 (1996).

**53-116.02 Licensee; violations; forfeiture or revocation of license.**

Whenever any retail licensee, craft brewery licensee, or microdistillery licensee has been convicted by any court of a violation of the Nebraska Liquor Control Act, the licensee may, in addition to the penalties for such offense, incur a forfeiture of the license and all money that had been paid for the license. The local governing body may conditionally revoke the license subject to a final order of the commission, or the commission may revoke the license in an original proceeding brought before it for that purpose.

**Source:** Laws 1935, c. 116, § 47, p. 403; C.S.Supp.,1941, § 53-347; R.S.1943, § 53-128; Laws 1989, LB 781, § 7; R.S.Supp.,1990, § 53-128; Laws 1991, LB 344, § 10; Laws 1993, LB 183, § 4; Laws 1999, LB 267, § 4; Laws 2004, LB 485, § 5; Laws 2007, LB549, § 3.

**53-117 Powers, functions, and duties.**

The commission has the following powers, functions, and duties:

(1) To receive applications for and to issue licenses to and suspend, cancel, and revoke licenses of manufacturers, wholesalers, nonbeverage users, retailers, railroads including owners and lessees of sleeping, dining, and cafe cars, airlines, and boats in accordance with the Nebraska Liquor Control Act;

(2) To fix by rules and regulations the standards of manufacture of alcoholic liquor not inconsistent with federal laws in order to insure the use of proper ingredients and methods in the manufacture and distribution thereof and to adopt and promulgate rules and regulations not inconsistent with federal laws for the proper labeling of containers, barrels, casks, or other bulk containers or of bottles of alcoholic liquor manufactured or sold in this state. The Legislature intends, by the grant of power to adopt and promulgate rules and regulations, that the commission have broad discretionary powers to govern the traffic in alcoholic liquor and to enforce strictly all provisions of the act in the interest of sanitation, purity of products, truthful representations, and honest dealings in a manner that generally will promote the public health and welfare. All such

rules and regulations shall be absolutely binding upon all licensees and enforceable by the commission through the power of suspension or cancellation of licenses, except that all rules and regulations of the commission affecting a club possessing any form of retail license shall have equal application to all such licenses or shall be void;

(3) To call upon other administrative departments of the state, county and municipal governments, county sheriffs, city police departments, village marshals, peace officers, and prosecuting officers for such information and assistance as the commission deems necessary in the performance of its duties;

(4) To recommend to local governing bodies rules and regulations not inconsistent with law for the distribution and sale of alcoholic liquor throughout the state;

(5) To inspect or cause to be inspected any premises where alcoholic liquor is manufactured, distributed, or sold and, when sold on unlicensed premises or on any premises in violation of law, to bring an action to enjoin the use of the property for such purpose;

(6) To hear and determine appeals from orders of a local governing body in accordance with the act;

(7) To conduct or cause to be conducted an audit to inspect any licensee's records and books;

(8) In the conduct of any hearing or audit authorized to be held by the commission (a) to examine or cause to be examined, under oath, any licensee and to examine or cause to be examined the books and records of such licensee, (b) to hear testimony and take proof material for its information in the discharge of its duties under the act, and (c) to administer or cause to be administered oaths;

(9) To investigate the administration of laws in relation to alcoholic liquor in this and other states and to recommend to the Governor and through him or her to the Legislature amendments to the act; and

(10) To receive, account for, and remit to the State Treasurer state license fees and taxes provided for in the act.

**Source:** Laws 1935, c. 116, § 16, p. 382; C.S.Supp., 1941, § 53-316; R.S. 1943, § 53-117; Laws 1959, c. 245, § 1, p. 842; Laws 1965, c. 318, § 4, p. 891; Laws 1967, c. 332, § 1, p. 879; Laws 1974, LB 681, § 4; Laws 1980, LB 848, § 2; Laws 1981, LB 545, § 15; Laws 1988, LB 1089, § 6; Laws 1989, LB 781, § 4; Laws 1991, LB 344, § 11; Laws 1993, LB 183, § 5; Laws 1999, LB 267, § 5; Laws 2004, LB 485, § 6.

In the absence of a violation of a statute or valid regulation of the Nebraska Liquor Control Commission, the commission has no authority to cancel a liquor license. *Jetter v. Nebraska Liquor Control Commission*, 204 Neb. 431, 283 N.W.2d 5 (1979).

Cited in making comparison of powers and duties of Liquor Control Commission with those of heads of executive depart-

ments. *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1946).

Funds collected as state license fees are properly distributed for use of all school districts within state and should not be paid over to counties in which liquor licenses are granted. *School District of Omaha v. Gass*, 131 Neb. 312, 267 N.W. 528 (1936).

### 53-117.01 Subpoenas; issuance; witnesses; documents.

In the discharge of any duty herein imposed the commission shall have authority to issue subpoenas and to compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony.

**Source:** Laws 1959, c. 245, § 2, p. 844.

**53-117.02 Disobedience to subpoena; refusal to testify; proceedings for contempt.**

In case of disobedience on the part of any person to any subpoena issued by the commission or the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court for the county in which such hearing was convened, on the application of a member of the commission, to compel obedience by proceedings for contempt as in the case of disobedience to the requirements of a subpoena issued from such court or a refusal to testify therein.

**Source:** Laws 1959, c. 245, § 3, p. 844.

**53-117.03 Employee and management training; commission; powers and duties; fees; certification.**

(1) On or before January 1, 2007, the commission shall adopt and promulgate rules and regulations governing programs which provide training for persons employed in the sale and service of alcoholic liquor and management of licensed premises. Such rules and regulations may include, but need not be limited to:

(a) Minimum standards governing training of beverage servers, including standards and requirements governing curriculum, program trainers, and certification requirements;

(b) Minimum standards governing training in management of licensed premises, including standards and requirements governing curriculum, program trainers, and certification requirements;

(c) Minimum standards governing the methods allowed for training programs which may include the Internet, interactive video, live training in various locations across the state, and other means deemed appropriate by the commission;

(d) Methods for approving beverage-server training organizations and programs. All beverage-server training programs approved by the commission shall issue a certificate of completion to all persons who successfully complete the program and shall provide the names of all persons completing the program to the commission;

(e) Enrollment fees in an amount determined by the commission to be necessary to cover the expense of enrolling in a training program offered by the commission pursuant to subsection (2) of this section, but not to exceed thirty dollars; and

(f) Procedures and fees for certification, which fees shall be in an amount determined by the commission to be sufficient to defray the expenses associated with maintaining a list of persons certified under this section and issuing proof of certification to eligible individuals but shall not exceed twenty dollars.

(2) The commission may create a program to provide training for persons employed in the sale and service of alcoholic liquor and management of licensed premises. The program shall include training on the issues of sales and service of alcoholic liquor to minors and to visibly inebriated purchasers. The commission may charge each person enrolling in the program an enrollment fee as provided in the rules and regulations, but such fee shall not exceed thirty dollars. All such fees shall be collected by the commission and remitted to the

State Treasurer for credit to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund.

(3) A person who has completed a training program which complies with the rules and regulations, whether such program is offered by the commission or by another organization, may become certified by the commission upon the commission receiving evidence that he or she has completed such program and the person seeking certification paying the certification fee established under this section.

**Source:** Laws 2006, LB 845, § 3.

**53-117.04 Repealed. Laws 1989, LB 70, § 5; Laws 1989, LB 781, § 20; Laws 1993, LB 183, § 20.**

**53-117.05 Rules and regulations; statutes; commission; provide copies; fee authorized.**

The commission shall provide without charge to any person licensed under the Nebraska Liquor Control Act a set of rules and regulations adopted and promulgated by the commission, a copy of the Nebraska Liquor Control Act, and any other information which the commission deems important in the area of liquor control in the State of Nebraska. The information may be printed in a booklet, a pamphlet, or any other form the commission may determine to be appropriate. The commission may update such material as often as it deems necessary. The commission may provide such material to any other person upon request and may charge a fee for the material. The fee shall be reasonable and shall not exceed any reasonable or necessary costs of producing the material for distribution.

**Source:** Laws 1989, LB 70, § 3; Laws 1989, LB 781, § 17; Laws 1991, LB 202, § 1; Laws 1993, LB 183, § 6.

**53-117.06 Nebraska Liquor Control Commission Rule and Regulation Cash Fund; created; use; investment.**

Any money collected by the commission pursuant to section 53-117.05 or 53-167.02 shall be credited to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund, which fund is hereby created. The purpose of the fund shall be to cover any costs incurred by the commission in producing or distributing the material referred to in such sections and to defray the costs associated with electronic regulatory transactions, industry education events, enforcement training, and equipment for regulatory work. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Liquor Control Commission Rule and Regulation Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1989, LB 70, § 4; Laws 1989, LB 781, § 18; Laws 1993, LB 183, § 7; Laws 1993, LB 332, § 6; Laws 1994, LB 1066, § 42; Laws 2008, LB993, § 1; Laws 2009, First Spec. Sess., LB3, § 28.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**53-117.07 Proceedings to suspend, cancel, or revoke licenses before commission.**

All proceedings for the suspension, cancellation, or revocation of licenses of manufacturers, wholesalers, nonbeverage users, craft breweries, microdistilleries, railroads, airlines, shippers, and boats shall be before the commission, and the proceedings shall be in accordance with rules and regulations adopted and promulgated by it not inconsistent with law. No such license shall be so suspended, canceled, or revoked except after a hearing by the commission with reasonable notice to the licensee and opportunity to appear and defend.

**Source:** Laws 1935, c. 116, § 94, p. 425; C.S.Supp.,1941, § 53-394; R.S.1943, § 53-140; Laws 1967, c. 332, § 11, p. 891; Laws 1980, LB 848, § 8; Laws 1988, LB 1089, § 19; R.S.1943, (1988), § 53-140; Laws 1991, LB 344, § 12; Laws 1996, LB 750, § 2; Laws 2007, LB549, § 4.

**53-117.08 License; suspend, cancel, or revoke; hearing; conviction; court; duty.**

The license of any licensee who violates any of the provisions of the Nebraska Liquor Control Act shall be suspended, canceled, or revoked. If any licensee violates the regulations adopted and promulgated by the commission or any lawful ordinance of the local governing body, the commission may, after proper hearing, suspend, cancel, or revoke the license. If any licensee is convicted of a violation of the terms of the act, the court shall immediately notify the local governing body and the commission.

**Source:** Laws 1991, LB 344, § 13.

The authority of the Nebraska Liquor Control Commission to cancel a liquor license is set forth in section 53-116.01 and this section. Each of these sections gives the commission authority to revoke, cancel, or suspend a liquor license where, after a proper hearing, the licensee has been found to have violated a

provision of the Nebraska Liquor Control Act, a regulation adopted pursuant to the act, or a lawful ordinance of a local governing body. *Grand Island Latin Club v. Nebraska Liq. Cont. Comm.*, 251 Neb. 61, 554 N.W.2d 778 (1996).

**53-118 Rules and regulations.**

The commission shall adopt and promulgate rules and regulations to carry out the Nebraska Liquor Control Act. The rules and regulations shall include, among such other things as the commission may determine, provisions: (1) Prescribing conditions as to the issuance of duplicate licenses in lieu of those lost or destroyed; (2) determining for which violations of the rules and regulations licenses shall be suspended, canceled, or revoked; (3) establishing standards of purity, sanitation, honest advertising, and representation; and (4) covering any and all the other details which are necessary or convenient to the enforcement of the intent, purpose, and requirements of the act.

**Source:** Laws 1935, c. 116, § 16, p. 383; C.S.Supp.,1941, § 53-316; R.S.1943, § 53-118; Laws 1945, c. 127, § 1, p. 409; Laws 1955, c. 201, § 1, p. 569; Laws 1961, c. 259, § 1, p. 767; Laws 1963, c. 311, § 1, p. 936; Laws 1967, c. 331, § 1, p. 877; Laws 1967, c. 332, § 2, p. 880; Laws 1971, LB 754, § 1; Laws 1972, LB 66, § 1; Laws 1977, LB 362, § 1; Laws 1979, LB 323, § 1; Laws 1991, LB 344, § 14.

In the absence of a violation of a statute or valid regulation of the Nebraska Liquor Control Commission, the commission has

no authority to cancel a liquor license. *Jetter v. Nebraska Liquor Control Commission*, 204 Neb. 431, 283 N.W.2d 5 (1979).

A city is not prohibited from adopting reasonable regulations beyond those of the Liquor Control Commission if not in conflict therewith. *Bali Hai', Inc. v. Nebraska Liquor Control Commission*, 195 Neb. 1, 236 N.W.2d 614 (1975).

Rule of Liquor Control Commission prescribing price at which liquors should be sold at retail was unconstitutional. *Terry Carpenter, Inc. v. Nebraska Liquor Control Commission*, 175 Neb. 26, 120 N.W.2d 374 (1963).

Liquor Control Commission may promulgate such reasonable rules and regulations as it may deem necessary to carry out

Liquor Control Act, but such rules and regulations must not be in conflict with the act itself. *State ex rel. Nebraska Beer Wholesalers Assn. v. Young*, 153 Neb. 395, 44 N.W.2d 806 (1950).

Legislative grant of power to Nebraska Liquor Control Commission to make rules and regulations with respect to all containers of alcoholic liquors is constitutional. *Marsh & Marsh, Inc. v. Carmichael*, 136 Neb. 797, 287 N.W. 616 (1939).

**53-119 Repealed. Laws 1991, LB 344, § 75.**

**53-119.01 Fire safety inspection; fee.**

The commission may request the State Fire Marshal to inspect for fire safety pursuant to section 81-502 any premises for which an annually renewable retail license, or renewal of such a license, is sought. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 which shall be payable by the licensee or applicant for a license. The authority to make such investigations may be delegated to qualified local fire prevention personnel pursuant to section 81-502.

**Source:** Laws 1983, LB 498, § 1; Laws 2004, LB 485, § 7.

(d) LICENSES; ISSUANCE AND REVOCATION

**53-120 Repealed. Laws 1991, LB 344, § 75.**

**53-121 Sale of liquor by package; election; submission procedure.**

The question of licensing the sale of alcoholic liquors, other than beer, by the package may be submitted at the general municipal election every two years after 1937 in such cities or villages. The proposal shall be submitted and voted upon in the same manner as the submission of the proposal to sell such alcoholic liquors by the drink as provided in section 53-122. The proposition shall be stated as follows:

Shall the sale of alcoholic liquors by the package, other than beer, be licensed in (here insert the name of the city or village)?

..... For license to sell by the package.

..... Against license to sell by the package.

The majority of those voting on the question shall be mandatory upon the commission insofar as licensing the sale of such liquors therein by the package is concerned. In the absence of any vote on the question of licensing the sale of such liquors in such cities or villages by the package, the commission shall continue to issue licenses to sell the same by the package therein for periods of one year subject to all the terms and conditions of the Nebraska Liquor Control Act.

**Source:** Laws 1935, c. 116, § 5, p. 378; C.S.Supp.,1941, § 53-305; R.S. 1943, § 53-121; Laws 1957, c. 228, § 1, p. 779; Laws 1959, c. 249, § 1, p. 860; Laws 1994, LB 859, § 3.

**53-122 Sale of liquor by drink; election; submission; procedure; when not required; prohibited acts; penalties.**

(1) The commission may issue licenses for the sale of alcoholic liquor, except beer, by the drink subject to all the terms and conditions of the Nebraska

Liquor Control Act in all cities and villages in this state, except in those cases when it affirmatively appears that the issuance will render null and void prior conveyances of land to such city or village for public uses and purposes by purchase, gift, or devise, under the conditions and in the manner provided in this section.

(2) If (a) a sufficient petition is signed by the registered voters of any such city or village of such number as equals twenty percent of the votes cast at the last general election held in such city or village, which petition requests that the question of licensing the sale of alcoholic liquor, except beer, by the drink in the city or village be submitted to the registered voters of the city or village at a special election to be called for that purpose and (b) such petition is presented to the clerk of the city or village, the clerk shall cause to be published one time in a legal newspaper published in or of general circulation in the city or village a notice of a special election to be held not less than ten days nor more than twenty days after the date of such publication. The notice shall state the proposition to be submitted at such special election.

(3) The question of licensing the sale of alcoholic liquor either by the drink or in the original package, or both by the drink and in the original package, may also be submitted at any general municipal election, except as otherwise provided in section 53-121, in any city or village in this state subject to the following:

(a) Upon the filing with the clerk of the city or village of a petition signed by registered voters of the city or village in a number equal to twenty percent of the votes cast at the last general election held in the city or village, such proposition or propositions shall be submitted;

(b) Each petition shall conform to the requirements of section 32-628;

(c) At the top of each sheet shall be stated the proposition or propositions to be submitted and the date of the general municipal election at which it is proposed to be submitted;

(d) No signature on the petition shall be valid unless appended to the petition within the last ninety days prior to the date of filing the petition with the clerk of the city or village; and

(e) The petition shall be filed thirty days prior to the day of the general municipal election at which the proposition is to be submitted, and during such thirty-day period no signature shall be withdrawn and no signature shall be added.

(4) Any person who signs any proposal or petition contemplated under this section knowing that he or she is not a registered voter in the place where such proposal or petition is made, who signs any name other than his or her own to such proposal or petition, or who aids or abets any other person in doing any of the acts mentioned is guilty of a Class I misdemeanor. Any person who bribes or gives or pays any money or thing of value to any person directly or indirectly to induce him or her to sign such proposal or petition, who accepts money for signing such proposal or petition, or who aids or abets any other person in doing any of such acts is guilty of a Class IV felony.

(5) Upon the ballot either at the special election or at any general municipal election, the proposition or propositions shall be stated as follows:

Shall the sale of alcoholic liquor, except beer, by the drink be licensed in (here insert the name of the city or village)?

..... For license to sell by drink.

..... Against license to sell by drink.

Shall the sale of alcoholic liquor, except beer, by the package be licensed in (here insert the name of the city or village)?

..... For license to sell by the package.

..... Against license to sell by the package.

The provisions of the Election Act relating to election officers, voting places, election apparatus and blanks, preparation and form of ballots, information to voters, delivery of ballots, calling of elections, conduct of elections, manner of voting, counting of votes, records and certificates of elections, and recounts of votes, so far as applicable, shall apply to voting on the proposition or propositions under the Nebraska Liquor Control Act, and a majority vote of those voting on the question shall be mandatory upon the commission.

(6) If the question is to be submitted at a statewide primary or general election, the petitions shall be filed with the clerk of the city or village not less than sixty days prior to the election. The provisions for the required number of signers and the form of petition shall be the same as for a special election. The clerk of the city or village shall verify the signatures on the petitions with the voter registration records in the office of the county clerk or election commissioner. During the ten-day period while the petitions are being checked, no signatures shall be withdrawn and no signatures shall be added.

If the clerk of the city or village finds the petitions to be valid, he or she shall, not less than fifty days prior to the statewide primary or general election, give notice in writing to the county clerk or election commissioner that the question is to be submitted at the time of the statewide primary or general election. The election notices, issuing of the official ballots on election day, issuing of the ballots for early voting, and counting and canvassing of the ballots shall be conducted by the county clerk or election commissioner as provided in the Election Act and the official results certified to the clerk of the city or village.

(7) An election may not be held in the same city or village under this section more often than once every twenty-three months. A Class I retail license under subdivision (6)(a)(v) of section 53-124 is not subject to this section.

**Source:** Laws 1935, c. 116, § 48, p. 403; C.S.Supp.,1941, § 53-348; R.S.1943, § 53-122; Laws 1963, c. 309, § 1, p. 911; Laws 1963, c. 310, § 2, p. 923; Laws 1969, c. 439, § 1, p. 1469; Laws 1973, LB 556, § 1; Laws 1977, LB 40, § 311; Laws 1984, LB 920, § 43; Laws 1988, LB 1089, § 7; Laws 1989, LB 781, § 5; Laws 1991, LB 344, § 15; Laws 1993, LB 183, § 8; Laws 1994, LB 76, § 570; Laws 1999, LB 267, § 6; Laws 2001, LB 278, § 2; Laws 2004, LB 485, § 8; Laws 2005, LB 98, § 34; Laws 2010, LB861, § 51.

#### Cross References

**Election Act**, see section 32-101.

Percentage of votes required is based on last general municipal election. *Allen v. Tobin*, 155 Neb. 212, 51 N.W.2d 338 (1952).  
over to counties in which liquor licenses are granted. *School District of Omaha v. Gass*, 131 Neb. 312, 267 N.W. 528 (1936).

Funds collected as state license fees are properly distributed for use of all school districts within state and should not be paid

#### 53-123 Licenses; types.

Licenses issued by the commission shall be of the following types: (1) Manufacturer's license; (2) alcoholic liquor wholesale license, except beer; (3)

beer wholesale license; (4) retail license; (5) railroad license; (6) airline license; (7) boat license; (8) nonbeverage user's license; (9) farm winery license; (10) craft brewery license; (11) shipping license; (12) special designated license; (13) catering license; and (14) microdistillery license.

**Source:** Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1, p. 616; Laws 1947, c. 188, § 1, p. 621; Laws 1963, c. 310, § 3, p. 926; Laws 1967, c. 332, § 3, p. 881; Laws 1985, LB 279, § 3; Laws 1988, LB 1089, § 8; Laws 1991, LB 344, § 16; Laws 1996, LB 750, § 3; Laws 2004, LB 485, § 9; Laws 2007, LB549, § 5.

A nonprofit corporation license is a retail license for the sale of alcoholic liquors including beer. *Arrow Club, Inc. v. Nebraska Liquor Control Commission*, 177 Neb. 686, 131 N.W.2d 134 (1964).

Where statute authorizes granting licensees right to sell all forms of alcoholic liquors including beer, licensees are entitled

to sell beer and other liquor in same room, notwithstanding another section declaring public policy in favor of separate sale. *Hanson v. Gass*, 130 Neb. 685, 267 N.W. 403 (1936).

### **53-123.01 Manufacturer's license; rights of licensee.**

A manufacturer's license shall allow the manufacture, storage, and sale of alcoholic liquor to licensees in this state and to such persons outside the state as may be permitted by law, except that nothing in the Nebraska Liquor Control Act shall prohibit a manufacturer of beer from distributing tax-paid samples of beer at the premises of a licensed manufacturer for consumption on the premises.

**Source:** Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(1), p. 617; Laws 1947, c. 188, § 1(1), p. 621; Laws 1982, LB 431, § 1; Laws 1991, LB 344, § 17; Laws 1996, LB 750, § 4.

### **53-123.02 Alcoholic liquor wholesale license, except beer; rights of licensee; sampling.**

An alcoholic liquor wholesale license, except beer, shall (1) allow the wholesale purchase, importation, and storage of alcoholic liquor and sale of alcoholic liquor, except beer, to licensees in this state and to persons outside the state as may be permitted by law and (2) allow the sampling of tax-paid alcoholic liquor, except beer, upon the premises of the licensed wholesaler by a licensed retailer or allow sampling on the premises of any licensed retailer, whether the license permits consumption on or off the licensed premises, or both, in the manner prescribed by the commission. The sampling authorized under this section shall be limited to persons licensed as wholesalers or retailers and their employees.

**Source:** Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(2), p. 617; Laws 1947, c. 188, § 1(2), p. 621; Laws 1963, c. 310, § 4, p. 926; Laws 1980, LB 848, § 3; Laws 1982, LB 431, § 2; Laws 1991, LB 344, § 18; Laws 1993, LB 53, § 1; Laws 2003, LB 205, § 1; Laws 2004, LB 485, § 10.

### **53-123.03 Beer wholesale license; rights of licensee; designated territory.**

A beer wholesale license shall (1) allow the wholesale purchase, importation, and storage of beer and sale, including delivery, of the brand or brands

described in such license to licensees in this state in the sales territory prescribed in the license for each brand and to such persons outside the state as may be permitted by law, (2) allow the licensed wholesaler to do all things incident to the carrying on of the wholesale beer business, including the sampling of tax-paid beer upon the premises of the licensed wholesaler by a licensed retailer in the manner prescribed by the commission, and (3) allow the sampling of tax-paid beer upon the premises of any retailer, whether the license permits consumption on or off the licensed premises, or both, in a manner prescribed by the commission.

The sampling authorized under subdivision (3) of this section shall be limited to persons licensed as wholesalers or retailers and their employees.

The license shall designate the territory within which the licensed wholesaler may sell the designated product of any brewer as agreed upon by the licensee and the brewer.

**Source:** Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(3), p. 617; Laws 1947, c. 188, § 1(3), p. 622; Laws 1963, c. 310, § 5, p. 926; Laws 1971, LB 234, § 18; Laws 1976, LB 204, § 1; Laws 1980, LB 848, § 4; Laws 1983, LB 133, § 1; Laws 1991, LB 344, § 19; Laws 2003, LB 205, § 2; Laws 2004, LB 485, § 11.

**53-123.04 Retail license; rights of licensee; sampling; removal of unsealed bottle of wine; conditions.**

(1) A retail license shall allow the licensee to sell and offer for sale at retail either in the original package or otherwise, as prescribed in the license, on the premises specified in the license or on the premises where catering is occurring, alcoholic liquor or beer for use or consumption but not for resale in any form except as provided in section 53-175.

(2) Nothing in the Nebraska Liquor Control Act shall prohibit a holder of a Class D license from allowing the sampling of tax-paid wine for consumption on the premises by such licensee or his or her employees in cooperation with a licensed wholesaler in the manner prescribed by the commission.

(3)(a) A restaurant holding a license to sell alcoholic liquor at retail for consumption on the licensed premises may permit a customer to remove one unsealed bottle of wine for consumption off the premises if the customer has purchased a full-course meal and consumed a portion of the bottle of wine with such full-course meal on the licensed premises. The licensee or his or her agent shall (i) securely reseal such bottle and place the bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been opened or tampered with and (ii) provide a dated receipt to the customer and attach to such bag a copy of the dated receipt for the resealed bottle of wine and the full-course meal.

(b) If the resealed bottle of wine is transported in a motor vehicle, it must be placed in the trunk of the motor vehicle or the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(c) For purposes of this subsection, full-course meal means a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking.

**Source:** Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(4), p. 617; Laws

1947, c. 188, § 1(4), p. 622; Laws 1965, c. 318, § 5, p. 892; Laws 1973, LB 111, § 3; Laws 1978, LB 386, § 3; Laws 1988, LB 1089, § 9; Laws 1989, LB 441, § 3; Laws 1989, LB 154, § 2; Laws 1991, LB 344, § 20; Laws 1993, LB 53, § 2; Laws 1994, LB 859, § 4; Laws 2001, LB 278, § 3; Laws 2004, LB 485, § 12; Laws 2006, LB 562, § 2.

**53-123.05 Railroad or airline license; rights of licensee.**

(1) The commission may issue a license to any airline company, dining car company, sleeping car company, or railroad company operating in this state which authorizes the holder thereof to keep for sale and to sell or dispense alcoholic liquor for consumption in its airplanes, dining cars, sleeping cars, buffet cars, observation cars, and any other cars used for transportation or accommodation of passengers. Each such company shall keep a duplicate of such license posted in each car or airplane where such alcoholic liquor is served.

(2) Every such license shall expire on April 30 of each year. Each such license shall be good throughout this state as a state license. Only one such license shall be required for all cars or airplanes operated in this state by the same owner. No further license shall be required or tax levied by any county, city, or village for the privilege of selling or dispensing alcoholic liquor for consumption in such cars or airplanes. Nothing in the Nebraska Liquor Control Act shall apply to or affect the right of holders of such licenses to transport within this state or to import into this state alcoholic liquor to be kept for dispensing or sale or to be sold while actually en route in the cars or airplanes of such licensees.

**Source:** Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(5), p. 618; Laws 1947, c. 188, § 1(5), p. 622; Laws 1957, c. 229, § 1, p. 786; Laws 1967, c. 332, § 5, p. 882; Laws 1989, LB 780, § 8.

**53-123.06 Boat license; rights of licensee.**

A boat license shall allow the sale of alcoholic liquor in individual drinks, on any passenger boat which maintains a public dining room or restaurant thereon.

**Source:** Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(6), p. 618; Laws 1947, c. 188, § 1(6), p. 623.

**53-123.07 Nonbeverage user's license; rights of licensee; importation of alcohol; classes of license.**

A nonbeverage user's license shall allow the licensee to purchase alcoholic liquor from a licensed manufacturer or wholesaler without the imposition of any tax upon the business of such licensed manufacturer or wholesaler as to such alcoholic liquor to be used by such licensed nonbeverage user solely for the nonbeverage purposes set forth in subsection (4) of section 53-160. If any licensed nonbeverage user is engaged in the business of manufacturing, compounding, or preparing pharmaceutical products or similar preparations or products containing alcohol to be sold in both intrastate and interstate commerce, such nonbeverage user's license shall allow the licensee to purchase at

wholesale or otherwise from manufacturers or wholesalers not licensed in the state and to import alcohol either in barrels, drums, casks, or other containers. If any licensed nonbeverage user is engaged in the business of manufacturing or preparing food products containing alcoholic liquor to be sold in both intrastate and interstate commerce, such nonbeverage user's license shall allow the licensee to purchase at wholesale from alcoholic liquor wholesalers licensed within the state alcoholic liquor either in barrels, drums, casks, or other containers, and such alcoholic liquor wholesalers may cause such alcoholic liquor to be shipped or delivered directly to such nonbeverage user from the source of supply, in which event all such shipments or deliveries shall be considered as received by such alcoholic liquor wholesalers within this state and at their licensed premises and purchased by such alcoholic liquor wholesalers and for their account, and all such shipments or deliveries shall be recorded and reported by such alcoholic liquor wholesalers as required by section 53-165. All such licenses shall be divided and classified and shall permit the purchase during the term for which such licenses are issued of limited and stated quantities of alcoholic liquor as follows:

Class 1, not to exceed . . . . 100 gallons

Class 2, not to exceed . . . . 1,000 gallons

Class 3, not to exceed . . . . 5,000 gallons

Class 4, not to exceed . . . . 10,000 gallons

Class 5, in excess of . . . . 10,000 gallons.

**Source:** Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(7), p. 618; Laws 1947, c. 188, § 1(7), p. 623; Laws 1965, c. 319, § 2, p. 908; Laws 1971, LB 466, § 1; Laws 1991, LB 344, § 21.

**53-123.08 Repealed. Laws 2004, LB 485, § 33.**

**53-123.09 Beer wholesaler; delivery outside territory; unlawful; penalty.**

(1) It shall be unlawful for any beer wholesaler to deliver beer to any retail licensee located outside the geographic territory designated on the beer wholesaler's license.

(2) If any person violates subsection (1) of this section, such person's license shall be suspended or revoked by the commission in the manner provided by the Nebraska Liquor Control Act.

**Source:** Laws 1976, LB 204, § 2; Laws 1991, LB 344, § 22.

**53-123.10 Farm winery license; when issued.**

A license to operate a farm winery may be issued by the commission upon an applicant's compliance with section 53-123.12 and such other requirements as the commission adopts and promulgates by rule and regulation to administer sections 53-101.02 and 53-123.10 to 53-123.13.

**Source:** Laws 1985, LB 279, § 4.

**53-123.11 Farm winery license; rights of licensee; removal of unsealed bottle of wine; conditions.**

(1) A farm winery license shall entitle the holder to:

(a) Sell wines produced at the farm winery onsite at wholesale and retail and to sell wines produced at the farm winery at off-premises sites holding the appropriate retail license;

(b) Sell wines produced at the farm winery at retail for consumption on the premises;

(c)(i) Permit a customer to remove one unsealed bottle of wine for consumption off the premises. The licensee or his or her agent shall (A) securely reseal such bottle and place the bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been opened or tampered with and (B) provide a dated receipt to the customer and attach to such bag a copy of the dated receipt for the resealed bottle of wine.

(ii) If the resealed bottle of wine is transported in a motor vehicle, it must be placed in the trunk of the motor vehicle or the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk;

(d) Ship wines produced at the farm winery by common carrier and sold at retail to recipients in and outside the State of Nebraska, if the output of such farm winery for each calendar year as reported to the commission by December 31 of each year does not exceed thirty thousand gallons. In the event such amount exceeds thirty thousand gallons, the farm winery shall be required to use a licensed wholesaler to distribute its wines for the following calendar year, except that this requirement shall not apply to wines produced and sold onsite at the farm winery pursuant to subdivision (1)(a) of this section;

(e) Allow sampling of the wine at the farm winery and at one branch outlet in the state in reasonable amounts;

(f) Sell wines produced at the farm winery to other Nebraska farm winery licensees, in bulk, bottled, labeled, or unlabeled, in accordance with 27 C.F.R. 24.308, 27 C.F.R. 24.309, and 27 C.F.R. 24.314, as such regulations existed on January 1, 2008;

(g) Purchase distilled spirits from licensed microdistilleries in Nebraska, in bulk or bottled, made entirely from Nebraska-licensed farm winery wine to be used in the production of fortified wine at the purchasing licensed farm winery; and

(h) Store and warehouse products produced at the farm winery in a designated, secure, offsite storage facility if the holder of the farm winery license notifies the commission of the location of the facility and maintains, at the farm winery and at the facility, a separate perpetual inventory of the product stored at the facility. Consumption of alcoholic liquor at the facility is strictly prohibited.

(2) No farm winery shall manufacture wine in excess of fifty thousand gallons per year.

(3) A holder of a farm winery license may obtain a special designated license pursuant to section 53-124.11.

(4) A holder of a farm winery license may obtain an annual catering license pursuant to section 53-124.12.

**Source:** Laws 1985, LB 279, § 5; Laws 1991, LB 344, § 23; Laws 1997, LB 479, § 1; Laws 2003, LB 536, § 3; Laws 2006, LB 562, § 3; Laws 2008, LB1103, § 2; Laws 2010, LB861, § 52.

**53-123.12 Farm winery license; application requirements; renewal; fees.**

(1) Any person desiring to obtain a new license to operate a farm winery shall:

(a) File an application with the commission in triplicate original upon such forms as the commission from time to time prescribes;

(b) Pay the license fee to the commission under sections 53-124 and 53-124.01, which fee shall be returned to the applicant if the application is denied; and

(c) Pay the nonrefundable application fee to the commission in the sum of four hundred dollars.

(2) To renew a farm winery license, a farm winery licensee shall file an application with the commission, pay the license fee under sections 53-124 and 53-124.01, and pay the renewal fee of forty-five dollars.

(3) License fees, application fees, and renewal fees may be paid to the commission by certified or cashier's check of a bank within this state, personal or business check, United States post office money order, or cash in the full amount of such fees.

(4) For a new license, the commission shall then notify, by registered or certified mail marked return receipt requested with postage prepaid, 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 enclose 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 mailing such application by the commission. Within thirty-five days from the date of receipt of such application from the commission, the local governing bodies of nearby cities or villages or the county may make and submit to the commission recommendations relative to the granting of or refusal to grant such license to the applicant.

**Source:** Laws 1985, LB 279, § 7; Laws 1988, LB 1089, § 10; Laws 1991, LB 202, § 2; Laws 2000, LB 973, § 3; Laws 2010, LB861, § 53.

**53-123.13 Farm winery; waiver of requirement; when; conditions.**

(1) If the operator of a farm winery is unable to produce or purchase seventy-five percent of the grapes, fruit, or other suitable agricultural products used in the farm winery from within the state due to natural disaster which causes substantial loss to the Nebraska-grown crop, such operator may petition the commission to waive the seventy-five-percent requirement prescribed in section 53-103.13 for one year.

(2) It shall be within the discretion of the commission to waive the seventy-five-percent requirement taking into consideration the availability of products used in farm wineries in this area and the ability of such operator to produce wine from products that are abundant within the state.

(3) If the operator of a farm winery is granted a waiver, any product purchased as concentrated juice from grapes or other fruits from outside of Nebraska, when reconstituted from concentrate, may not exceed in total volume along with other products purchased the total percentage allowed by the waiver.

(4) Any product purchased under the waiver or as part of the twenty-five percent of allowable product purchased that is not Nebraska-grown for the production of wine shall not exceed the twenty-five percent volume allowed under state law if made from concentrated grapes or other fruit, when reconstituted. The concentrate shall not be reduced to less than twenty-two degrees Brix in accordance with 27 C.F.R. 24.180.

**Source:** Laws 1985, LB 279, § 6; Laws 1986, LB 871, § 2; Laws 1989, LB 441, § 5; Laws 1991, LB 344, § 24; Laws 1994, LB 859, § 5; Laws 2004, LB 485, § 13; Laws 2008, LB1103, § 3; Laws 2010, LB861, § 54.

#### **53-123.14 Craft brewery license; rights of licensee.**

Any person who operates a craft brewery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a craft brewery shall permit a brewpub or microbrewery to produce on the craft brewery premises a maximum of ten thousand barrels of beer per year. 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 craft brewery 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 or a special designated license pursuant to section 53-124.11.

**Source:** Laws 1988, LB 1089, § 3; Laws 1991, LB 344, § 25; Laws 1994, LB 1292, § 3; Laws 1996, LB 750, § 5.

#### **53-123.15 Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action.**

(1) No person shall order or receive alcoholic liquor in this state which has been shipped directly to him or her from outside this state by any person other than a holder of a shipping license issued by the commission, except that a licensed wholesaler may receive not more than three gallons of wine in any calendar year from any person who is not a holder of a shipping license.

(2) The commission may issue a shipping license to a manufacturer. Such license shall allow the licensee to ship alcoholic liquor only to a licensed wholesaler, except that a licensed wholesaler may, without a shipping license and for the purposes of subdivision (2) of section 53-161, receive beer in this state which has been shipped from outside the state by a manufacturer in accordance with the Nebraska Liquor Control Act to the wholesaler, then transported by the wholesaler to another state for retail distribution, and then returned by the retailer to such wholesaler. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a manufacturer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.

(3) The commission may issue a shipping license to any person who deals with vintage wines, which shipping license shall allow the licensee to distribute

such wines to a licensed wholesaler in the state. For purposes of distributing vintage wines, a licensed shipper must utilize a designated wholesaler if the manufacturer has a designated wholesaler. For purposes of this section, vintage wine shall mean a wine verified to be ten years of age or older and not available from a primary American source of supply. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a vintage wine dealer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.

(4) The commission may issue a shipping license to any person who sells and ships alcoholic liquor from another state directly to a consumer in this state. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a direct sales shipping license. Until April 30, 2012, such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

(5) The application for a shipping license shall be in such form as the commission prescribes. The application shall contain all provisions the commission deems proper and necessary to effectuate the purpose of any section of the act and the rules and regulations of the commission that apply to manufacturers and shall include, but not be limited to, provisions that the applicant, in consideration of the issuance of such shipping license, agrees:

(a) To comply with and be bound by section 53-164.01 in making and filing reports, paying taxes, penalties, and interest, and keeping records;

(b) To permit and be subject to all of the powers granted by section 53-164.01 to the commission or its duly authorized employees or agents for inspection and examination of the applicant's premises and records and to pay the actual expenses, excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the commission if within the United States; and

(c) That if the applicant violates any of the provisions of the application or the license, any section of the act, or any of the rules and regulations of the commission that apply to manufacturers, the commission may revoke or suspend such shipping license for such period of time as it may determine.

**Source:** Laws 1991, LB 344, § 49; Laws 1994, LB 416, § 1; Laws 1995, LB 874, § 1; Laws 2001, LB 671, § 1; Laws 2004, LB 485, § 14; Laws 2007, LB441, § 1; Laws 2010, LB861, § 55; Laws 2010, LB867, § 1.

#### **53-123.16 Microdistillery license; rights of licensee.**

Any person who operates a microdistillery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a microdistillery shall permit the licensee to produce on the premises a maximum of ten thousand gallons of liquor per year. A microdistillery may also sell to licensed wholesalers for sale and distribution to licensed retailers. A microdistillery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of microdistilled product for consumption on or off the licensed premises, except that the sale of any beer, wine, or alcoholic liquor, other than microdistilled product manufactured by the microdistillery licensee, by the drink for consumption on

the microdistillery premises shall require the appropriate retail license. Any license held by the operator of a microdistillery shall be subject to the act. A holder of a microdistillery license may obtain an annual catering license pursuant to section 53-124.12 or a special designated license pursuant to section 53-124.11. 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.

**53-124 Licenses; types; classification; fees; where paid; license year.**

(1) At the time application is made to the commission for a license of any type, the applicant shall pay the fee provided in section 53-124.01 and, if the applicant is an individual, provide the applicant's social security number. The commission shall issue the types of licenses described in this section.

(2) There shall be an airline license, a boat license, and a railroad license. The commission shall charge one dollar for each duplicate of an airline license or a railroad license.

(3)(a) There shall be a manufacturer's license for alcohol and spirits, for beer, and for wine. The annual fee for a manufacturer's license for beer shall be based on the barrel daily capacity as follows:

- (i) 1 to 100 barrel daily capacity, or any part thereof, tier one;
- (ii) 100 to 150 barrel daily capacity, tier two;
- (iii) 150 to 200 barrel daily capacity, tier three;
- (iv) 200 to 300 barrel daily capacity, tier four;
- (v) 300 to 400 barrel daily capacity, tier five;
- (vi) 400 to 500 barrel daily capacity, tier six;
- (vii) 500 barrel daily capacity, or more, tier seven.

(b) For purposes of this subsection, daily capacity means the average daily barrel production for the previous twelve months of manufacturing operation. If no such basis for comparison exists, the manufacturing licensee shall pay in advance for the first year's operation a fee of five hundred dollars.

(4) There shall be five classes of nonbeverage users' licenses: Class 1, Class 2, Class 3, Class 4, and Class 5.

(5) In lieu of a manufacturer's, a retailer's, or a wholesaler's license, there shall be a license to operate issued for a craft brewery, a farm winery, or a microdistillery.

(6)(a) There shall be five classes of retail licenses:

- (i) Class A: Beer only, for consumption on the premises;
- (ii) Class B: Beer only, for consumption off the premises, sales in the original packages only;
- (iii) Class C: Alcoholic liquor, for consumption on the premises and off the premises, sales in original packages only. If a Class C license is held by a nonprofit corporation, it shall be restricted to consumption on the premises only. A Class C license may have a sampling designation restricting consump-

tion on the premises to sampling, but such designation shall not affect sales for consumption off the premises under such license;

(iv) Class D: Alcoholic liquor, including beer, for consumption off the premises, sales in the original packages only, except as provided in subsection (2) of section 53-123.04; and

(v) Class I: Alcoholic liquor, for consumption on the premises.

(b) All applicable license fees shall be paid by the applicant or licensee directly to the city or village treasurer in the case of premises located inside the corporate limits of a city or village and directly to the county treasurer in the case of premises located outside the corporate limits of a city or village.

(7) There shall be three types of shipping licenses as described in section 53-123.15: Manufacturers, vintage wines, and direct sales.

(8) There shall be two types of wholesale licenses: Alcoholic liquor and beer only. The annual fee shall be paid for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling the same product.

(9) The license year, unless otherwise provided in the Nebraska Liquor Control Act, shall commence on May 1 of each year and shall end on the following April 30, except that the license year for a Class C license shall commence on November 1 of each year and shall end on the following October 31. During the license year, no license shall be issued for a sum less than the amount of the annual license fee as fixed in section 53-124.01, regardless of the time when the application for such license has been made, except that (a) when there is a purchase of an existing licensed business and a new license of the same class is issued or (b) upon the issuance of a new license for a location which has not been previously licensed, the license fee and occupation taxes shall be prorated on a quarterly basis as of the date of issuance.

**Source:** Laws 1935, c. 116, § 26, p. 391; C.S.Supp.,1941, § 53-326; R.S.1943, § 53-124; Laws 1955, c. 202, § 1, p. 576; Laws 1959, c. 249, § 2, p. 861; Laws 1961, c. 258, § 2, p. 761; Laws 1963, c. 309, § 2, p. 913; Laws 1963, c. 310, § 7, p. 927; Laws 1963, Spec. Sess., c. 5, § 3, p. 76; Laws 1965, c. 318, § 6, p. 893; Laws 1967, c. 332, § 6, p. 882; Laws 1967, c. 336, § 1, p. 897; Laws 1973, LB 111, § 4; Laws 1974, LB 681, § 5; Laws 1975, LB 414, § 1; Laws 1977, LB 237, § 1; Laws 1978, LB 386, § 4; Laws 1983, LB 133, § 2; Laws 1983, LB 213, § 3; Laws 1984, LB 947, § 1; Laws 1985, LB 279, § 8; Laws 1988, LB 1089, § 11; Laws 1989, LB 154, § 3; Laws 1989, LB 781, § 6; Laws 1991, LB 344, § 26; Laws 1993, LB 53, § 3; Laws 1993, LB 183, § 9; Laws 1994, LB 1313, § 3; Laws 1996, LB 750, § 6; Laws 1997, LB 752, § 131; Laws 2001, LB 278, § 4; Laws 2001, LB 671, § 2; Laws 2004, LB 485, § 15; Laws 2007, LB549, § 7; Laws 2009, LB355, § 3; Laws 2010, LB861, § 56; Laws 2010, LB867, § 2.

It was error for the Nebraska Liquor Control Commission to refuse a license on grounds of "unfair competition" when the applicant was not advised ahead of time that that issue would be considered by the commission. A license may not be denied solely on the grounds that it might give one business a "competitive edge" over others in the area. Halbert v. Nebraska Liquor Control Commission, 206 Neb. 687, 294 N.W.2d 864 (1980).

There is a difference between nonprofit corporation license and bottle club license. Arrow Club, Inc. v. Nebraska Liquor Control Commission, 177 Neb. 686, 131 N.W.2d 134 (1964).

Rights of individual licensees to operate are subject to power of Liquor Control Commission. Griffin v. Gass, 133 Neb. 56, 274 N.W. 193 (1937).

Where statute authorizes granting licensees right to sell all forms of alcoholic liquors including beer, licensees are entitled

to sell beer and other liquor in same room, notwithstanding another section declaring public policy in favor of separate sale. Hanson v. Gass, 130 Neb. 685, 267 N.W. 403 (1936).

revocation of liquor licenses was not rendered invalid in its entirety by reason of invalidity of some portions. Clark v. City of Fremont, 377 F.Supp. 327 (D. Neb. 1974).

Despite absence of severance clause, ordinance which provided several distinct and separate grounds upon which to base

**53-124.01 Fees for annual licenses.**

(1) The fees for annual licenses finally issued by the commission shall be as provided in this section and section 53-124.

(2) Airline license . . . \$100

(3) Boat license . . . \$50

(4) Manufacturer’s license:

Class	Fee - In Dollars
Alcohol and spirits	1,000
Beer - tier one	100
Beer - tier two	200
Beer - tier three	350
Beer - tier four	500
Beer - tier five	650
Beer - tier six	700
Beer - tier seven	800
Wine	250

(5) Nonbeverage user’s license:

Class	Fee - In Dollars
Class 1	5
Class 2	25
Class 3	50
Class 4	100
Class 5	250

(6) Operator’s license:

Class	Fee - In Dollars
Craft brewery	250
Farm winery	250
Microdistillery	250

(7) Railroad license . . . \$100

(8) Retail license:

Class	Fee - In Dollars
Class A	100
Class B	100
Class C	300
Class D	200
Class I	250

(9) Shipping license:

Class	Fee - In Dollars
Manufacturer	1,000
Vintage wines	1,000
Direct sales	500

(10) Wholesale license:

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Class	Fee - In Dollars
Alcoholic liquor	750
Beer	500

**Source:** Laws 2010, LB861, § 57.

**53-124.02 Holder of license under prior law; how treated.**

On May 1, 2005, the holder of a Class D-1 license, Class E license, or Class K license shall be issued a Class D license, the holder of a Class F license shall be issued a Class A license, and the holder of a Class H license, Class J license, or bottle club license shall be issued a Class I license. Any conditions placed on a Class D-1, Class E, Class F, Class H, Class J, Class K, or bottle club license by the local governing body or the commission prior to May 1, 2005, shall continue to apply to the license issued to such holder on such date.

**Source:** Laws 2004, LB 485, § 16.

**53-124.03 Repealed. Laws 1986, LB 871, § 4.**

**53-124.04 Repealed. Laws 1986, LB 871, § 4.**

**53-124.05 Repealed. Laws 1986, LB 871, § 4.**

**53-124.06 Repealed. Laws 1967, c. 333, § 1.**

**53-124.07 Repealed. Laws 1986, LB 871, § 4.**

**53-124.08 Repealed. Laws 1983, LB 213, § 21.**

**53-124.09 Repealed. Laws 1986, LB 871, § 4.**

**53-124.10 Repealed. Laws 1983, LB 213, § 21.**

**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, a municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, a political organization which has been exempted from the payment of federal income taxes, or any other nonprofit corporation the purpose of which is fraternal, charitable, or public service and which has been exempted from the payment of federal income taxes, under conditions specified in this section. The applicant shall demonstrate meeting the requirements of this subsection.

(2) No retail licensee, craft brewery licensee, microdistillery licensee, farm winery licensee, organization, or corporation enumerated in subsection (1) of this section may be issued a special designated license under this section for more than six calendar days in any one calendar year. Only one special designated license shall be required for any application for two or more consecutive days. This subsection shall not apply to any holder of a catering license.

(3) Except for any special designated license issued to a holder of a catering license, there shall be a fee of forty dollars for each day identified in the special

designated license. Such fee shall be submitted with the application for the special designated license, collected by the commission, and remitted to the State Treasurer for credit to the General Fund. The applicant shall be exempt from the provisions of the Nebraska Liquor Control Act requiring an application or renewal fee and the provisions of the act requiring the expiration of forty-five days from the time the application is received by the commission prior to the issuance of a license, if granted by the commission. The retail licensees, craft brewery licensees, microdistillery licensees, farm winery licensees, municipal corporations, organizations, and nonprofit corporations enumerated in subsection (1) of this section seeking a special designated license shall file an application on such forms as the commission may prescribe. Such forms shall contain, along with other information as required by the commission, (a) the name of the applicant, (b) the premises for which a special designated license is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (c) the name of the owner or lessee of the premises for which the special designated license is requested, (d) sufficient evidence that the holder of the special designated license, if issued, will carry on the activities and business authorized by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (e) a statement of the type of activity to be carried on during the time period for which a special designated license is requested, and (f) sufficient evidence that the activity will be supervised by persons or managers who are agents of and directly responsible to the holder of the special designated license.

(4) No special designated license provided for by this section shall be issued by the commission without the approval of the local governing body. The local governing body may establish criteria for approving or denying a special designated license. The local governing body may designate an agent to determine whether a special designated license is to be approved or denied. Such agent shall follow criteria established by the local governing body in making his or her determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body. For purposes of this section, the local governing body shall be the city or village within which the premises for which the special designated license is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be the county within which the premises for which the special designated license is requested are located.

(5) If the applicant meets the requirements of this section, a special designated license shall be granted and issued by the commission for use by the holder of the special designated license. All statutory provisions and rules and regulations of the commission that apply to a retail licensee shall apply to the holder of a special designated license with the exception of such statutory provisions and rules and regulations of the commission so designated by the commission and stated upon the issued special designated license, except that the commission may not designate exemption of sections 53-180 to 53-180.07. The decision of the commission shall be final. If the applicant does not qualify for a special designated license, the application shall be denied by the commission.

(6) A special designated license issued by the commission shall be mailed or delivered to the city, village, or county clerk who shall deliver such license to

the licensee upon receipt of any fee or tax imposed by such city, village, or county.

**Source:** Laws 1983, LB 213, § 9; Laws 1988, LB 490, § 5; Laws 1991, LB 344, § 27; Laws 1994, LB 1292, § 4; Laws 1996, LB 750, § 7; Laws 2000, LB 973, § 4; Laws 2006, LB 562, § 4; Laws 2007, LB549, § 8; Laws 2010, LB861, § 58.

**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, or a farm winery license 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, or farm winery license.

(2) Any person desiring to obtain a catering license shall file with the commission:

(a) An application in triplicate original upon such forms as the commission prescribes; and

(b) A license fee of one hundred dollars payable to the commission, which fee shall be returned to the applicant if the application is denied.

(3) When an application for a catering license is filed, the commission shall notify, by registered or certified mail, return receipt requested with postage prepaid, (a) the clerk of the city or incorporated village in which such applicant is located or (b) 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 enclose with such notice one copy of the application. 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.

**53-124.13 Catering licensee; special designated license; application; procedure; proceeds; violation; penalty.**

(1) The holder of a catering license may deliver, sell, or dispense alcoholic liquor, including beer, for consumption at premises designated in a special designated license issued pursuant to section 53-124.11.

(2) At least twenty-one days prior to the event for which the special designated license is to be used, the holder of the catering license shall file an application seeking a special designated license for the event. In addition to the information required by subsection (3) of section 53-124.11, the applicant shall inform the commission of (a) the time of the event, (b) the name of the person or organization requesting the applicant's services, (c) the opening and closing dates of the event, and (d) any other information the commission or local governing body deems necessary. A holder of a catering license shall not cater an event unless such licensee receives a special designated license for the event.

(3) If the organization for which the holder of a catering license is catering is a nonprofit organization exempted from the payment of federal income taxes, such organization may share with such licensee a part or all of the proceeds from the sale of any alcoholic liquor sold and dispensed pursuant to this section.

(4) For purposes of this section, local governing body shall mean the governing body of the city or village in which the event will be held or, if the event will not be held within the corporate limits of a city or village, the governing body of the county in which such event will be held.

(5) Only the holder of a special designated license or employees of such licensee may dispense alcoholic liquor at the event which is being catered. Violation of any provision of this section or section 53-124.12 or any rules or regulations adopted and promulgated pursuant to such sections occurring during an event being catered by such licensee may be cause to revoke, cancel, or suspend the class of retail license issued under section 53-124 held by such licensee.

**Source:** Laws 1988, LB 490, § 2; Laws 1991, LB 344, § 29; Laws 2010, LB861, § 60.

**53-124.14 Applicants outside cities and villages; airport authorities; Nebraska State Fair Board; issuance of licenses; when permitted.**

(1) The commission may license the sale of alcoholic liquor at retail in the original package to applicants who reside in any county in which there is no incorporated city or village or in which the county seat is not located in an incorporated city or village if the licensed premises are situated in an unincorporated village having a population of twenty-five inhabitants or more.

(2) The commission may license the sale of beer at retail in any county outside the corporate limits of any city or village therein and license the sale of alcoholic liquor at retail for consumption on the premises and off the premises, sales in the original package only.

(3) The commission may license the sale of alcoholic liquor for consumption on the premises as provided in subdivision (6)(a)(iii) of section 53-124 on lands controlled by airport authorities when such land is located on and under county jurisdiction or by the Nebraska State Fair Board.

**Source:** Laws 1991, LB 582, § 2; Laws 2001, LB 278, § 6; Laws 2002, LB 1236, § 17; Laws 2004, LB 485, § 18; Laws 2010, LB861, § 61.

**53-124.15 Community college culinary education program; catering license.**

A community college which offers a culinary education program may obtain a catering license under this section upon applying for and receiving a Class I license under the Nebraska Liquor Control Act. The catering license shall be issued for the same period and may be renewed in the same manner as the Class I license.

A community college holding a catering license and a Class I license under the act may sell alcoholic beverages only (1) at events held by such culinary education program on the campus of the community college or (2) at events catered by such culinary education program as part of the requirements of such program.

**Source:** Laws 2009, LB232, § 2.

**53-125 Classes of persons to whom no license issued.**

No license of any kind shall be issued to (1) a person who is not a resident of Nebraska, except in case of railroad, airline, or boat licenses, (2) a person who is not of good character and reputation in the community in which he or she resides, (3) a person who is not a citizen of the United States, (4) a person who has been convicted of or has pleaded guilty to a felony under the laws of this state, any other state, or the United States, (5) a person who has been convicted of or has pleaded guilty to any Class I misdemeanor pursuant to Chapter 28, article 3, 4, 7, 8, 10, 11, or 12, or any similar offense under a prior criminal statute or in another state, except that any additional requirements imposed by this subdivision on May 18, 1983, shall not prevent any person holding a license on such date from retaining or renewing such license if the conviction or plea occurred prior to May 18, 1983, (6) a person whose license issued under the Nebraska Liquor Control Act has been revoked for cause, (7) a person who at the time of application for renewal of any license issued under the act would not be eligible for such license upon initial application, (8) a partnership, unless one of the partners is a resident of Nebraska and unless all the members of such partnership are otherwise qualified to obtain a license, (9) a limited liability company, if any officer or director of the limited liability company or any member having an ownership interest in the aggregate of more than twenty-five percent of such company would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, or if a manager of a limited liability company licensee would be ineligible to receive a license under this section for any reason, (10) a corporation, if any officer or director of the corporation or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, or if a manager of a corporate licensee would be ineligible to receive a license under this section for any reason. This subdivision shall not apply to railroad licenses, (11) a person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee, (12) a person who does not own the premises for which a license is sought or does not have a lease or combination of leases on such premises for the full period for which the license is to be issued, (13) except as provided in this subdivision, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such applicant shall

become eligible for a liquor license only if the commission finds from the evidence that the public interest will not be infringed upon if such license is granted. It shall be prima facie evidence that when a spouse is ineligible to receive a liquor license the applicant is also ineligible to receive a liquor license. Such prima facie evidence shall be overcome if it is shown to the satisfaction of the commission (a) that the licensed business will be the sole property of the applicant and (b) that such licensed premises will be properly operated, (14) a person seeking a license for premises which do not meet standards for fire safety as established by the State Fire Marshal, (15) a law enforcement officer, except that this subdivision shall not prohibit a law enforcement officer from holding membership in any nonprofit organization holding a liquor license or from participating in any manner in the management or administration of a nonprofit organization, or (16) a person less than twenty-one years of age.

When a trustee is the licensee, the beneficiary or beneficiaries of the trust shall comply with the requirements of this section, but nothing in this section shall prohibit any such beneficiary from being a minor or a person who is mentally incompetent.

**Source:** Laws 1935, c. 116, § 28, p. 395; C.S.Supp.,1941, § 53-328; R.S.1943, § 53-125; Laws 1957, c. 230, § 1, p. 788; Laws 1959, c. 249, § 3, p. 864; Laws 1965, c. 318, § 7, p. 897; Laws 1967, c. 332, § 7, p. 887; Laws 1971, LB 752, § 2; Laws 1973, LB 111, § 6; Laws 1975, LB 414, § 2; Laws 1976, LB 204, § 3; Laws 1979, LB 224, § 1; Laws 1980, LB 848, § 5; Laws 1983, LB 213, § 10; Laws 1986, LB 871, § 3; Laws 1991, LB 344, § 30; Laws 1993, LB 121, § 319; Laws 1994, LB 1292, § 6; Laws 2010, LB788, § 2; Laws 2010, LB861, § 62.

One is unable to renew liquor license for premises when not in possession of either lease or deed to such premises. III Lounge, Inc. v. Gaines, 227 Neb. 585, 419 N.W.2d 143 (1988).

The phrase not of good character concerning eligibility for a license imports lack of good faith or honesty of purpose. C & L Co. v. Nebraska Liquor Control Commission, 190 Neb. 91, 206 N.W.2d 49 (1973).

In exercising discretion to refuse license, Nebraska Liquor Control Commission may consider factors in addition to those

set out in this section. T & N P Co., Inc. v. Nebraska Liquor Control Commission, 189 Neb. 708, 204 N.W.2d 809 (1973).

A liquor license may be issued to a partnership. Stevens v. Fall, 133 Neb. 610, 276 N.W. 401 (1937).

A party who has tendered a guilty plea under a deferred judgment statute of another state has not necessarily been convicted of or pleaded guilty to an offense within the meaning of this statute. McHenry v. Nebraska Liquor Control Comm., 5 Neb. App. 95, 555 N.W.2d 350 (1996).

### **53-126 License to corporation; conditions.**

No corporation organized under the laws of this state, any other state, or any foreign country shall be issued any license provided for in the Nebraska Liquor Control Act unless such corporation is duly registered with the Secretary of State to transact business in this state. If such corporation is owned by a corporation, the owning corporation shall also be duly registered with the Secretary of State to transact business in this state.

**Source:** Laws 1935, c. 116, § 33, p. 398; C.S.Supp.,1941, § 53-333; R.S.1943, § 53-126; Laws 1983, LB 447, § 75; Laws 1991, LB 344, § 31.

Agent of corporation licensee must be satisfactory to and approved by the commission with respect to his character. C & L Co. v. Nebraska Liquor Control Commission, 190 Neb. 91, 206 N.W.2d 49 (1973).

In exercising discretion to refuse license, Nebraska Liquor Control Commission may consider factors in addition to those set out in this section. T & N P Co., Inc. v. Nebraska Liquor Control Commission, 189 Neb. 708, 204 N.W.2d 809 (1973).

**53-127 Repealed. Laws 1989, LB 781, § 20; Laws 1993, LB 183, § 20.**

**53-128 Transferred to section 53-116.02.**

**53-129 Retail, craft brewery, and microdistillery licenses; premises to which applicable.**

Retail, craft brewery, and microdistillery licenses issued under the Nebraska Liquor Control Act apply only to that part of the premises described in the application approved by the commission and in the license issued on the application, and only one location shall be described in each license. After such license has been granted for particular premises, the commission, with the approval of the local governing body and upon proper showing, may endorse upon the license permission to add to, delete from, or abandon the premises described in such license and, if applicable, to move from the premises to other premises approved by it, but in order to obtain such approval the retail, craft brewery, or microdistillery licensee shall file with the local governing body a request in writing and a statement under oath which shows that the premises as added to or deleted from or to which such move is to be made comply in all respects with the requirements of the act. No such addition, deletion, or move shall be made by any such licensee until the license has been endorsed to that effect in writing by the local governing body and by the commission and the licensee furnishes proof of payment of the renewal fee prescribed in subsection (4) of section 53-131.

**Source:** Laws 1935, c. 116, § 49, p. 405; C.S.Supp.,1941, § 53-349; R.S.1943, § 53-129; Laws 1978, LB 386, § 5; Laws 1980, LB 848, § 6; Laws 1983, LB 213, § 11; Laws 1988, LB 1089, § 12; Laws 1989, LB 781, § 8; Laws 1993, LB 183, § 10; Laws 1994, LB 1292, § 7; Laws 1999, LB 267, § 7; Laws 2004, LB 485, § 19; Laws 2007, LB549, § 10; Laws 2010, LB861, § 63.

If a named licensee desires to relocate the license, the licensee may do so under the provisions of this section by making application to either the Nebraska Liquor Control Commission or the local governing body. The relocation of a license from its issued premises to new premises is dependent upon approval by the local governing body. *City of Lincoln v. Nebraska Liquor Control Comm.*, 208 Neb. 630, 304 N.W.2d 922 (1981).

An agreement between lessor and lessee that lessee will apply for a license for the premises, and will not seek permission to transfer it to another location, and upon expiration of the lease will assist lessor in obtaining a license for the premises is not void. *Greco v. Bonacci*, 194 Neb. 685, 234 N.W.2d 904 (1975).

Where licensee stored alcoholic beverages in an unauthorized area without permission of the commission and permitted part of licensed premises to be used for gambling, suspension of license was authorized and reasonable. *O'Connor v. Nebraska Liquor Control Commission*, 191 Neb. 436, 215 N.W.2d 635 (1974).

Purpose of this section is to provide a short procedure for change of location of business of licensee. *City of Lincoln v. Nebraska Liquor Control Commission*, 181 Neb. 277, 147 N.W.2d 803 (1967).

**53-130 Licenses; manufacturers, wholesalers, railroads, airlines, boats, and nonbeverage users; conditions on issuance; fees; renewal.**

(1) New licenses to manufacturers, wholesalers, railroads, airlines, boats, and nonbeverage users of alcoholic liquor may be issued by the commission upon (a) written application in duplicate filed in the manner and on such forms as the commission prescribes and in which the applicant for a beer wholesale license sets forth the sales territory in Nebraska in which it is authorized by a manufacturer or manufacturers to sell their brand or brands and the name of such brand or brands, (b) receipt of bond, (c) payment in advance of the nonrefundable application fee of forty-five dollars and the license fee, and (d) such notice and hearing as the commission fixes by its own order.

(2) A notice of such application shall be served upon the manufacturer or manufacturers listed in any application for a beer wholesale license and upon any existing wholesaler licensed to sell the brand or brands in the described sales territory.

(3) A license so issued may be renewed without formal application upon payment of license fees and a renewal fee of forty-five dollars. The payment of such fees shall be an affirmative representation and certification by the licensee that all answers contained in an application, if submitted, would be the same in all material respects as the answers contained in the last previous application. The commission may at any time require a licensee to submit an application.

**Source:** Laws 1935, c. 116, § 81, p. 417; C.S.Supp.,1941, § 53-381; R.S.1943, § 53-130; Laws 1959, c. 247, § 1, p. 848; Laws 1959, c. 249, § 5, p. 865; Laws 1967, c. 332, § 8, p. 888; Laws 1971, LB 234, § 19; Laws 1972, LB 66, § 2; Laws 1991, LB 202, § 3; Laws 1991, LB 344, § 32; Laws 2000, LB 973, § 5; Laws 2010, LB861, § 64.

**53-130.01 Beer; manufacturers and shippers; file notice; contents.**

Every manufacturer or shipper of beer shall, before commencing or continuing business, file with the commission a notice in writing stating the name of the person, company, corporation, or firm, the names of the members of any such company or firm, the place of residence of such persons, a legal description of the premises on which the office of the manufacturer or shipper is situated and the title to such premises, and the name of the owner thereof.

**Source:** Laws 1935, c. 116, § 23, p. 388; C.S.Supp.,1941, § 53-323; R.S.1943, § 53-159; Laws 1988, LB 1089, § 21; Laws 1989, LB 780, § 11; R.S.Supp.,1990, § 53-159; Laws 1991, LB 344, § 33.

**53-131 Retail, craft brewery, and microdistillery licenses; application; fees; notice of application to city, village, or county; renewal; fee.**

(1) Any person desiring to obtain a new license to sell alcoholic liquor at retail, a craft brewery license, or a microdistillery license shall file with the commission:

(a) An application in triplicate original upon forms the commission prescribes, including the information required by subsection (3) of this section for an application to operate a cigar bar;

(b) The license fee if under sections 53-124 and 53-124.01 such fee is payable to the commission, which fee shall be returned to the applicant if the application is denied; and

(c) The nonrefundable application fee in the sum of four hundred dollars, except that the nonrefundable application fee for an application for a cigar bar shall be one thousand dollars.

(2) The commission shall notify, by registered or certified mail, return receipt requested with postage prepaid, (a) the clerk of the city or village in which such license is sought or (b) if the license sought is not sought within a city or village, the county clerk of the county in which such license is sought, of the receipt of the application and shall enclose one copy of the application with the notice. No such license shall be issued or denied by the commission until the expiration of the time allowed for the receipt of a recommendation of denial or an objection requiring a hearing under subdivision (1)(a) or (b) of section 53-133. During the period of forty-five days after the date of receiving such application from the commission, the local governing body of such city, village,

or county may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant.

(3) For an application to operate a cigar bar, the application shall include proof of the cigar bar's annual gross revenue as requested by the commission and such other information as requested by the commission to establish the intent to operate as a cigar bar. The commission may adopt and promulgate rules and regulations to regulate cigar bars.

(4) For renewal of a license under this section, a licensee shall file with the commission an application, the license fee as provided in subdivision (1)(b) of this section, and a renewal fee of forty-five dollars.

**Source:** Laws 1935, c. 116, § 82, p. 417; C.S.Supp.,1941, § 53-382; R.S.1943, § 53-131; Laws 1955, c. 203, § 1, p. 580; Laws 1959, c. 249, § 6, p. 866; Laws 1976, LB 413, § 1; Laws 1980, LB 848, § 7; Laws 1982, LB 928, § 42; Laws 1983, LB 213, § 12; Laws 1984, LB 947, § 2; Laws 1986, LB 911, § 3; Laws 1988, LB 550, § 1; Laws 1988, LB 1089, § 13; Laws 1989, LB 781, § 9; Laws 1991, LB 202, § 4; Laws 1991, LB 344, § 34; Laws 1993, LB 183, § 11; Laws 1996, LB 750, § 9; Laws 1999, LB 267, § 8; Laws 2000, LB 973, § 6; Laws 2001, LB 278, § 7; Laws 2004, LB 485, § 20; Laws 2007, LB549, § 11; Laws 2009, LB355, § 4; Laws 2010, LB861, § 65.

The portion of this section amended by 1986 Neb. Laws, L.B. 911, is declared unconstitutional. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988).

Failure to obtain approval to relocate a license pursuant to section 53-129, R.R.S.1943 does not mean that another license may not be sought under this section. *City of Lincoln v. Nebraska Liquor Control Comm.*, 208 Neb. 630, 304 N.W.2d 922 (1981).

City council's resolution approving applicant's request for Class C license includes, by implication, a recommendation for a Class D license. *Winkelmann v. Nebraska Liquor Control Commission*, 198 Neb. 481, 253 N.W.2d 307 (1977).

Applications to provide license were properly filed under this section. *City of Lincoln v. Nebraska Liquor Control Commission*, 181 Neb. 277, 147 N.W.2d 803 (1967).

Application for package liquor license was properly made to Liquor Control Commission. *Allen v. Nebraska Liquor Control Commission*, 179 Neb. 767, 140 N.W.2d 413 (1966).

This section provides for the issuance of a license to sell alcoholic liquor including beer at retail, and is controlling over another section declaring public policy in favor of separate sale. *Hanson v. Gass*, 130 Neb. 685, 267 N.W. 403 (1936).

#### **53-131.01 License; application; form; contents; criminal history record check; verification; false statement; penalty.**

(1) The application for a new license shall be submitted upon such forms as the commission may prescribe. Such forms shall contain (a) the name and residence of the applicant and how long he or she has resided within the State of Nebraska, (b) the particular premises for which a license is desired designating the same by street and number if practicable or, if not, by such other description as definitely locates the premises, (c) the name of the owner of the premises upon which the business licensed is to be carried on, (d) a statement that the applicant is a citizen of the United States, that the applicant and the spouse of the applicant are not less than twenty-one years of age, and that such applicant has never been convicted of or pleaded guilty to a felony or been adjudged guilty of violating the laws governing the sale of alcoholic liquor or the law for the prevention of gambling in the State of Nebraska, except that a manager for a corporation applying for a license shall qualify with all provisions of this subdivision as though the manager were the applicant, except that the provisions of this subdivision shall not apply to the spouse of a manager-applicant, (e) a statement that the applicant intends to carry on the business authorized by the license for himself or herself and not as the agent of any other persons and that if licensed he or she will carry on such business for

himself or herself and not as the agent for any other person, (f) a statement that the applicant intends to superintend in person the management of the business licensed and that if so licensed he or she will superintend in person the management of the business, and (g) such other information as the commission may from time to time direct. The applicant shall also submit two legible sets of fingerprints to be furnished to the Federal Bureau of Investigation through the Nebraska State Patrol for a national criminal history record check and the fee for such record check payable to the patrol.

(2) The application shall be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If any false statement is made in any part of such application, the applicant or applicants shall be deemed guilty of perjury, and upon conviction thereof the license shall be revoked and the applicant subjected to the penalties provided by law for that crime.

**Source:** Laws 1935, c. 116, § 99, p. 427; C.S.Supp.,1941, § 53-399; R.S.1943, § 53-142; Laws 1959, c. 249, § 13, p. 872; Laws 1979, LB 224, § 4; Laws 1980, LB 848, § 9; Laws 1991, LB 344, § 35; Laws 2003, LB 267, § 1.

**53-132 Retail, craft brewery, or microdistillery license; commission; duties.**

(1) If no hearing is required pursuant to subdivision (1)(a) or (b) of section 53-133 and the commission has no objections pursuant to subdivision (1)(c) of such section, the commission may waive the forty-five-day objection period and, if not otherwise prohibited by law, cause a retail license, craft brewery license, or microdistillery license to be signed by its chairperson, attested by its executive director over the seal of the commission, and issued in the manner provided in subsection (4) of this section as a matter of course.

(2) A retail license, craft brewery license, or microdistillery license may be issued to any qualified applicant if the commission finds that (a) the applicant is fit, willing, and able to properly provide the service proposed within the city, village, or county where the premises described in the application are located, (b) the applicant can conform to all provisions and requirements of and rules and regulations adopted pursuant to the Nebraska Liquor Control Act, (c) the applicant has demonstrated that the type of management and control to be exercised over the premises described in the application will be sufficient to insure that the licensed business can conform to all provisions and requirements of and rules and regulations adopted pursuant to the act, and (d) the issuance of the license is or will be required by the present or future public convenience and necessity.

(3) In making its determination pursuant to subsection (2) of this section the commission shall consider:

- (a) The recommendation of the local governing body;
- (b) The existence of a citizens' protest made in accordance with section 53-133;
- (c) The existing population of the city, village, or county and its projected growth;
- (d) The nature of the neighborhood or community of the location of the proposed licensed premises;

(e) The existence or absence of other retail licenses, craft brewery licenses, or microdistillery licenses with similar privileges within the neighborhood or community of the location of the proposed licensed premises and whether, as evidenced by substantive, corroborative documentation, the issuance of such license would result in or add to an undue concentration of licenses with similar privileges and, as a result, require the use of additional law enforcement resources;

(f) The existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises;

(g) The adequacy of existing law enforcement;

(h) Zoning restrictions;

(i) The sanitation or sanitary conditions on or about the proposed licensed premises; and

(j) Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.

(4) Retail licenses, craft brewery licenses, or microdistillery licenses issued or renewed by the commission shall be mailed or delivered to the clerk of the city, village, or county who shall deliver the same to the licensee upon receipt from the licensee of proof of payment of (a) the license fee if by the terms of subsection (6) of section 53-124 the fee is payable to the treasurer of such city, village, or county, (b) any fee for publication of notice of hearing before the local governing body upon the application for the license, (c) the fee for publication of notice of renewal as provided in section 53-135.01, and (d) occupation taxes, if any, imposed by such city, village, or county. Notwithstanding any ordinance or charter power to the contrary, no city, village, or county shall impose an occupation tax on the business of any person, firm, or corporation licensed under the act and doing business within the corporate limits of such city or village or within the boundaries of such county in any sum which exceeds two times the amount of the license fee required to be paid under the act to obtain such license.

(5) Each license shall designate the name of the licensee, the place of business licensed, and the type of license issued.

**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.

- 1. License issuance allowed
- 2. License issuance denied
- 3. Miscellaneous

**1. License issuance allowed**

Decision of district court reversing city council's disapproval of class D liquor licenses for grocery stores affirmed because

grocery stores met license issuance criteria set forth in statute. B & R Stores v. City of Lincoln, 245 Neb. 76, 511 N.W.2d 101 (1994).

Recommendation of denial made by city council based only on belief sufficient licenses exist does not justify denial of otherwise valid application. *McChesney v. City of No. Platte*, 216 Neb. 416, 343 N.W.2d 925 (1984).

In administrative hearing for license not required by section 53-133(1), where evidence fails to establish valid ground for denial, this section requires that license be issued. *Hadlock v. Nebraska Liquor Control Commission*, 193 Neb. 721, 228 N.W.2d 887 (1975).

In the absence of protest within three days, license must be issued. *State ex rel. Smith v. Nebraska Liquor Control Commission*, 152 Neb. 676, 42 N.W.2d 297 (1950).

License issues as a matter of course under certain conditions. *Leeman v. Vocelka*, 149 Neb. 702, 32 N.W.2d 274 (1948).

## 2. License issuance denied

A district court's decision reversing the Nebraska Liquor Control Commission's approval of a class D liquor license was affirmed where the district court properly considered all the factors listed in subsection (3) and where the court's decision was not arbitrary, capricious, or unreasonable. *Orchard Hill Neighborhood v. Orchard Hill Mercantile*, 274 Neb. 154, 738 N.W.2d 820 (2007).

Recommendation of denial of license by local governing body to commission may be enough to justify denial. *Kerrey's, Inc. v. Neb. Liquor Control Comm.*, 213 Neb. 442, 329 N.W.2d 364 (1983).

## 3. Miscellaneous

In order to issue a retail liquor license, the Nebraska Liquor Control Commission must find that each of the conditions specified in subsections (2)(a) through (d) of this section are satisfied, and in making its determination whether such conditions are satisfied, the commission must consider each of the factors listed in subsections (3)(a) through (j) of this section. City

of *Lincoln v. Nebraska Liquor Control Comm.*, 261 Neb. 783, 626 N.W.2d 518 (2001).

Subsection (2) of this section (Reissue 1984) describes the general standards by which initial applicants are judged to be fit to obtain a liquor license and to follow the rules and regulations that bear on license holders. This statute, however, is not itself a rule or regulation which can be violated by a current licensee and subject the licensee to cancellation under the power given the Nebraska Liquor Control Commission by sections 53-116.01 and 53-117.08. *Grand Island Latin Club v. Nebraska Liq. Cont. Comm.*, 251 Neb. 61, 554 N.W.2d 778 (1996).

This section, as amended by 1993 Neb. Laws, L.B. 183, is unenforceable. *Marting v. Nebraska Liquor Control Comm.*, 250 Neb. 134, 548 N.W.2d 326 (1996).

For purposes of this section, there is no close approximation between purchasing off-sale liquor at a grocery store and purchasing and consuming liquor in an "on premises" establishment. *Hy-Vee Food Stores v. Nebraska Liquor Control Comm.*, 242 Neb. 752, 497 N.W.2d 647 (1993).

The portion of this section amended by 1986 Neb. Laws, L.B. 911, is declared unconstitutional. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988).

The applicant for a liquor license has the burden of proof, at the hearing before the Nebraska Liquor Control Commission, to show that the issuance of the license is or will be required by the present or future public convenience and necessity. *Richards v. Neb. Liquor Control Comm.*, 221 Neb. 542, 378 N.W.2d 667 (1985).

Failure by liquor commission to make fact findings and conclusions of law makes its order irregular, which requires remand to make appropriate findings. *McChesney v. City of No. Platte*, 216 Neb. 416, 343 N.W.2d 925 (1984).

This section provides for the issuance of a license to sell alcoholic liquor, including beer, at retail, and is controlling over another section declaring public policy in favor of separate sale. *Hanson v. Gass*, 130 Neb. 685, 267 N.W. 403 (1936).

## 53-133 Retail, craft brewery, and microdistillery licenses; hearing; when held; procedure.

(1) The commission shall set for hearing before it any application for a retail license, craft brewery license, or microdistillery license relative to which it has received:

(a) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, a recommendation of denial from the city, village, or county;

(b) Within ten days after the receipt of a recommendation from the city, village, or county, or, if no recommendation is received, within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections in writing by not less than three persons residing within such city, village, or county, protesting the issuance of the license. Withdrawal of the protest does not prohibit the commission from conducting a hearing based upon the protest as originally filed and making an independent finding as to whether the license should or should not be issued;

(c) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections by the commission or any duly appointed employee of the commission, protesting the issuance of the license; or

(d) An indication on the application that the location of a proposed retail establishment is within one hundred fifty feet of a church as described in subsection (2) of section 53-177.

(2) Hearings upon such applications shall be in the following manner: Notice indicating the time and place of such hearing shall be mailed to the applicant, the local governing body, each individual protesting a license pursuant to subdivision (1)(b) of this section, and any church affected as described in subdivision (1)(d) of this section, by certified mail, return receipt requested, at least fifteen days prior to such hearing. The notice shall state that the commission will receive evidence for the purpose of determining whether to approve or deny the application. Mailing to the attorney of record of a party shall be deemed to fulfill the purposes of this section. The commission may receive evidence, including testimony and documentary evidence, and may hear and question witnesses concerning the application.

**Source:** Laws 1935, c. 116, § 84, p. 420; C.S.Supp.,1941, § 53-384; R.S.1943, § 53-133; Laws 1959, c. 249, § 8, p. 868; Laws 1961, c. 260, § 1, p. 774; Laws 1976, LB 413, § 3; Laws 1979, LB 224, § 2; Laws 1983, LB 213, § 13; Laws 1986, LB 911, § 5; Laws 1988, LB 550, § 2; Laws 1989, LB 781, § 11; Laws 1993, LB 183, § 13; Laws 1999, LB 267, § 10; Laws 2004, LB 485, § 22; Laws 2007, LB549, § 13; Laws 2010, LB861, § 67.

The portion of this section amended by 1986 Neb. Laws, L.B. 911, is declared unconstitutional. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988).

Absence of need alone is not a sufficient reason to deny an otherwise proper application for a liquor license. *Joe & Al's IGA, Inc. v. Nebraska Liquor Control Commission*, 203 Neb. 176, 277 N.W.2d 693 (1979).

On objection to application for liquor license, where hearing is required, the matter becomes a contested case under section

84-901(3), and notice to applicant of the issues is necessary. *J K & J, Inc. v. Nebraska Liquor Control Commission*, 194 Neb. 413, 231 N.W.2d 694 (1975).

In administrative hearing on application for license not required by this section where evidence fails to establish valid ground for denial, Nebraska Liquor Control Commission is required to cause license to be issued. *Hadlock v. Nebraska Liquor Control Commission*, 193 Neb. 721, 228 N.W.2d 887 (1975).

### **53-134 Retail, craft brewery, and microdistillery licenses; city and village governing bodies; county boards; powers, functions, and duties.**

The local governing body of any city or village with respect to licenses within its corporate limits and the local governing body of any county with respect to licenses not within the corporate limits of any city or village but within the county shall have the following powers, functions, and duties with respect to retail, craft brewery, and microdistillery licenses:

(1) To cancel or revoke for cause retail, craft brewery, or microdistillery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the commission;

(2) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated and at such time examine the premises of such licensee in connection with such determination;

(3) To receive a signed complaint from any citizen within its jurisdiction that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the act;

(4) To receive retail license fees, craft brewery license fees, and microdistillery license fees as provided in sections 53-124 and 53-124.01 and pay the

same, after the license has been delivered to the applicant, to the city, village, or county treasurer;

(5) To examine or cause to be examined any applicant or any retail licensee, craft brewery licensee, or microdistillery licensee upon whom notice of cancellation or revocation has been served as provided in the act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the local governing body may authorize its agent or attorney to act on its behalf;

(6) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in section 53-134.04, it determines that the licensee has violated any of the provisions of the act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the commission within thirty days after the date of the order by filing a notice of appeal with the commission. The commission shall handle the appeal in the manner provided for hearing on an application in section 53-133; and

(7) Upon receipt from the commission of the notice and copy of application as provided in section 53-131, to fix a time and place for a hearing at which the local governing body shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in such city, village, or county one time not less than seven and not more than fourteen days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the local governing body in support of or in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than forty-five days after the date of receipt of the notice from the commission, and after such hearing the local governing body shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The clerk of such city, village, or county shall mail to the commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the commission. If the commission refuses to issue such a license, the cost of publication of notice shall be paid by the commission from the security for costs.

**Source:** Laws 1935, c. 116, § 85, p. 421; C.S.Supp.,1941, § 53-385; R.S.1943, § 53-134; Laws 1949, c. 169, § 1(1), p. 447; Laws 1959, c. 249, § 9, p. 868; Laws 1967, c. 332, § 9, p. 888; Laws 1983, LB 213, § 14; Laws 1984, LB 947, § 4; Laws 1986, LB 911, § 6; Laws 1988, LB 550, § 3; Laws 1988, LB 352, § 92; Laws 1988, LB 1089, § 15; Laws 1989, LB 781, § 12; Laws 1989, LB 780, § 10; Laws 1991, LB 344, § 37; Laws 1993, LB 183, § 14; Laws 1999, LB 267, § 11; Laws 2001, LB 278, § 8; Laws 2004, LB 485, § 23; Laws 2007, LB549, § 14; Laws 2010, LB861, § 68.

The plain language of this section does not allow a county to revoke a liquor license based upon a resolution. DLH, Inc. v. Lancaster Cty. Bd. of Comrs., 264 Neb. 358, 648 N.W.2d 277 (2002).

The provisions of this section give a local governing board the authority to cancel or to revoke a liquor license, providing that a multistep process is followed. Any cancellation or revocation is subject to appeal to the Nebraska Liquor Control Commission. *Luet, Inc. v. City of Omaha*, 247 Neb. 831, 530 N.W.2d 633 (1995).

This section, as amended by L.B. 781, is unconstitutionally vague and unconstitutionally delegates legislative power. *Kwik Shop v. City of Lincoln*, 243 Neb. 178, 498 N.W.2d 102 (1993).

The portion of this section amended by 1986 Neb. Laws, L.B. 911, is declared unconstitutional. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988).

The action of five members of the city council, in recommending denial of a liquor license, must be considered a nullity and, therefore, not a denial when a city ordinance requires a quorum of six before business may be transacted. *Bond v. Nebraska Liquor Control Comm.*, 210 Neb. 663, 316 N.W.2d 600 (1982).

This section authorized ordinance which provides that any liquor licensee who voluntarily closed his licensed premises for ten days without permission shall have elected to discontinue business under such license. *Bali Hai, Inc. v. Nebraska Liquor Control Commission*, 195 Neb. 1, 236 N.W.2d 614 (1975).

To be valid, a resolution recommending issuance or refusal of liquor license must be adopted by a majority of all elected members of city council. *Hadlock v. Nebraska Liquor Control Commission*, 193 Neb. 721, 228 N.W.2d 887 (1975).

### **53-134.01 Repealed. Laws 1989, LB 781, § 20; Laws 1993, LB 183, § 20.**

### **53-134.02 Local governing bodies; authority under act.**

Local governing bodies shall only have authority to approve applications and deny licenses pursuant to the Nebraska Liquor Control Act.

**Source:** Laws 1989, LB 781, § 13; Laws 1993, LB 183, § 15.

### **53-134.03 Retail, craft brewery, and microdistillery licenses; regulation by cities and villages.**

The governing bodies of cities and villages are authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all retail, craft brewery, or microdistillery licensees carried on within the corporate limits of the city or village.

**Source:** Laws 1935, c. 116, § 104, p. 429; C.S.Supp.,1941, § 53-3,104; R.S.1943, § 53-147; Laws 1980, LB 848, § 11; Laws 1989, LB 781, § 14; R.S.Supp.,1990, § 53-147; Laws 1991, LB 344, § 38; Laws 1993, LB 183, § 16; Laws 1999, LB 267, § 12; Laws 2004, LB 485, § 24; Laws 2007, LB549, § 15.

Where city had not by ordinance attempted to regulate the location of the place of business of licensee, commission could grant license over objection of city. *City of Lincoln v. Nebraska Liquor Control Commission*, 181 Neb. 277, 147 N.W.2d 803 (1967).

Power to regulate sale of beer lies in local municipality. *Phelps Inc. v. City of Hastings*, 152 Neb. 651, 42 N.W.2d 300 (1950).

Despite absence of severance clause, ordinance which provided several distinct and separate grounds upon which to base revocation of liquor licenses was not rendered invalid in its entirety by reason of invalidity of some portions. *Clark v. City of Fremont*, 377 F.Supp. 327 (D. Neb. 1977).

### **53-134.04 Violations by retail licensee; complaints of residents; hearings.**

Any five residents of the city or village shall have the right to file a complaint with the local governing body of such city or village stating that any retail licensee subject to the jurisdiction of such local governing body has been or is violating any provision of the Nebraska Liquor Control Act or the rules or regulations issued pursuant to the act. Such complaint shall be in writing in the form prescribed by the local governing body and shall be signed and sworn to by the parties complaining. The complaint shall state the particular provision, rule, or regulation believed to have been violated and the facts in detail upon which belief is based. If the local governing body is satisfied that the complaint substantially charges a violation and that from the facts alleged there is reasonable cause for such belief, it shall set the matter for hearing within ten days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of such hearing and of the particular charge in the complaint. The complaint shall in all cases be disposed of by the local

governing body within thirty days from the date the complaint was filed by resolution thereof, which resolution shall be deemed the final order for purposes of appeal to the commission as provided in section 53-1,115.

**Source:** Laws 1935, c. 116, § 88, p. 422; C.S.Supp.,1941, § 53-388; R.S.1943, § 53-1,114; Laws 1980, LB 848, § 21; R.S.1943, (1988), § 53-1,114; Laws 1991, LB 344, § 39; Laws 2004, LB 485, § 25.

**53-135 Retail licenses; automatic renewal; conditions; licensed premises within annexed area; effect.**

A retail license issued by the commission and outstanding may be automatically renewed by the commission without formal application upon payment of the renewal fee and license fee if payable to the commission. The payment shall be an affirmative representation and certification by the licensee that all answers contained in an application, if submitted, would be the same in all material respects as the answers contained in the last previous application. The commission may at any time require a licensee to submit an application, and the commission shall at any time require a licensee to submit an application if requested in writing to do so by the local governing body.

If a licensee files an application form in triplicate original upon seeking renewal of his or her license, the application shall be processed as set forth in section 53-131.

Any licensed retail premises located in an area which is annexed to any governmental subdivision shall file a formal application for a license, and while such application is pending, the licensee may continue all license privileges until the original license expires or is canceled or revoked. If such license expires within sixty days following the annexation date of such area, the license may be renewed by order of the commission for not more than one year.

**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.

An appeal from the district court's decision reversing the Nebraska Liquor Control Commission's approval of a class D liquor license under section 53-135.02 was not moot despite the expiration of the original license during the pendency of an appeal, because a licensee has a constitutionally protected interest in obtaining the renewal of an existing license, and that interest would be jeopardized if the license were wrongfully taken away. *Orchard Hill Neighborhood v. Orchard Hill Mercantile*, 274 Neb. 154, 738 N.W.2d 820 (2007).

An administrative agency is limited in authority to those powers granted to it by statute. Thus, without a showing by the Nebraska Liquor Control Commission or the objecting city that a renewal applicant did not meet one of the renewal requirements of this section and section 53-135.02, the commission

could not demand that the applicant submit a long-form liquor license application. *Grand Island Latin Club v. Nebraska Liq. Cont. Comm.*, 251 Neb. 61, 554 N.W.2d 778 (1996).

A liquor license which has been renewed by the Nebraska Liquor Control Commission pursuant to this section cannot be revoked by action of a city council. *Luet, Inc. v. City of Omaha*, 247 Neb. 831, 530 N.W.2d 633 (1995).

The language of section 53-150 and this section discloses a legislative intent to codify a practice of approving an application for continuation of an existing liquor license in the absence of a change of circumstances indicated on the licensee's renewal application. *Pump & Pantry, Inc. v. City of Grand Island*, 233 Neb. 191, 444 N.W.2d 312 (1989).

**53-135.01 Retail licenses; renewal; notice.**

The city, village, or county clerk shall cause to be published in a legal newspaper in or of general circulation in such city, village, or county, one time between January 10 and January 30 of each year, individual notice of the right of automatic renewal of each retail liquor and beer license, except that notice of the right of automatic renewal of Class C licenses shall be published between

the dates of July 10 and July 30 of each year within such city, village, or county, in substantially the following form:

**NOTICE OF RENEWAL OF RETAIL LIQUOR LICENSE**

Notice is hereby given pursuant to section 53-135.01 that a liquor license may be automatically renewed for one year from May 1, 20 . . . . , or November 1, 20 . . . . , for the following retail liquor licensee:

(Name of Licensee) (Address of licensed premises)

Notice is hereby given that written protests to the issuance of automatic renewal of license may be filed by any resident of the city (village or county) on or before February 10, 20 . . . . , or August 10, 20 . . . . , in the office of the city (village or county) clerk and that in the event protests are filed by three or more such persons, hearing will be had to determine whether continuation of the license should be allowed.

(Name)

City (village or county) Clerk

Upon the conclusion of any hearing required by this section, the local governing body may request a licensee to submit an application as provided in section 53-135.

**Source:** Laws 1959, c. 249, § 11, p. 870; Laws 1961, c. 260, § 2, p. 779; Laws 1974, LB 681, § 6; Laws 1979, LB 224, § 3; Laws 1983, LB 213, § 16; Laws 1991, LB 344, § 41; Laws 2004, LB 813, § 23.

**53-135.02 Licenses; renewal; no vested right.**

Any licensee may renew his, her, or its license at the expiration thereof in the manner set forth in section 53-135 if the licensee is then qualified to receive a license and the premises for which such renewal license is sought are the same premises licensed under the license to be renewed and are suitable for such purpose. The renewal privilege provided for in this section shall not be construed as a vested right which shall in any case prevent the commission from decreasing the number of licenses to be issued within its jurisdiction.

**Source:** Laws 1935, c. 116, § 27, p. 394; C.S.Supp., 1941, § 53-327; R.S. 1943, § 53-150; Laws 1959, c. 249, § 17, p. 874; R.S. 1943, (1988), § 53-150; Laws 1991, LB 344, § 42.

An appeal from the district court's decision reversing the Nebraska Liquor Control Commission's approval of a class D liquor license under this section was not moot despite the expiration of the original license during the pendency of an appeal, because a licensee has a constitutionally protected interest in obtaining the renewal of an existing license, and that interest would be jeopardized if the license were wrongfully taken away. *Orchard Hill Neighborhood v. Orchard Hill Mercantile*, 274 Neb. 154, 738 N.W.2d 820 (2007).

An administrative agency is limited in authority to those powers granted to it by statute. Thus, without a showing by the Nebraska Liquor Control Commission or the objecting city that a renewal applicant did not meet one of the renewal requirements of this section and section 53-135, the commission could not demand that the applicant submit a long-form liquor license application. *Grand Island Latin Club v. Nebraska Liq. Cont. Comm.*, 251 Neb. 61, 554 N.W.2d 778 (1996).

As the result of the renewal privilege established by this section, a licensee is entitled to renewal of a liquor license, that is, continuation of an existing license, if at the time for renewal the licensee meets the requirements which existed when the license to be renewed was initially issued. *Pump & Pantry, Inc. v. City of Grand Island*, 233 Neb. 191, 444 N.W.2d 312 (1989).

The language of section 53-135 and this section discloses a legislative intent to codify a practice of approving an application for continuation of an existing liquor license in the absence of a change of circumstances indicated on the licensee's renewal application. *Pump & Pantry, Inc. v. City of Grand Island*, 233 Neb. 191, 444 N.W.2d 312 (1989).

District court cannot enjoin hearing by municipality with respect to issuance or revocation of liquor license. *Leeman v. Vocolka*, 149 Neb. 702, 32 N.W.2d 274 (1948).

**53-136 Repealed. Laws 1959, c. 249, § 18.**

**53-137 Repealed. Laws 1959, c. 249, § 18.**

**53-138 Repealed. Laws 1959, c. 249, § 18.****53-138.01 Licenses; disposition of fees.**

The State Treasurer shall credit three hundred ninety-five dollars of each four-hundred-dollar application fee and forty dollars of each forty-five-dollar application fee and each renewal fee to the General Fund and the remaining five dollars to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund to be used for providing licensees with materials pursuant to section 53-117.05. All retail license fees received by the city or village treasurer, as the case may be, shall inure to the school fund of the district lying wholly or partially within the corporate limits of such city or village. Except as otherwise provided in section 53-123.15, the State Treasurer shall distribute license fees received by the commission for licenses issued pertaining to alcoholic liquor, including beer, in accordance with Article VII, section 5, of the Constitution of Nebraska. All retail license fees received by the county treasurer, as provided in section 53-124, shall be credited to the school fund of the county.

**Source:** Laws 1935, c. 116, § 92, p. 424; C.S.Supp.,1941, § 53-392; R.S.1943, § 53-138; Laws 1949, c. 169, § 2(2), p. 448; Laws 1953, c. 180, § 2, p. 570; Laws 1959, c. 249, § 12, p. 872; Laws 1988, LB 1089, § 17; Laws 1991, LB 202, § 5; Laws 1997, LB 345, § 1; Laws 2000, LB 973, § 7; Laws 2010, LB861, § 70; Laws 2010, LB867, § 3.

**53-138.02 Repealed. Laws 1991, LB 344, § 75.****53-138.03 Nonprofit corporations; license; required.**

A nonprofit corporation shall not engage in the sale of alcoholic liquor without first having obtained a license required by the Nebraska Liquor Control Act.

**Source:** Laws 1963, c. 310, § 11, p. 934; Laws 1965, c. 318, § 8, p. 898; Laws 1983, LB 213, § 17; Laws 2004, LB 485, § 27.

**Cross References**

For general penalties, see section 53-1,100 et seq.

**53-139 Retail licenses to restaurants and clubs; conditions.**

No person shall receive a retail license to sell alcoholic liquor upon any premises used as a restaurant or as a club unless such premises or plan of operation strictly complies with sections 53-103.09 and 53-103.30.

**Source:** Laws 1935, c. 116, § 93, p. 425; C.S.Supp.,1941, § 53-393; R.S.1943, § 53-139; Laws 1989, LB 441, § 6; Laws 1994, LB 859, § 6; Laws 2010, LB861, § 71.

**53-140 Transferred to section 53-117.07.****53-140.01 Repealed. Laws 1991, LB 344, § 75; Laws 1991, LB 586, § 4.****53-141 Repealed. Laws 1980, LB 848, § 25.****53-142 Transferred to section 53-131.01.****53-143 Repealed. Laws 1980, LB 848, § 25.**

**53-144 Repealed. Laws 1991, LB 344, § 75.**

**53-145 Transferred to section 53-160.02.**

**53-146 Transferred to section 53-116.01.**

**53-147 Transferred to section 53-134.03.**

**53-148 Licenses; display.**

Every licensee shall cause his license or licenses to be framed and hung in plain view in a conspicuous place on the licensed premises.

**Source:** Laws 1935, c. 116, § 43, p. 402; C.S.Supp.,1941, § 53-343; R.S.1943, § 53-148.

**53-148.01 Retail licensee; warning sign; commission; duties.**

Any retail 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 licensees.

**Source:** Laws 1989, LB 70, § 2; R.S.Supp.,1990, § 53-101.04; Laws 1991, LB 344, § 43.

**53-149 Licenses; term; sale of premises; temporary operating permit; false information; penalty; license not assignable or inheritable; exception; effect of death or bankruptcy of licensee.**

(1) A license shall be purely a personal privilege, good for not to exceed one year after issuance unless sooner revoked as provided in the Nebraska Liquor Control Act, and shall not constitute property, nor shall it be subject to attachment, garnishment, or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated.

(2) A license issued under the act terminates immediately upon the sale of the licensed premises named in such license. The purchaser or transferee may submit an application for a license under the act prior to closing such sale or transfer. While such application is pending, the purchaser may request and obtain a temporary operating permit from the commission which shall authorize the purchaser to continue the business which was conducted on the purchased premises under the terms and conditions of the terminated license for ninety days or until the purchaser has obtained a license in its own name, whichever occurs sooner. Prior to the issuance of a temporary operating permit, the purchaser shall supply the commission with documentation from the seller that the seller is current on all accounts with any wholesaler under section 53-123.02. A seller who provides false information regarding such accounts is guilty of a Class IV misdemeanor for each offense. In the absence of such temporary operating permit, the purchaser shall not manufacture, store, or sell alcoholic liquor on the purchased premises until the purchaser has obtained a license in the purchaser's own name. If the application is withdrawn by the applicant or is denied by the commission, the previous license may be reinstated at the discretion of the commission upon request by the previous licensee.

(3) A license shall not descend by the laws of testate or intestate devolution, but it shall cease upon the death of the licensee, except that (a) executors or

administrators of the estate of any deceased licensee, when such estate consists in part of alcoholic liquor, or a partnership or limited liability company upon the death of one or more of the partners or members, may continue the business of the sale or manufacture of alcoholic liquor under order of the appropriate court and may exercise the privileges of the deceased or deceased partner or member after the death of such decedent until the expiration of such license, but if such license would have expired within two months following the death of the licensee, the license may be renewed by the administrators or executors with the approval of the appropriate court for a period not to exceed one additional year; or (b) when a license is issued to a husband and wife, as colicensees with rights of survivorship, upon the death of one spouse the survivor may exercise all rights and privileges under such license in his or her own name. The trustee of any insolvent or bankrupt licensee, when such estate consists in part of alcoholic liquor, may continue the business of the sale or manufacture of alcoholic liquor under order of the appropriate court and may exercise the privileges of the insolvent or bankrupt licensee until the expiration of such license.

**Source:** Laws 1935, c. 116, § 27, p. 394; C.S.Supp.,1941, § 53-327; R.S.1943, § 53-149; Laws 1959, c. 249, § 16, p. 874; Laws 1972, LB 1375, § 1; Laws 1976, LB 204, § 5; Laws 1993, LB 121, § 320; Laws 2010, LB861, § 72.

1. License is personal privilege
2. Rights of licensee
3. Miscellaneous

#### 1. License is personal privilege

The payment of rent to a lessor based on a percentage of sales does not create a partnership between the lessor and lessee in violation of this section, which states that a liquor license is a privilege personal to the grantee, nor does it violate rules 20 and 14(E) of the Nebraska Liquor Control Commission, which prohibit any partner from sharing in profits arising from the granting of any liquor license. Department of Banking, Receiver v. Wilken, 217 Neb. 796, 352 N.W.2d 145 (1984).

A liquor license is a purely personal privilege, does not constitute property, and vests no property rights in a licensee. Bali Hai', Inc. v. Nebraska Liquor Control Commission, 195 Neb. 1, 236 N.W.2d 614 (1975).

Fact that license is a privilege does not prevent license holder from complaining of unconstitutional rules and regulations. Terry Carpenter, Inc. v. Nebraska Liquor Control Commission, 175 Neb. 26, 120 N.W.2d 374 (1963).

A license to sell liquors is purely a personal privilege and not transferable. Stevens v. Fall, 133 Neb. 610, 276 N.W. 401 (1937).

#### 2. Rights of licensee

A liquor license is not such a property right as will be protected by injunction. Leeman v. Vocelka, 149 Neb. 702, 32 N.W.2d 274 (1948).

License to sell liquors is not alienable, transferable, or subject to encumbrance or hypothecation. Marsh & Marsh, Inc. v. Carmichael, 136 Neb. 797, 287 N.W. 616 (1939).

#### 3. Miscellaneous

An agreement between lessor and lessee that lessee will apply for a license for the premises, and will not seek permission to transfer it to another location, and upon expiration of the lease will assist lessor in obtaining a license for the premises is not void. Greco v. Bonacci, 194 Neb. 685, 234 N.W.2d 904 (1975).

Licensee was in violation of this section when he permitted another to operate and control the business. Eleven Eighteen Co. v. Nebraska Liquor Control Commission, 191 Neb. 572, 216 N.W.2d 720 (1974).

### 53-150 Transferred to section 53-135.02.

#### (e) BONDED WAREHOUSES

**53-151 Repealed. Laws 1991, LB 344, § 75.**

**53-152 Repealed. Laws 1991, LB 344, § 75.**

**53-153 Repealed. Laws 1991, LB 344, § 75.**

**53-154 Repealed. Laws 1991, LB 344, § 75.**

**53-155 Repealed. Laws 1991, LB 344, § 75.**

**53-156 Repealed. Laws 1991, LB 344, § 75.**

**53-157 Transferred to section 53-164.02.**

**53-158 Repealed. Laws 1991, LB 344, § 75.**

**53-159 Transferred to section 53-130.01.**

(f) TAX

**53-160 Tax on manufacturer and wholesaler; amount; exemption; duties of commission.**

(1) For the purpose of raising revenue, a tax is imposed upon the privilege of engaging in business as a manufacturer or a wholesaler at a rate of thirty-one cents per gallon on all beer; ninety-five cents per gallon for wine, except for wines produced in farm wineries; six cents per gallon for wine produced in farm wineries; and three dollars and seventy-five cents per gallon on alcohol and spirits manufactured and sold by such manufacturer or shipped for sale in this state by such wholesaler in the course of such business. The gallonage tax imposed by this subsection shall be imposed only on alcoholic liquor upon which a federal excise tax is imposed.

(2) Manufacturers or wholesalers of alcoholic liquor shall be exempt from the payment of the gallonage tax on such alcoholic liquor upon satisfactory proof, including bills of lading furnished to the commission by affidavit or otherwise as the commission may require, that such alcoholic liquor was manufactured in this state but shipped out of the state for sale and consumption outside this state.

(3) Dry wines or fortified wines manufactured or shipped into this state solely and exclusively for sacramental purposes and uses shall not be subject to the gallonage tax.

(4) The gallonage tax shall not be imposed upon any alcoholic liquor, whether manufactured in or shipped into this state, when sold to a licensed nonbeverage user for use in the manufacture of any of the following when such products are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic, and toilet preparations; flavoring extracts, syrups, food products, and confections or candy; scientific, industrial, and chemical products, except denatured alcohol; or products for scientific, chemical, experimental, or mechanical purposes.

(5) The gallonage tax shall not be imposed upon the privilege of engaging in any business in interstate commerce or otherwise, which business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this state.

(6) The gallonage tax shall be in addition to all other occupation or privilege taxes imposed by this state or by any municipal corporation or political subdivision thereof.

(7) The commission shall collect the gallonage tax and shall account for and remit to the State Treasurer at least once each week all money collected pursuant to this section. If any alcoholic liquor manufactured in or shipped into this state is sold to a licensed manufacturer or wholesaler of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon such manufacturer or wholesaler shall be

reduced by the amount of the taxes which have been paid as to such alcoholic liquor so used under the Nebraska Liquor Control Act. The net proceeds of all revenue arising under this section shall be credited to the General Fund.

**Source:** Laws 1935, c. 116, § 50, p. 405; Laws 1939, c. 66, § 1, p. 273; Laws 1941, c. 106, § 1, p. 426; C.S.Supp.,1941, § 53-350; R.S. 1943, § 53-160; Laws 1947, c. 189, § 1, p. 624; Laws 1951, c. 172, § 1, p. 660; Laws 1963, c. 312, § 1, p. 940; Laws 1965, c. 320, § 1, p. 911; Laws 1965, c. 319, § 3, p. 909; Laws 1965, c. 318, § 9, p. 898; Laws 1972, LB 66, § 3; Laws 1977, LB 254, § 1; Laws 1977, LB 220, § 1; Laws 1979, LB 260, § 1; Laws 1981, LB 129, § 1; Laws 1985, LB 279, § 9; Laws 1985, LB 280, § 1; Laws 1988, LB 901, § 3; Laws 1988, LB 1089, § 22; Laws 1991, LB 344, § 44; Laws 2003, LB 283, § 1; Laws 2003, LB 759, § 1.

**53-160.01 Tax on manufacturer and wholesaler; instrumentality of armed forces of United States; resale; exemption.**

No excise taxes of this state, direct or indirect, shall be imposed upon the sale, use, delivery, or storage of articles of merchandise to any instrumentality of the armed forces of the United States engaged in resale activities, except those state excise taxes which may be specifically authorized by the various acts of the Congress of the United States.

**Source:** Laws 1951, c. 180, § 1, p. 683; Laws 1985, LB 359, § 2.

**53-160.02 Near beer; regulation.**

The manufacture, distribution, sale, and purchase of near beer shall be subject to all provisions of the Nebraska Liquor Control Act, except taxation provisions, to which the manufacture, distribution, sale, and purchase of beer are subject.

**Source:** Laws 1989, LB 441, § 7; R.S.Supp.,1990, § 53-145; Laws 1991, LB 344, § 45.

**53-160.03 Repealed. Laws 1981, LB 497, § 1.**

**53-160.04 Repealed. Laws 1981, LB 497, § 1.**

**53-160.05 Repealed. Laws 1981, LB 497, § 1.**

**53-160.06 Repealed. Laws 1981, LB 497, § 1.**

**53-160.07 Repealed. Laws 1981, LB 497, § 1.**

**53-160.08 Transferred to section 53-178.01.**

**53-160.09 Repealed. Laws 1989, LB 1, § 1.**

**53-161 Beer; credit for tax paid; when allowed.**

The commission shall allow credit to any wholesaler for tax paid under section 53-160 (1) for beer shipped out of this state for sale and consumption outside of the state or (2) for beer returned to the manufacturer for credit, substitution, or replacement, and such credit shall be allowed whether such

beer is a part of the original inventory of such wholesaler or returned to such wholesaler by a licensee authorized to purchase beer from a wholesaler.

**Source:** Laws 1935, c. 116, § 51, p. 407; Laws 1941, c. 109, § 1, p. 431; C.S.Supp.,1941, § 53-351; R.S.1943, § 53-161; Laws 1951, c. 173, § 1, p. 662; Laws 1955, c. 201, § 2, p. 571; Laws 1961, c. 259, § 7, p. 771; Laws 1963, c. 311, § 5, p. 938; Laws 1965, c. 321, § 1, p. 913; Laws 1991, LB 344, § 46.

**53-162 Alcoholic liquor shipped from another state; tax imposed.**

For the purpose of raising revenue, a tax is imposed upon persons holding a shipping license issued pursuant to subsection (4) of section 53-123.15 who ship alcoholic liquor to individuals pursuant to section 53-192 and for which the required taxes in the state of purchase or this state have not been paid. The tax, if due, shall be paid by the holder of the shipping license issued pursuant to subsection (4) of section 53-123.15. The amount of the tax shall be imposed as provided in section 53-160. The tax shall be collected by the commission, except that the tax shall not be due until December 31 of the year in which the purchase was made. The tax shall be delinquent if unpaid within twenty-five days after December 31. The revenue from the tax shall be credited to the General Fund. The commission shall adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2000, LB 973, § 2; Laws 2001, LB 671, § 3.

**53-162.01 Repealed. Laws 1963, c. 311, § 7.**

**53-163 Commission; rounding of amounts on returns or reports; authorized.**

When the commission finds that the administration of the state alcohol excise tax laws might be more efficiently and economically conducted, the commission may require or allow for rounding of all amounts on returns or reports, including amounts of tax. Amounts shall be rounded to the nearest dollar with amounts ending in fifty cents or more rounded to the next highest dollar.

**Source:** Laws 2007, LB578, § 2.

**53-164 Repealed. Laws 1963, c. 311, § 7.**

**53-164.01 Alcoholic liquor; tax; payment; report; penalty; bond; sale to instrumentality of armed forces; credit for tax paid.**

Payment of the tax provided for in section 53-160 on alcoholic liquor shall be paid by the manufacturer or wholesaler as follows:

(1)(a) All manufacturers or wholesalers, except farm winery producers, whether inside or outside this state shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report to the commission upon forms furnished by the commission showing the total amount of alcoholic liquor in gallons or fractional parts thereof shipped by such manufacturer or wholesaler, whether inside or outside this state, during the preceding calendar month;

(b) All beer wholesalers shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report to the commission upon forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof shipped by all

manufacturers, whether inside or outside this state, during the preceding calendar month to such wholesaler;

(c)(i) Except as provided in subdivision (ii) of this subdivision, farm winery producers which paid less than one thousand dollars of excise taxes pursuant to section 53-160 for the previous calendar year and which will pay less than one thousand dollars of excise taxes pursuant to section 53-160 for the current calendar year shall, on or before the twenty-fifth day of the calendar month following the end of the year in which wine was packaged or bottled for sale, submit a report to the commission upon forms furnished by the commission showing the total amount of wine in gallons or fractional parts thereof packaged or bottled by such producer during the preceding calendar year; and

(ii) Farm winery producers which paid one thousand dollars or more of excise taxes pursuant to section 53-160 for the previous calendar year or which become liable for one thousand dollars or more of excise taxes pursuant to section 53-160 during the current calendar year shall, on or before the twenty-fifth day of each calendar month following the month in which wine was packaged or bottled for sale, submit a report to the commission upon forms furnished by the commission showing the total amount of wine in gallons or fractional parts thereof packaged or bottled by such producer during the preceding calendar month. A farm winery producer which becomes liable for one thousand dollars or more of excise taxes pursuant to section 53-160 during the current calendar year shall also pay such excise taxes immediately;

(d) A craft brewery shall, on or before the twenty-fifth day of each calendar month following the month in which the beer was produced for sale, submit a report to the commission on forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof produced for sale by the craft brewery during the preceding calendar month;

(e) A microdistillery shall, on or before the twenty-fifth day of each calendar month following the month in which the distilled liquor was produced for sale, submit a report to the commission on forms furnished by the commission showing the total amount of distilled liquor in gallons or fractional parts thereof produced for sale by the microdistillery during the preceding calendar month; and

(f) Reports submitted pursuant to subdivision (a), (b), or (c) of this subdivision shall also contain a statement of the total amount of alcoholic liquor, except beer, in gallons or fractional parts thereof shipped to licensed retailers inside this state and such other information as the commission may require;

(2) The wholesaler or farm winery producer shall at the time of the filing of the report pay to the commission the tax due on alcoholic liquor, except beer, shipped to licensed retailers inside this state at the rate fixed in accordance with section 53-160. The tax due on beer shall be paid by the wholesaler on beer shipped from all manufacturers;

(3) The tax imposed pursuant to section 53-160 shall be due on the date the report is due less a discount of one percent of the tax on alcoholic liquor for submitting the report and paying the tax in a timely manner. The discount shall be deducted from the payment of the tax before remittance to the commission and shall be shown in the report to the commission as required in this section. If the tax is not paid within the time provided in this section, the discount shall not be allowed and shall not be deducted from the tax;

(4) If the report is not submitted by the twenty-fifth day of the calendar month or if the tax is not paid to the commission by the twenty-fifth day of the calendar month, the following penalties shall be assessed on the amount of the tax: One to five days late, three percent; six to ten days late, six percent; and over ten days late, ten percent. In addition, interest on the tax shall be collected at the rate of one percent per month, or fraction of a month, from the date the tax became due until paid;

(5) No tax shall be levied or collected on alcoholic liquor manufactured inside this state and shipped or transported outside this state for sale and consumption outside this state;

(6) In order to insure the payment of all state taxes on alcoholic liquor, together with interest and penalties, persons required to submit reports and payment of the tax shall, at the time of application for a license under sections 53-124 and 53-124.01, enter into a surety bond with corporate surety, both the bond form and surety to be approved by the commission. Subject to the limitations specified in this subdivision, the amount of the bond required of any taxpayer shall be fixed by the commission and may be increased or decreased by the commission at any time. In fixing the amount of the bond, the commission shall require a bond equal to the amount of the taxpayer's estimated maximum monthly excise tax ascertained in a manner as determined by the commission. Nothing in this section shall prevent or prohibit the commission from accepting and approving bonds which run for a term longer than the license period. The amount of a bond required of any one taxpayer shall not be less than one thousand dollars. The bonds required by this section shall be filed with the commission; and

(7) When a manufacturer or wholesaler sells and delivers alcoholic liquor upon which the tax has been paid to any instrumentality of the armed forces of the United States engaged in resale activities as provided in section 53-160.01, the manufacturer or wholesaler shall be entitled to a credit in the amount of the tax paid in the event no tax is due on such alcoholic liquor as provided in such section. The amount of the credit, if any, shall be deducted from the tax due on the following monthly report and subsequent reports until liquidated.

**Source:** Laws 1955, c. 201, § 3, p. 571; Laws 1959, c. 247, § 6, p. 853; Laws 1959, c. 251, § 1, p. 880; Laws 1967, c. 334, § 1, p. 892; Laws 1972, LB 66, § 4; Laws 1973, LB 111, § 8; Laws 1979, LB 224, § 5; Laws 1981, LB 124, § 3; Laws 1983, LB 213, § 18; Laws 1985, LB 279, § 10; Laws 1985, LB 359, § 3; Laws 1988, LB 1089, § 23; Laws 1989, LB 777, § 1; Laws 1989, LB 780, § 12; Laws 1991, LB 344, § 47; Laws 1991, LB 582, § 3; Laws 1994, LB 1292, § 8; Laws 1996, LB 750, § 10; Laws 2006, LB 1003, § 3; Laws 2007, LB549, § 16; Laws 2010, LB861, § 73.

**53-164.02 Evasion of liquor tax; acts forbidden; violations; penalty.**

It shall be unlawful for any person to evade or attempt to evade the payment of tax on any alcoholic liquor in any manner whatever, and upon conviction thereof, in addition to the penalty prescribed for the violation of the Nebraska Liquor Control Act, such person shall forfeit and pay, as a part of costs in such

action, double the amount of the tax so evaded or attempted to be evaded. Any person who violates this section shall be guilty of a Class II misdemeanor.

**Source:** Laws 1935, c. 116, § 21, p. 387; C.S.Supp.,1941, § 53-321; R.S.1943, § 53-157; Laws 1961, c. 259, § 6, p. 770; Laws 1963, c. 311, § 4, p. 938; Laws 1977, LB 40, § 314; R.S.1943, (1988), § 53-157; Laws 1991, LB 344, § 48.

(g) MANUFACTURER'S AND WHOLESALER'S RECORD AND REPORT

**53-165 Manufacturer and wholesaler; monthly report to commission of manufacture and sale; manufacturer or shipper; certification; record keeping.**

(1) Every manufacturer and wholesaler shall, between the first and fifteenth day of each calendar month, make return to the commission of all alcoholic liquor manufactured and sold by such manufacturer or wholesaler in the course of such business during the preceding calendar month. Such return shall be made upon forms prescribed and furnished by the commission and shall contain such other information as the commission may reasonably require.

(2) Every manufacturer or shipper of beer on filing notice of intention to commence or continue business pursuant to section 53-130.01 shall certify that such manufacturer or shipper will keep or cause to be kept books and records and make reports in the manner and for the purposes specified by rules and regulations of the commission, which books, records, and reports shall be open to inspection by the proper officers of the commission, and that such manufacturer or shipper will in all respects faithfully comply with all of the requirements of the laws of this state and the rules and regulations of the commission relating to the manufacture and shipping to licensed retail beer dealers in this state.

(3) Each manufacturer and wholesaler shall keep complete and accurate records of all sales of liquor, wine, or beer and complete and accurate records of all such alcoholic liquor produced, manufactured, compounded, or imported.

**Source:** Laws 1935, c. 116, § 55, p. 408; C.S.Supp.,1941, § 53-355; R.S.1943, § 53-165; Laws 1991, LB 344, § 50; Laws 2006, LB 1003, § 4.

**53-166 Repealed. Laws 1991, LB 344, § 75.**

**53-166.01 Unconstitutional.**

**Note:** The Revisor of Statutes, as authorized by section 49-705, has omitted sections 53-166.01 to 53-166.17, which the Supreme Court has held to be unconstitutional. *United States Brewers' Assn., Inc. v. State*, 192 Neb. 328, 220 N.W.2d 544 (1974).

**53-166.02 Unconstitutional.**

**Note:** The Revisor of Statutes, as authorized by section 49-705, has omitted sections 53-166.01 to 53-166.17, which the Supreme Court has held to be unconstitutional. *United States Brewers' Assn., Inc. v. State*, 192 Neb. 328, 220 N.W.2d 544 (1974).

**53-166.03 Unconstitutional.**

**Note:** The Revisor of Statutes, as authorized by section 49-705, has omitted sections 53-166.01 to 53-166.17, which the Supreme Court has held to be unconstitutional. *United States Brewers' Assn., Inc. v. State*, 192 Neb. 328, 220 N.W.2d 544 (1974).

**53-166.04 Unconstitutional.**



## (h) KEG SALES

**53-167 Repealed. Laws 1977, LB 176, § 2.****53-167.01 Legislative findings.**

The Legislature finds that every year hundreds of people, many of them teenagers, are seriously injured or killed as a result of alcohol-related accidents. In recognition of such facts it is the intent of the Legislature, through the implementation of section 53-167.02, to protect the public health, safety, and welfare of all Nebraskans.

**Source:** Laws 1993, LB 332, § 2.

**53-167.02 Keg sales; requirements; keg identification number; violation; penalty.**

When any person licensed to sell alcoholic liquor at retail sells beer for consumption off the premises in a container with a liquid capacity of five or more gallons or eighteen and ninety-two hundredths or more liters, the seller shall record the date of the sale, the keg identification number, the purchaser's name and address, and the number of the purchaser's motor vehicle operator's license, state identification card, or military identification, if such military identification contains a picture of the purchaser, together with the purchaser's signature. Such record shall be on a form prescribed by the commission and shall be kept by the licensee at the retail establishment where the purchase was made for not less than six months.

The commission shall adopt and promulgate rules and regulations which require the licensee to place a label on the beer container, which label shall at least contain a keg identification number and shall be on a form prescribed by the commission. Such label shall be placed on the keg at the time of retail sale. The licensee shall purchase the forms referred to in this section from the commission. The cost incurred to produce and distribute such forms shall be reasonable and shall not exceed the reasonable and necessary costs of producing and distributing the forms. Any money collected by the commission relating to the sale of such forms shall be credited to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund.

The keg identification number for each container shall be registered with the commission. The records kept pursuant to this section shall be available for inspection by any law enforcement officer during normal business hours or at any other reasonable time. Any person violating this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1993, LB 332, § 3.

**53-167.03 Keg identification number; prohibited acts; violation; penalty; deposit.**

(1) Any person who unlawfully tampers with, alters, or removes the keg identification number from a beer container or is in possession of a beer container described in section 53-167.02 with an altered or removed keg identification number after such container has been taken from the licensed premises pursuant to a retail sale and before its return to such licensed premises or other place where returned kegs are accepted shall be guilty of a Class III misdemeanor.

(2) A licensee may require a deposit of not more than the replacement cost of the container described in section 53-167.02 from a person purchasing beer for consumption off the premises. Such deposit may be retained by the licensee, in the amount of actual damages, if upon return the container or any associated equipment is damaged or if the keg identification number has been unlawfully tampered with, altered, or removed and such tampering, alteration, or removal has been reported to a law enforcement officer.

**Source:** Laws 1993, LB 332, § 4; Laws 2002, LB 1126, § 5; Laws 2007, LB573, § 10.

**53-167.04 Repealed. Laws 2006, LB 562, § 8.**

(i) PROHIBITED ACTS

**53-168 Receiving money, credit, discounts, rebates, or other inducement; unlawful acts; penalty; private or generic label permitted.**

(1) It shall be unlawful for any person having a retail license to sell beer to accept credit for the purchase of beer from any manufacturer or wholesaler of beer and for any person having a retail license to sell alcoholic liquor or any officer, associate, member, representative, or agent of such licensee to accept, receive, or borrow money or anything else of value or to accept or to receive credit, other than merchandising credit in the ordinary course of business for a period not to exceed thirty days, directly or indirectly, from (a) any person, partnership, limited liability company, or corporation engaged in manufacturing or wholesaling such liquor, (b) any person connected with or in any way representing such manufacturer or wholesaler, (c) any member of the family of such manufacturer or wholesaler, (d) any stockholders in any corporation engaged in manufacturing or wholesaling such liquor, or (e) any officer, manager, agent, member, or representative of such manufacturer or wholesaler.

(2) It shall be unlawful for any manufacturer or wholesaler to give or lend money or otherwise loan or extend credit, except the merchandising credit referred to in subsection (1) of this section, directly or indirectly, to any such licensee or to the manager, representative, agent, member, officer, or director of such licensee. It shall be unlawful for any wholesaler to participate in any manner in a merchandising and coupon plan of any manufacturer involving alcoholic liquor and the redemption in cash. The redemption of any merchandising and coupon plan involving cash shall be made by the manufacturer to the consumer.

(3) If any holder of a license to sell alcoholic liquor at retail or wholesale violates subsection (1) or (2) of this section, such license shall be suspended or revoked by the commission in the manner provided by the Nebraska Liquor Control Act.

(4) It shall not be a violation of subsection (1) or (2) of this section for a manufacturer or wholesaler to sell or provide alcoholic liquor exclusively or in minimum quantities in containers bearing a private label or to sell or provide alcoholic liquor in containers bearing a generic label to a wholesaler or retailer.

(5) It shall not be a violation of subsection (1) or (2) of this section for a wholesaler or retailer to accept or purchase from a manufacturer or wholesaler

alcoholic liquor exclusively or in minimum quantities in containers bearing a private label or for a wholesaler or retailer to accept or purchase from a manufacturer or wholesaler alcoholic liquor in containers bearing a generic label.

**Source:** Laws 1935, c. 116, § 29, p. 395; Laws 1941, c. 104, § 1, p. 424; C.S.Supp., 1941, § 53-329; R.S. 1943, § 53-168; Laws 1953, c. 182, § 2, p. 573; Laws 1953, c. 181, § 1, p. 571; Laws 1967, c. 335, § 1, p. 896; Laws 1969, c. 441, § 1, p. 1475; Laws 1969, c. 442, § 1, p. 1478; Laws 1969, c. 443, § 1, p. 1480; Laws 1980, LB 874, § 1; Laws 1981, LB 483, § 2; Laws 1985, LB 183, § 2; Laws 1991, LB 344, § 51; Laws 1993, LB 121, § 321; Laws 2004, LB 485, § 28.

The 1969 amendment making it unlawful for any manufacturer, distributor, or wholesaler of alcoholic liquor to give discounts to any retailer is constitutional. *Central Markets West, Inc. v. State*, 186 Neb. 79, 180 N.W.2d 880 (1970) supplemental opinion, 186 Neb. 276, 182 N.W.2d 898 (1971).

The 1967 amendment to this section prohibiting a retailer from accepting credit for the purchase of beer from a wholesaler is constitutional; exception as to baseball stadiums is unconstitutional. *Tom & Jerry, Inc. v. Nebraska Liquor Control Commission*, 183 Neb. 410, 160 N.W.2d 232 (1968).

Liquor Control Commission cannot adopt rules and regulations in conflict with Liquor Control Act. *Terry Carpenter, Inc. v. Nebraska Liquor Control Commission*, 175 Neb. 26, 120 N.W.2d 374 (1963).

Provisions of rule promulgated by the Liquor Control Commission authorizing the giving away of advertising novelties were invalid. *State ex rel. Nebraska Beer Wholesalers Assn. v. Young*, 153 Neb. 395, 44 N.W.2d 806 (1950).

**53-168.01 Repealed. Laws 1991, LB 344, § 75.**

**53-168.02 Repealed. Laws 1985, LB 183, § 7.**

**53-168.03 Repealed. Laws 1985, LB 183, § 7.**

**53-168.04 Repealed. Laws 1985, LB 183, § 7.**

**53-168.05 Violations; procedure.**

The commission may revoke or suspend the license of any manufacturer, wholesaler, or retailer found violating section 53-169, and all proceedings under such section shall be governed by the provisions of the Nebraska Liquor Control Act governing the suspension or revocation of licenses and the appeals to the courts from any orders of the commission.

**Source:** Laws 1971, LB 751, § 6; Laws 1985, LB 183, § 4; Laws 1991, LB 344, § 53.

**53-168.06 General prohibition; exceptions.**

No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish, or possess any alcoholic liquor for beverage purposes except as specifically provided in the Nebraska Liquor Control Act. Nothing in the act shall prevent (1) the possession of alcoholic liquor legally obtained as provided in the act for the personal use of the possessor and his or her family and guests; (2) the making of wine, cider, or other alcoholic liquor by a person from fruits, vegetables, or grains, or the product thereof, by simple fermentation and without distillation, if made solely for the use of the maker and his or her family and guests; (3) any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession, any hospital or other institution caring for the sick and diseased persons from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution, or any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in the compounding of

prescriptions of licensed physicians; (4) the possession and dispensation of alcoholic liquor by an authorized representative of any religion on the premises of a place of worship, for the purpose of conducting any bona fide religious rite, ritual, or ceremony; (5) persons who are sixteen years old or older from carrying alcoholic liquor from licensed establishments when they are accompanied by a person not a minor; (6) persons who are sixteen years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment; (7) persons who are sixteen years old or older from removing and disposing of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment; or (8) persons who are nineteen years old or older from serving or selling alcoholic liquor in the course of their employment.

**Source:** Laws 1935, c. 116, § 1, p. 374; C.S.Supp.,1941, § 53-301; R.S. 1943, § 53-102; Laws 1971, LB 666, § 1; Laws 1978, LB 386, § 2; Laws 1980, LB 221, § 1; Laws 1985, LB 359, § 1; R.S.1943, (1988), § 53-102; Laws 1991, LB 344, § 52; Laws 1995, LB 874, § 2; Laws 2001, LB 114, § 3.

Exemption accorded to possession of liquor for personal use of possessor, his family, or guests did not apply to business conducted as a common nuisance. State ex rel. Fitzgerald v. Kubik, 167 Neb. 219, 92 N.W.2d 533 (1958).

Possession of intoxicating liquor for personal use is authorized. State v. Kubik, 159 Neb. 509, 67 N.W.2d 755 (1954).

Purpose of Liquor Control Act was to govern and control sale and use of alcoholic liquors. State ex rel. Johnson v. Hash, 144 Neb. 495, 13 N.W.2d 716 (1944).

The Nebraska Liquor Control Commission is empowered to determine, by reasonable regulations, the hours for sale of beer outside the corporate limits of cities and villages, regardless of its alcoholic content. Griffin v. Gass, 133 Neb. 56, 274 N.W. 193 (1937).

It is a penal offense for owner and operator of a truck, not designated as a carrier or granted a permit therefor, to transport from another state a cargo of unstamped alcoholic liquors consigned to a bonded warehouse of liquors in this state. State v. Hyslop, 131 Neb. 681, 269 N.W. 512 (1936).

### **53-169 Manufacturer or wholesaler; craft brewery or microdistillery licensee; limitations.**

(1) 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 shall not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

**Source:** Laws 1935, c. 116, § 30, p. 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.

**53-169.01 Manufacturer; interest in licensed wholesaler; prohibitions.**

No manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor, except beer, for distribution and sale within this state shall, directly or indirectly, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, trusteeship, loan, mortgage, or lien on any personal or real property, or as guarantor, endorser, or surety, be interested in the ownership, conduct, operation, or management of any alcoholic liquor wholesaler holding an alcoholic liquor wholesale license, except beer, under section 53-123.02.

No manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor, except beer, for distribution and sale within this state shall be interested directly or indirectly, as lessor or lessee, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, or trusteeship in the premises upon which the place of business of an alcoholic liquor wholesaler holding an alcoholic liquor wholesale license, except beer, under section 53-123.02 is located, established, conducted, or operated in whole or in part unless such interest was acquired or became effective prior to April 17, 1947.

**Source:** Laws 1935, c. 116, § 30, p. 396; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-169; Laws 1947, c. 187, § 2, p. 619; Laws 1953, c. 182, § 4, p. 575; Laws 1959, c. 250, § 2, p. 876; Laws 1969, c. 441, § 3, p. 1477; Laws 1991, LB 344, § 55; Laws 2007, LB578, § 3; Laws 2010, LB861, § 74.

The interest forbidden by this section is a financial or business interest. *Nebraska Liq. Distrib. v. Nebraska Liq. Cont. Comm.*, 269 Neb. 401, 693 N.W.2d 539 (2005).

While the forbidden interest in this section is worded as that of the manufacturer in the wholesaler and not the interest of the wholesaler in the manufacturer, the obvious intent of the Legislature is to forbid both types of interests. *Nebraska Liq. Distrib. v. Nebraska Liq. Cont. Comm.*, 269 Neb. 401, 693 N.W.2d 539 (2005).

Amendments made to this section by Laws 2007, LB 578, contained a Grandfather Clause that violated the Equal Protection Clause and the Privileges and Immunities Clause of the United States Constitution and the Grandfather Clause was not severable from the other amendments. The section as amended is unconstitutional. *Southern Wine & Spirits of America Inc. v. Heineman*, 534 F.Supp.2d 1001 (D.Neb.2008).

**53-170 Violations; effect.**

Any licensee who permits, assents, or is a party in any way to any violation or infringement of the Nebraska Liquor Control Act shall be deemed guilty of a violation of the act. Any money loaned contrary to a provision of the act shall not be recovered back. Any note, mortgage, or other evidence of indebtedness, any security, or any lease or contract obtained or made contrary to the act shall be unenforceable and void.

**Source:** Laws 1935, c. 116, § 30, p. 397; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-170; Laws 1994, LB 859, § 7.

**53-170.01 Repealed. Laws 1991, LB 344, § 75.**

**53-170.02 Repealed. Laws 1991, LB 344, § 75.**

**53-170.03 Repealed. Laws 1991, LB 344, § 75.**

**53-170.04 Repealed. Laws 1991, LB 344, § 75.**

**53-171 Licenses; issuance of more than one kind to same person; when unlawful; craft brewery or microdistillery licensee; limitations.**

No person licensed as a manufacturer or wholesaler of alcoholic liquor shall be permitted to receive any retail license at the same time. No person licensed as a retailer of alcoholic liquor shall be permitted to receive any manufacturer's or wholesale license at the same time. This section shall not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

**Source:** Laws 1935, c. 116, § 30, p. 397; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-171; Laws 1953, c. 182, § 1, p. 573; Laws 1969, c. 441, § 4, p. 1478; Laws 1985, LB 279, § 12; Laws 1988, LB 1089, § 25; Laws 1991, LB 344, § 56; Laws 1996, LB 750, § 12; Laws 2007, LB549, § 18.

**53-172 Original packages; labels; seals; requirements.**

No manufacturer or wholesaler shall sell or deliver any original package containing alcoholic liquor, except beer and wine, manufactured or distributed by him or her unless the package has affixed thereto a clear and legible label containing the name and address of the manufacturer, the kind of alcoholic liquor contained in the package, and, in the case of alcoholic liquor other than beer, the date when manufactured. No original package of alcoholic liquor shall be delivered by any manufacturer or wholesaler unless the package is securely sealed so that the contents cannot be removed without breaking the seal placed thereon by such manufacturer, and no other licensee shall sell, have in his or her possession, or use any original package which does not comply with this section or which does not bear evidence that such original package, when delivered to him or her, complied with this section.

**Source:** Laws 1935, c. 116, § 31, p. 397; C.S.Supp.,1941, § 53-331; R.S.1943, § 53-172; Laws 1955, c. 201, § 5, p. 575; Laws 1961, c. 259, § 11, p. 773; Laws 1963, c. 311, § 6, p. 939; Laws 1989, LB 780, § 13; Laws 1991, LB 344, § 57; Laws 2010, LB861, § 75.

**53-173 Repealed. Laws 1991, LB 344, § 75.**

**53-174 Repealed. Laws 2010, LB 861, § 85.**

**53-175 Liquor; acquisition from other than licensed dealer; when unlawful; limitation; records.**

It shall be unlawful for any person to purchase, receive, acquire, accept, or possess any alcoholic liquor acquired from any person other than one duly licensed to handle alcoholic liquor under the Nebraska Liquor Control Act unless within the specific exemptions or exceptions provided in the act. No licensed retailer of alcoholic liquor shall purchase such liquor other than from a licensed wholesaler who has his or her place of business within this state, except that a licensed retailer may purchase alcoholic liquor other than beer or wine from one or more retailers licensed to sell alcoholic liquor for consumption off the premises if the seller has the required federal wholesaler's basic permit and federal wholesale liquor dealer's special tax stamp and has filed proof of possession of the permit and tax stamp with the commission prior to engaging in any such sales for resale. Retailers making such sales and retailers making such purchases from retailers shall keep accurate records of such sales and purchases and shall report all such sales and purchases on a quarterly basis on forms and in such manner as prescribed by the commission. No licensed retailer shall purchase in the aggregate more than three hundred dollars of alcoholic liquor as allowed under this section in any calendar year. Nothing in this section shall prohibit the sale or exchange among collectors of commemorative bottles or uniquely designed decanters which contain alcoholic liquor.

**Source:** Laws 1935, c. 116, § 32, p. 398; C.S.Supp.,1941, § 53-332; R.S.1943, § 53-175; Laws 1988, LB 1089, § 27; Laws 1989, LB 154, § 4; Laws 1991, LB 344, § 58.

**53-176 Sale or delivery to unauthorized person forbidden; suspension, cancellation, or revocation of license.**

No manufacturer or wholesaler shall sell or deliver any package containing alcoholic liquor manufactured or distributed by such manufacturer or wholesaler for resale unless the person to whom such package is sold or delivered is authorized to receive such package in accordance with the Nebraska Liquor Control Act. The commission shall suspend, cancel, or revoke the license of any manufacturer or wholesaler who violates this section.

**Source:** Laws 1935, c. 116, § 34, p. 399; C.S.Supp.,1941, § 53-334; R.S.1943, § 53-176; Laws 1979, LB 224, § 6; Laws 1980, LB 848, § 16; Laws 1991, LB 344, § 59.

**53-177 Sale at retail; restrictions as to locality.**

(1) Except as otherwise provided in subsection (2) of this section, no license shall be issued for the sale at retail of any alcoholic liquor within one hundred fifty feet of any church, school, hospital, or home for aged or indigent persons or for veterans, their wives or children. This prohibition does not apply (a) to any location within such distance of one hundred fifty feet for which a license to sell alcoholic liquor at retail has been granted by the Nebraska Liquor Control Commission for two years continuously prior to making of application for license and (b) to hotels offering restaurant service, to regularly organized clubs, or to restaurants, food shops, or other places where sale of alcoholic liquor is not the principal business carried on, if such place of business so exempted was established for such purposes prior to May 24, 1935.

(2) If a proposed location for the sale at retail of any alcoholic liquor is within one hundred fifty feet of any church, a license may be issued if the commission

gives notice to the affected church and holds a hearing as prescribed in section 53-133.

(3) No alcoholic liquor, other than beer, shall be sold for consumption on the premises within three hundred feet from the campus of any college or university in the state, except that this section:

(a) Does not prohibit a nonpublic college or university from contracting with an individual or corporation holding a license to sell alcoholic liquor at retail for the purpose of selling alcoholic liquor at retail on the campus of such college or university at events sanctioned by such college or university but does prohibit the sale of alcoholic liquor at retail by such licensee on the campus of such nonpublic college or university at student activities or events; and

(b) Does not prohibit sales of alcoholic liquor by a community college culinary education program pursuant to section 53-124.15.

**Source:** Laws 1935, c. 116, § 35, p. 399; C.S.Supp.,1941, § 53-335; R.S.1943, § 53-177; Laws 1947, c. 189, § 2, p. 626; Laws 1965, c. 322, § 1, p. 914; Laws 1999, LB 267, § 13; Laws 2009, LB232, § 3; Laws 2010, LB861, § 76.

The plain, ordinary, and popular meaning of the word "church" includes a building in which people assemble for the worship of God and for the administration of such offices and services as pertain to that worship, a building used predominantly for the honor of God and religion, and a place where persons regularly assemble for worship. A building which is used predominantly for the honor of a religion would likewise

include buildings in which people assemble for non-Christian worship, such as a mosque, a synagogue, or a temple. *City of Omaha v. Kum & Go*, 263 Neb. 724, 642 N.W.2d 154 (2002).

Distance between church and place where intoxicating liquor is sold is measured in a straight line between the nearest walls of the two buildings. *Calvary Baptist Church v. Coonrad*, 163 Neb. 25, 77 N.W.2d 821 (1956).

### **53-178 Sale at retail; forbidden in dwelling or lodging house; exceptions.**

Except in the case of hotels and clubs, no alcoholic liquor shall be sold at retail upon any premises which have any access which leads from such premises to any other portion of the same building or structure used for dwelling or lodging purposes, and which is permitted to be used or kept accessible for use by the public. This provision shall not prevent any connection between such premises and such other portion of the building or structure which is used only by the licensee, his family and personal guests.

**Source:** Laws 1935, c. 116, § 36, p. 399; C.S.Supp.,1941, § 53-336; R.S.1943, § 53-178.

### **53-178.01 Licensee; sale to person within motor vehicle; prohibited; exception.**

No licensee shall sell alcoholic liquor, including beer, to any person for consumption off the licensed premises while such person is in any manner within any motor vehicle. This section shall not apply to sales to handicapped persons in a motor vehicle displaying a current handicapped license plate issued by the Department of Motor Vehicles.

**Source:** Laws 1965, c. 318, § 17, p. 903; Laws 1973, LB 111, § 7; Laws 1978, LB 386, § 7; R.S.1943, (1984), § 53-160.08; Laws 1991, LB 344, § 60.

### **53-179 Sale or dispensing of alcoholic liquor; forbidden during certain hours; exceptions; alcoholic liquor in open containers; unlawful after hours.**

(1) No alcoholic liquor, including beer, shall be sold at retail or dispensed on any day between the hours of 1 a.m. and 6 a.m., except that the local governing

body of any city or village with respect to area inside the corporate limits of such city or village, or the county board with respect to area outside the corporate limits of any city or village, may by ordinance or resolution (a) require closing prior to 1 a.m. on any day or (b) if adopted by a vote of at least two-thirds of the members of such local governing body or county board, permit retail sale or dispensing of alcoholic liquor for consumption on the premises, excluding sales for consumption off the premises, later than 1 a.m. and prior to 2 a.m. on any day.

(2) Except as provided for and allowed by ordinance of a local governing body applicable to area inside the corporate limits of a city or village or by resolution of a county board applicable to area inside such county and outside the corporate limits of any city or village, no alcoholic liquor, including beer, shall be sold at retail or dispensed between the hours of 6 a.m. Sunday and 1 a.m. Monday. No ordinance or resolution allowed by this subsection shall permit alcoholic liquor, other than beer and wine, to be sold at retail or dispensed between the hours of 6 a.m. Sunday and 12 noon Sunday. This subsection shall not apply after 12 noon on Sunday to a licensee which is a nonprofit corporation and the holder of a Class C license or a Class I license.

(3) It shall be unlawful on property licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open containers to remain or be in possession or control of any person for purposes of consumption between the hours of fifteen minutes after the closing hour applicable to the licensed premises and 6 a.m. on any day.

(4) Nothing in this section shall prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic liquor is prohibited by this section.

**Source:** Laws 1935, c. 116, § 37, p. 399; Laws 1941, c. 107, § 1, p. 429; C.S.Supp.,1941, § 53-337; R.S.1943, § 53-179; Laws 1955, c. 202, § 2, p. 579; Laws 1957, c. 232, § 1, p. 791; Laws 1963, c. 310, § 12, p. 934; Laws 1963, Spec. Sess., c. 5, § 4, p. 82; Laws 1965, c. 318, § 10, p. 900; Laws 1967, c. 336, § 2, p. 902; Laws 1974, LB 681, § 7; Laws 1976, LB 204, § 6; Laws 1978, LB 386, § 8; Laws 1979, LB 514, § 1; Laws 1981, LB 217, § 1; Laws 1983, LB 213, § 19; Laws 1991, LB 354, § 1; Laws 1991, LB 344, § 61; Laws 2004, LB 485, § 29; Laws 2010, LB861, § 77.

Amendment to this section, made by Chapter 5, Seventy-fourth Extraordinary Session of the Legislature, 1963, was unconstitutional because not within the Governor's call. *Arrow Club, Inc. v. Nebraska Liquor Control Commission*, 177 Neb. 686, 131 N.W.2d 134 (1964).

There are no restrictions imposed by this section on the right of the Liquor Control Commission to determine the permissible hours for sale of beer outside the corporate limits of cities and villages. *Griffin v. Gass*, 133 Neb. 56, 274 N.W. 193 (1937).

### **53-180 Sale to minors and incompetents; prohibited.**

No person shall sell, give away, dispose of, exchange, or deliver, or permit the sale, gift, or procuring of any alcoholic liquors, to or for any minor or to any person who is mentally incompetent.

**Source:** Laws 1935, c. 116, § 38, p. 400; Laws 1937, c. 125, § 1, p. 437; C.S.Supp.,1941, § 53-338; Laws 1943, c. 121, § 1, p. 419; R.S. 1943, § 53-180; Laws 1951, c. 174, § 1(1), p. 664; Laws 1980, LB 848, § 17.

#### **Cross References**

City of the second class may prohibit sale to minors, see section 17-135.

**Minor Alcoholic Liquor Liability Act**, see section 53-401.

This section does not make it a crime to permit the possession or consumption of alcohol by a minor. *State v. Jansen*, 241 Neb. 196, 486 N.W.2d 913 (1992).

A criminal conviction under this section may rest upon circumstantial evidence. *State v. Wilson*, 238 Neb. 217, 469 N.W.2d 749 (1991).

This section does not create a duty toward third parties, and, as such, it does not fix a standard of care, the violation of which could be proof of negligence in actions by third parties. *Pelzek v. American Legion*, 236 Neb. 608, 463 N.W.2d 321 (1990).

In procuring liquor for a minor, which does not involve a specific criminal intent, the general criminal intent is supplied by the performance of the proscribed act. *State v. Lesiak*, 234 Neb. 163, 449 N.W.2d 550 (1989).

This section does not create a duty toward third parties and, therefore, the statute does not fix a standard of care, the violation of which could be proof of negligence in actions by

third parties. *Schroer v. Synowiecki*, 231 Neb. 168, 435 N.W.2d 875 (1989).

Requisite intent may be inferred from defendant's acts and surrounding circumstances, so evidence was sufficient to support conviction. *State v. Smith*, 221 Neb. 406, 377 N.W.2d 527 (1985).

The Nebraska Liquor Control Act does not create a civil cause of action in favor of third parties for violation of this section, nor is such violation evidence of negligence. *Holmes v. Circo*, 196 Neb. 496, 244 N.W.2d 65 (1976).

City ordinance prohibiting sale of intoxicating liquors to minors is not void as being inconsistent with state statute. *Bodkin v. State*, 132 Neb. 535, 272 N.W. 547 (1937).

Procuring alcoholic liquor for a minor is a general intent crime, and there is sufficient evidence to convict a defendant even when he or she did not intend for a minor to obtain the alcohol which the defendant purchased. *State v. Butzke*, 7 Neb. App. 360, 584 N.W.2d 449 (1998).

### 53-180.01 Minor misrepresenting age; unlawful.

No minor shall obtain, or attempt to obtain, alcoholic liquor by misrepresentation of age, or by any other method, in any tavern or other place where alcoholic liquor is sold.

**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(2), p. 664.

### 53-180.02 Minor; prohibited acts; exception; governing bodies; powers.

Except as provided in section 53-168.06, no minor may sell, dispense, consume, or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place, including public streets, alleys, roads, or highways, upon property owned by the State of Nebraska or any subdivision thereof, or inside any vehicle while in or on any other place, including, but not limited to, the public streets, alleys, roads, or highways, or upon property owned by the State of Nebraska or any subdivision thereof, except that a minor may consume, possess, or have physical control of alcoholic liquor as a part of a bona fide religious rite, ritual, or ceremony or in his or her permanent place of residence.

The governing bodies of counties, cities, and villages shall have the power to, and may by applicable resolution or ordinance, regulate, suppress, and control the transportation, consumption, or knowing possession of or having under his or her control beer or other alcoholic liquor in or transported by any motor vehicle, by any person under twenty-one years of age, and may provide penalties for violations of such resolution or ordinance.

**Source:** Laws 1951, c. 174, § 1(3), p. 664; Laws 1955, c. 205, § 1, p. 584; Laws 1957, c. 233, § 1, p. 792; Laws 1965, c. 323, § 1, p. 915; Laws 1967, c. 337, § 1, p. 904; Laws 1969, c. 440, § 2, p. 1473; Laws 1980, LB 221, § 3; Laws 1980, LB 848, § 18; Laws 1981, LB 124, § 4; Laws 1984, LB 56, § 2; Laws 1991, LB 344, § 62; Laws 2001, LB 114, § 4; Laws 2007, LB573, § 11.

Circumstantial evidence can be sufficient to sustain a conviction of a minor in possession in violation of this section. When relying upon circumstantial evidence, it is not necessary for the State to disprove every hypothesis but that of guilt. One accused of a crime may be convicted on the basis of circumstantial

evidence if, taken as a whole, the evidence establishes guilt beyond a reasonable doubt. Circumstantial evidence is sufficient to support a conviction if such evidence and the reasonable inferences that may be drawn therefrom establish the defen-

dant's guilt beyond a reasonable doubt. State v. Laue, 225 Neb. 57, 402 N.W.2d 313 (1987).

Circumstantial evidence was sufficient to sustain a conviction under this section. State v. Reeder, 183 Neb. 425, 160 N.W.2d 753 (1968).

To sustain conviction, minor must have known or have been conscious of actual or constructive possession of intoxicating liquor. State v. Eberhardt, 176 Neb. 18, 125 N.W.2d 1 (1963).

**53-180.03 Minor; sale or gift to; misrepresenting age; parent or guardian; duties.**

No parent or guardian shall knowingly suffer or permit any minor, of whom he or she may be a parent or guardian, to violate the provisions of section 53-180.01 or 53-180.02.

**Source:** Laws 1951, c. 174, § 1(4), p. 664; Laws 1961, c. 258, § 6, p. 765.

**53-180.04 Minors; warning notice; posting.**

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

**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.

**53-180.05 Minors and incompetents; violations; penalties; false identification; penalty; law enforcement agency; duties.**

(1) Any person violating section 53-180 shall be guilty of a Class I misdemeanor. Any person violating any of the provisions of section 53-180.01 or 53-180.03 shall be guilty of a Class III misdemeanor. 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. 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.

(2) 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.

(3) When a minor is arrested for a violation of sections 53-180 to 53-180.02 or subsection (2) 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.

This section provides the only penalty for violation of section 53-180. *Holmes v. Circo*, 196 Neb. 496, 244 N.W.2d 65 (1976).

**53-180.06 Documentary proof of age; separate book; record; contents.**

(1) To establish proof of age for the purpose of purchasing or consuming alcoholic liquor, a person shall present or display only a valid driver's or operator's license, Nebraska state identification card, military identification card, alien registration card, or passport.

(2) Every holder of a retail license may maintain, in a separate book, a record of each person who has furnished documentary proof of age for the purpose of making any purchase of alcoholic liquor. The record shall show the name and address of the purchaser, the date of the purchase, and a description of the identification used and shall be signed by the purchaser.

**Source:** Laws 1969, c. 437, § 1, p. 1467; Laws 1991, LB 454, § 2; Laws 1999, LB 267, § 14.

**53-180.07 Minors; licensee charged with sale; defenses.**

In any prosecution of or any proceeding against any licensee charged with having made a sale to a minor, proof of the following shall be an absolute defense to the charge:

(1)(a) The purchaser falsely represented in writing and supported with other documentary proof that he or she was of legal age to purchase alcoholic liquor;

(b) The appearance of such purchaser was such that an ordinary and prudent person would believe that such appearance conformed to any documentary description of appearance presented by the purchaser; and

(c) The seller was acting in good faith, in reliance upon the written representation, other documentary evidence, and the appearance of the purchaser, and in the belief the purchaser was of legal age to make such purchase; or

(2) The seller was acting with the knowledge of and in cooperation with a duly authorized law enforcement officer.

**Source:** Laws 1969, c. 437, § 2, p. 1467; Laws 1978, LB 386, § 9; Laws 1991, LB 344, § 63; Laws 1993, LB 561, § 1.

**53-181 Person eighteen years of age or younger; penalty; copy of abstract to Director of Motor Vehicles.**

The penalty for violation of section 53-180.02 by a person eighteen years of age or younger shall be as follows:

(1) If the person convicted or adjudicated of violating such section has one or more licenses or permits issued under the Motor Vehicle Operator's License Act:

(a) For the first offense, such person is guilty of a Class III misdemeanor and the court may, as a part of the judgment of conviction or adjudication, impound any such licenses or permits for thirty days and require such person to attend an alcohol education class;

(b) For a second offense, such person is guilty of a Class III misdemeanor and the court, as a part of the judgment of conviction or adjudication, may (i) impound any such licenses or permits for ninety days and (ii) require such person to complete no fewer than twenty and no more than forty hours of community service and to attend an alcohol education class; and

(c) For a third or subsequent offense, such person is guilty of a Class III misdemeanor and the court, as a part of the judgment of conviction or adjudication, may (i) impound any such licenses or permits for twelve months and (ii) require such person to complete no fewer than sixty hours of community service, to attend an alcohol education class, and to submit to an alcohol assessment by a licensed alcohol and drug counselor; and

(2) If the person convicted or adjudicated of violating such section does not have a permit or license issued under the Motor Vehicle Operator's License Act:

(a) For the first offense, such person is guilty of a Class III misdemeanor and the court, as part of the judgment of conviction or adjudication, may (i) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until thirty days after the date of such order and (ii) require such person to attend an alcohol education class;

(b) For a second offense, such person is guilty of a Class III misdemeanor and the court, as part of the judgment of conviction or adjudication, may (i) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until ninety days after the date of such order and (ii) require such person to complete no fewer than twenty hours and no more than forty hours of community service and to attend an alcohol education class; and

(c) For a third or subsequent offense, such person is guilty of a Class III misdemeanor and the court, as part of the judgment of conviction or adjudication, may (i) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until twelve months after the date of such order and (ii) require such person to complete no fewer than sixty hours of community service, to attend an alcohol education class, and to submit to an alcohol assessment by a licensed alcohol and drug counselor.

A copy of an abstract of the court's conviction or adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04.

**Source:** Laws 2010, LB258, § 3.

**Cross References**

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

**53-182 Repealed. Laws 1977, LB 93, § 1.**

**53-183 Sale on credit or for goods or services forbidden; exceptions.**

No person shall sell or furnish alcoholic liquor at retail to any person on credit, on a passbook, on an order on a store, in exchange for any goods, wares, or merchandise, or in payment for any services rendered, and if any person extends credit for any such purpose, the debt thereby attempted to be created shall not be recoverable at law. Nothing in this section shall prevent any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members or bona fide guests of members and charged to the account of such members or guests in accordance with the bylaws of such club, and nothing in this section shall prevent any hotel or restaurant holding a retail license from permitting checks or statements for liquor to be signed by regular guests residing at such hotel or eating at such restaurant and charged to the accounts of such guests.

**Source:** Laws 1935, c. 116, § 40, p. 401; C.S.Supp.,1941, § 53-340; R.S.1943, § 53-183; Laws 1959, c. 252, § 1, p. 883; Laws 1978, LB 386, § 10; Laws 1991, LB 344, § 64.

**53-184 Sale only in original package; refilling forbidden; exception.**

No person except a manufacturer or wholesaler shall fill or refill, in whole or in part, any original package of alcoholic liquor with the same or any other kind or quality of alcoholic liquor. It shall be unlawful for any person to have in his or her possession for sale at retail any bottles, casks, or other containers containing alcoholic liquor except in original packages. Nothing in this section shall prohibit the refilling of original packages of alcoholic liquor for strictly private use and not for resale.

**Source:** Laws 1935, c. 116, § 41, p. 401; C.S.Supp.,1941, § 53-341; R.S.1943, § 53-184; Laws 1991, LB 124, § 1; Laws 1991, LB 344, § 65.

**53-185 Contract to sell for only one manufacturer or wholesaler; void.**

No manufacturer or wholesaler shall enter into any contract with any person licensed to sell at retail whereby such licensee agrees not to sell any alcoholic liquor manufactured or distributed by any other manufacturer or wholesaler.

Any provision in any contract which violates this section shall render the entire contract void, and no action shall be brought on such contract in any court.

**Source:** Laws 1935, c. 116, § 42, p. 401; C.S.Supp.,1941, § 53-342; R.S.1943, § 53-185; Laws 1991, LB 344, § 66.

**53-186 Consumption of liquor on public property; forbidden; exceptions; license authorized.**

(1) Except as provided in subsection (2) of this section, it shall be unlawful for any person to consume alcoholic liquor upon property owned or controlled by the state or any governmental subdivision thereof unless authorized by the governing bodies having jurisdiction over such property.

(2) The commission may issue licenses for the sale of alcoholic liquor at retail (a) on lands owned by public power districts, public power and irrigation districts, the Bureau of Reclamation, or the Corps of Army Engineers or (b) for locations within or on structures on land owned by the state, cities, or villages or on lands controlled by airport authorities. The issuance of a license under this subsection shall be subject to the consent of the local governing body having jurisdiction over the site for which the license is requested as provided in the Nebraska Liquor Control Act.

**Source:** Laws 1935, c. 116, § 44, p. 402; C.S.Supp.,1941, § 53-344; R.S.1943, § 53-186; Laws 1953, c. 182, § 5, p. 576; Laws 1967, c. 332, § 12, p. 891; Laws 1993, LB 235, § 45; Laws 1999, LB 585, § 1.

**53-186.01 Consumption of liquor in public places; license required; exception; violations; penalty.**

(1) It shall be unlawful for any person owning, operating, managing, or conducting any dance hall, restaurant, cafe, or club or any place open to the general public to permit or allow any person to consume alcoholic liquor upon the premises except as permitted by a license issued for such premises pursuant to the Nebraska Liquor Control Act.

(2) It shall be unlawful for any person to consume alcoholic liquor in any dance hall, restaurant, cafe, or club or any place open to the general public except as permitted by a license issued for such premises pursuant to the act.

(3) This section shall not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages.

(4) Any person violating subsection (1) of this section shall, upon conviction thereof, be subject to the penalties contained in section 53-1,100.

(5) Any person violating subsection (2) of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1965, c. 318, § 1, p. 885; Laws 1978, LB 386, § 11; Laws 1991, LB 344, § 67; Laws 1991, LB 454, § 3.

**53-187 Nonbeverage licensee forbidden to give or sell alcoholic liquor; violation; penalty.**

No nonbeverage user shall sell, give away or otherwise dispose of any alcoholic liquor, purchased under his license as such nonbeverage user, in any form fit for beverage purposes. Any nonbeverage user who shall violate the provisions of this section shall pay to the commission, for the use of the General

Fund, the sum of two dollars and ten cents for each gallon of alcoholic liquor so diverted, and in addition thereto shall be subject to the penalties provided in section 53-1,100.

**Source:** Laws 1935, c. 116, § 57, p. 408; Laws 1939, c. 64, § 2, p. 271; C.S.Supp.,1941, § 53-357; R.S.1943, § 53-187; Laws 1959, c. 250, § 3, p. 877; Laws 1965, c. 319, § 4, p. 910.

**53-188 Governmental subdivision under prohibition; effect on licenses.**

No person shall operate a craft brewery or microdistillery or sell alcoholic liquor at retail, and the commission shall not grant, issue, or cause to be granted or issued any license to operate a craft brewery or microdistillery or to sell alcoholic liquor at retail, within the limits of any governmental subdivision of this state while a prohibition against such sales arising under sections 53-121 and 53-122 or otherwise as provided in the Nebraska Liquor Control Act is in effect, and any such license granted or issued in violation thereof shall be void. This section shall not prohibit the issuance of a manufacturer's or wholesale license in accordance with law by the commission in such prohibited territory.

**Source:** Laws 1935, c. 116, § 59, p. 408; C.S.Supp.,1941, § 53-359; R.S.1943, § 53-188; Laws 1988, LB 1089, § 28; Laws 1991, LB 344, § 68; Laws 1996, LB 750, § 13; Laws 2007, LB549, § 19.

**53-189 Giving or selling liquor to evade law declared unlawful.**

The giving away or delivery of any alcoholic liquor for the purpose of evading any provision of section 53-188 or the taking of orders or making of agreements, at or within any governmental subdivision, while such sales are prohibited, for the sale or delivery of any alcoholic liquor, or any other shift or device to evade any provision of the Nebraska Liquor Control Act, shall be held to be an unlawful selling.

**Source:** Laws 1935, c. 116, § 60, p. 409; C.S.Supp.,1941, § 53-360; R.S.1943, § 53-189; Laws 1994, LB 859, § 8.

**53-190 Premises violating law declared common nuisances.**

All places where alcoholic liquor is sold or consumed in violation of any provision of section 53-186.01 or sections 53-188 and 53-189, shall be taken and held and are declared to be common nuisances, and may be abated as such in the manner hereinafter provided.

**Source:** Laws 1935, c. 116, § 61, p. 409; C.S.Supp.,1941, § 53-361; R.S.1943, § 53-190; Laws 1965, c. 318, § 11, p. 901.

**53-191 Prohibited areas; sales; railroad licensees excepted.**

Nothing in sections 53-188 and 53-189 shall be construed to forbid or prevent the sale of alcoholic liquor by a railroad licensee on trains passing through prohibited territory.

**Source:** Laws 1935, c. 116, § 62, p. 409; C.S.Supp.,1941, § 53-362; R.S.1943, § 53-191.

**53-192 Transportation of liquor into state forbidden; when.**

A person or common carrier shall not haul or transport alcoholic liquor, whether by boat, airplane, automobile, truck, or other conveyance, in or into

this state, for sale, or for storage and sale in this state, upon which the required labeling or gauging fee, tax, duty, or license has not been paid. A person or common carrier shall not haul or transport alcoholic liquor, whether by boat, airplane, automobile, truck, or other conveyance, in or into this state, for personal use, unless the required labeling or gauging fee, tax, duty, or license has been paid, either in this state or the state where such alcoholic liquor was purchased.

**Source:** Laws 1935, c. 116, § 68, p. 410; C.S.Supp.,1941, § 53-368; R.S.1943, § 53-192; Laws 1991, LB 344, § 69; Laws 2000, LB 973, § 8.

**53-192.01 Wholesale licensee; purchases and imports; restrictions.**

A holder of an alcoholic liquor wholesale license shall purchase and import all alcoholic liquor from a primary American source of supply. For purposes of this section, primary American source of supply shall mean the manufacturer, the owner of alcoholic liquor at the time it becomes a marketable product, or the manufacturer's or owner's agent, who, if such liquor cannot be secured directly from such manufacturer or owner by American wholesalers, is the source closest to such manufacturer or owner in the channel of commerce from which the product can be secured by American wholesalers.

**Source:** Laws 1994, LB 1292, § 2.

**53-193 Repealed. Laws 1991, LB 344, § 75.**

**53-194 Repealed. Laws 1991, LB 344, § 75.**

**53-194.01 Repealed. Laws 1983, LB 213, § 21.**

**53-194.02 Repealed. Laws 1983, LB 213, § 21.**

**53-194.03 Transportation of liquor into state; forbidden; when; penalty.**

(1) It shall be unlawful for any person to transport, import, bring, ship, or cause to be transported, imported, brought, or shipped into the State of Nebraska for the personal use of the possessor, his or her family, or guests a quantity of alcoholic liquor in excess of nine liters in any one calendar month.

(2) Alcoholic liquor transported, imported, brought, or shipped into the State of Nebraska in violation of this section shall be seized by the commission and disposed of in the manner provided for contraband. Any person violating this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1985, LB 359, § 4; Laws 1994, LB 1292, § 9.

**53-194.04 Sale of confections or candy; license requirements; label.**

No person, firm, or corporation shall sell or offer for sale any confections or candy that contains more than one-half of one percent alcohol rendered unfit for beverage purposes unless licensed under the Nebraska Liquor Control Act.

Any confections or candy sold in this state that contains more than one-half of one percent alcohol rendered unfit for beverage purposes shall bear a label containing the following statement: Sale of this product to persons under the legal age for purchasing alcoholic liquor is unlawful.

**Source:** Laws 1988, LB 901, § 4.

**53-195 Repealed. Laws 1991, LB 344, § 75.**

**53-196 Repealed. Laws 1978, LB 593, § 5.**

**53-197 Violations; peace officer; duties; neglect of duty; penalty.**

Every sheriff, deputy sheriff, police officer, marshal, or deputy marshal who knows or who is credibly informed that any offense has been committed against the provisions of any law of this state relating to the sale of alcoholic liquors shall make complaint against the person so offending within their respective jurisdictions to the proper court, and for every neglect or refusal so to do, every such officer shall be guilty of a Class V misdemeanor.

**Source:** Laws 1935, c. 116, § 75, p. 412; C.S.Supp.,1941, § 53-375; R.S.1943, § 53-197; Laws 1972, LB 1032, § 257; Laws 1977, LB 40, § 318; Laws 1988, LB 1030, § 44.

**53-198 Places operated in violation of act; declared common nuisances; violations; penalty.**

Any room, house, building, boat, structure, or place of any kind where alcoholic liquors are sold, manufactured, bartered, or given away in violation of the Nebraska Liquor Control Act or where persons are permitted to resort for the purpose of drinking same in violation of the act, or any place where such liquors are kept for sale, barter, or gift in violation of the act, and all such liquors, and all property kept in and used in maintaining such a place, are each and all of them hereby declared to be a common nuisance. Any person who maintains or assists in maintaining such common nuisance shall be guilty of a violation of the act. If it is proved that the owner of any building or premises has knowingly suffered the same to be used or occupied for the manufacture, sale, or possession of alcoholic liquors contrary to the provisions of the act, such building or premises shall be subject to a lien for and may be sold to pay all fines and costs assessed against the occupant of such building or premises for any violation of the act. Such lien shall be immediately enforced by civil action in any court having jurisdiction by the county attorney of the county wherein such building or premises is located or by one of the assistant attorneys general assigned to the commission when directed by the commission.

**Source:** Laws 1935, c. 116, § 76, p. 413; C.S.Supp.,1941, § 53-376; R.S.1943, § 53-198; Laws 1994, LB 859, § 9.

Sale of liquor by the drink outside corporate limits of city or village was a common nuisance. State ex rel. Fitzgerald v. Kubik, 167 Neb. 219, 92 N.W.2d 533 (1958).      holic liquors violated this section. State ex rel. Johnson v. Hash, 144 Neb. 495, 13 N.W.2d 716 (1944).

Maintenance of place outside corporate limits of city where persons were permitted to resort for purpose of drinking alco-

**53-199 Nuisance; abatement; procedure; owner or lessee may give bond.**

The Attorney General, any one of the assistant attorneys general assigned to the commission when directed by the commission, or the county attorney in the county where such nuisance exists or is kept or maintained may maintain an action by injunction, in the name of the State of Nebraska, to abate and temporarily or permanently to enjoin such nuisance. The court shall have the right to make temporary and final orders as in other injunction proceedings. The plaintiff shall not be required to give bond in such action, and upon final

judgment against the defendant, such court shall also order that such room, house, building, structure, boat, or place of any kind shall be closed and padlocked for a period of not less than three months nor more than two years and until the owner, lessee, tenant, or occupant thereof gives bond with sufficient surety to be approved by the court making the order, in the penal sum of not less than one thousand dollars, payable to the State of Nebraska and conditioned that no alcoholic liquors will thereafter be manufactured, possessed, sold, bartered, given away, furnished, or otherwise disposed of thereon or therein, or kept thereon or therein with intent to sell, barter, give away, or otherwise dispose of the same, contrary to the Nebraska Liquor Control Act, and that he or she and his or her surety will pay all fines and costs assessed for any violation of the act. If any condition of such bond is violated, the whole amount may be recovered as a penalty for the use of the State of Nebraska; and in such suit on the bond, both the principal and surety shall be joined as party defendants, and satisfaction may be had from either of them. In such action a notice to nonresident defendants may be given by publication as authorized by law under the code of civil procedure, or upon their agents for service in this state, if any.

**Source:** Laws 1935, c. 116, § 77, p. 413; C.S.Supp.,1941, § 53-377; R.S.1943, § 53-199; Laws 1994, LB 859, § 10.

#### Cross References

**Service by publication**, see sections 25-518.01 to 25-523.

Common nuisance arising from sale of liquor by drink outside city or village can be abated by injunction. State ex rel. Fitzgerald v. Kubik, 167 Neb. 219, 92 N.W.2d 533 (1958).

Court of equity has jurisdiction to padlock building and enjoin maintenance of nuisance by injunction for violation of Liquor

Control Act. State ex rel. Johnson v. Hash, 145 Neb. 405, 16 N.W.2d 734 (1944).

Premises outside corporate limits of city, where intoxicating liquors were habitually brought for consumption which owner encouraged by sale of setups, was a public nuisance. State ex rel. Johnson v. Hash, 144 Neb. 495, 13 N.W.2d 716 (1944).

## (j) PENALTIES

### **53-1,100 Violations; general penalty.**

Any person (1) who manufactures, imports for distribution as a wholesaler, or distributes or sells alcoholic liquor at any place within the state without having first obtained a valid license to do so under the Nebraska Liquor Control Act, (2) who makes any false statement or otherwise violates any of the provisions of the act in obtaining any license under the act, (3) who, having obtained a license under the act, violates any of the provisions of the act with respect to the manufacture, possession, distribution, or sale of alcoholic liquor or with respect to the maintenance of the licensed premises, or (4) who violates any other provision of the act for which a penalty is not otherwise provided, shall for a first offense be guilty of a Class IV misdemeanor and for a second or subsequent offense shall be guilty of a Class II misdemeanor. Each day any person engages in business as a manufacturer, wholesaler, or retailer in violation of the act shall constitute a separate offense. In any prosecution in which a person is charged with an offense arising out of the failure to obtain a valid license as provided in subdivision (1) of this section, evidence of the failure of the accused to produce such license upon demand shall constitute

prima facie proof that a license has not been issued by the commission to such person.

**Source:** Laws 1935, c. 116, § 63, p. 409; C.S.Supp.,1941, § 53-363; R.S.1943, § 53-1,100; Laws 1945, c. 128, § 1, p. 411; Laws 1949, c. 170, § 1, p. 450; Laws 1977, LB 40, § 319; Laws 1991, LB 344, § 70.

It is a penal offense for owner and operator of a truck, who has not been designated as a carrier of alcoholic liquor or granted a permit, to transport from another state a cargo of unstamped alcoholic liquors, consigned to a bonded warehouse in this state. State v. Hyslop, 131 Neb. 681, 269 N.W. 512 (1936).

#### **53-1,101 Owner of premises or agent knowing of violations; penalty.**

If the owner of the licensed premises or any person from whom the licensee derives the right to possession of such premises, or the agent of such owner or person, knowingly permits the licensee to use such licensed premises in violation of the terms of the Nebraska Liquor Control Act, such owner, agent, or other person shall be deemed guilty of a violation of the act to the same extent as such licensee and be subject to the same punishment.

**Source:** Laws 1935, c. 116, § 64, p. 409; C.S.Supp.,1941, § 53-364; R.S.1943, § 53-1,101; Laws 1994, LB 859, § 11.

#### **53-1,102 Violations by agent or employee of licensee; deemed act of licensee, when.**

Every act or omission of whatsoever nature constituting a violation of any of the provisions of the Nebraska Liquor Control Act by any officer, director, manager, or other agent or employee of any licensee, if such act is committed or omission is made with the authorization, knowledge, or approval of the licensee, shall be deemed and held to be the act of such employer or licensee, and such employer or licensee shall be punishable in the same manner as if such act or omission had been done or omitted by him or her personally.

**Source:** Laws 1935, c. 116, § 65, p. 410; C.S.Supp.,1941, § 53-365; R.S.1943, § 53-1,102; Laws 1994, LB 859, § 12.

#### **53-1,103 False branding; penalty.**

Any person who knowingly possesses, sells, ships, transports, or in any way disposes of any alcoholic liquor under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the package or other containers of such alcoholic liquor or who causes any such act to be done shall forfeit to the state such alcoholic liquor and such packages and containers and shall be subject to the punishment and penalties provided for violation of the Nebraska Liquor Control Act.

**Source:** Laws 1935, c. 116, § 66, p. 410; C.S.Supp.,1941, § 53-366; R.S.1943, § 53-1,103; Laws 1994, LB 859, § 13.

#### **53-1,104 Violations by licensee; suspension, cancellation, or revocation of license; cash penalty in lieu of suspending sales; election authorized.**

(1) Any licensee which sells or permits the sale of any alcoholic liquor not authorized under the terms of such license on the licensed premises or in connection with such licensee's business or otherwise shall be subject to suspension, cancellation, or revocation of such license by the commission.

(2) When an order suspending a license to sell alcoholic liquor becomes final, the licensee may elect to pay a cash penalty to the commission in lieu of suspending sales of alcoholic liquor for the designated period if such election is not prohibited by order of the commission. Except as otherwise provided in subsection (3) of this section, for the first such suspension for any licensee, the penalty shall be fifty dollars per day, and for a second or any subsequent suspension, the penalty shall be one hundred dollars per day.

(3)(a) For a second suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed forty-eight hours and that the licensee may not elect to pay a cash penalty. The commission may use the required suspension of sales of alcoholic liquor penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, second suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and second suspension for violation of section 53-180.02 shall include suspension for a violation of section 53-180 following suspension for a violation of section 53-180.02;

(b) For a third or subsequent suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed fifteen days and that the licensee may not elect to pay a cash penalty. The commission may use the required suspension of sales of alcoholic liquor penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, third or subsequent suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and third or subsequent suspension for violation of section 53-180.02 shall include suspension for a violation of section 53-180 following suspension for a violation of section 53-180.02; and

(c) For a first suspension based upon a finding that a licensee or an employee or agent of the licensee has been convicted of possession of a gambling device on a licensee's premises in violation of sections 28-1107 to 28-1111, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for thirty days and that the licensee may not elect to pay a cash penalty. For a second or subsequent suspension for such a violation of sections 28-1107 to 28-1111 occurring within four years after the date of the first suspension, the commission shall order that the license be canceled.

(4) For any licensee which has no violation for a period of four years consecutively, any suspension shall be treated as a new first suspension.

(5) The election provided for in subsection (2) of this section shall be filed with the commission in writing one week before the suspension is ordered to commence and shall be accompanied by payment in full of the sum required by this section. If such election has not been received by the commission by the close of business one week before the day such suspension is ordered to commence, it shall be conclusively presumed that the licensee has elected to close for the period of the suspension and any election received later shall be

absolutely void and the payment made shall be returned to the licensee. The election shall be made on a form prescribed by the commission. The commission shall remit all funds collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1935, c. 116, § 105, p. 429; C.S.Supp.,1941, § 53-3,105; R.S.1943, § 53-1,104; Laws 1977, LB 40, § 320; Laws 1980, LB 848, § 20; Laws 1991, LB 344, § 71; Laws 1991, LB 586, § 2; Laws 1999, LB 267, § 15; Laws 2000, LB 973, § 9; Laws 2003, LB 205, § 3; Laws 2010, LB861, § 78.

(k) PROSECUTION AND ENFORCEMENT

**53-1,105 Sufficiency of charge of violation; sufficiency of proof.**

In any indictment, information, affidavit, or complaint charging the violation of any of the provisions of the Nebraska Liquor Control Act, it shall be sufficient to charge that the accused unlawfully manufactured, sold, offered for sale, kept for sale, delivered, or otherwise unlawfully disposed of alcoholic liquor without any further or more specific description of such liquor, and proof of any kind of alcoholic liquor unlawfully manufactured, sold, offered for sale, kept for sale, delivered, or otherwise unlawfully disposed of shall be sufficient proof as to the character or kind of alcoholic liquor.

**Source:** Laws 1935, c. 116, § 71, p. 411; C.S.Supp.,1941, § 53-371; R.S.1943, § 53-1,105; Laws 1991, LB 344, § 72.

**53-1,106 Charge of violation; sufficiency of allegations; second offense; proof; former conviction.**

In any indictment, information, complaint, or affidavit charging the violation of any of the provisions of the Nebraska Liquor Control Act, it shall not be necessary to allege the quantity or kind of such alcoholic liquor further than to allege that it was alcoholic liquor. In case of sale, keeping for sale, or delivering, it shall not be necessary to set out the name of the person to whom sale or delivery has been made. In any prosecution for a second offense, it shall not be necessary to state in the indictment, complaint, or affidavit the record of the former conviction, but it shall be sufficient briefly to allege such conviction. In any prosecution for an offense, no indictment, information, complaint, or affidavit shall state or allege and no consideration shall be given to the record of a former filing of an indictment, information, complaint, or affidavit, or the record of a former conviction, which is four years old or older. Proof of sale, delivery, or unlawful disposition of alcoholic liquor to any person not authorized by the act to purchase or receive the same shall be sufficient to sustain the allegation of unlawful sale, delivery, or disposition.

**Source:** Laws 1935, c. 116, § 72, p. 411; C.S.Supp.,1941, § 53-372; R.S.1943, § 53-1,106; Laws 1978, LB 386, § 12; Laws 1991, LB 344, § 73.

**53-1,107 Complaint, indictment, or information; contents; sufficiency.**

In any indictment, information, complaint, or affidavit against any one or more individuals charging the violation of the Nebraska Liquor Control Act, separate offenses under the act may be joined in the same indictment, informa-



.....  
.....  
(Signature of complainant)

Subscribed and sworn to before me this ..... day of .....  
20.....

.....  
(Name of officer)  
.....  
(Official title of officer)

**Source:** Laws 1935, c. 116, § 78, p. 414; C.S.Supp.,1941, § 53-378;  
R.S.1943, § 53-1,108; Laws 1994, LB 859, § 15; Laws 2004, LB  
813, § 24.

**Cross References**

Search warrants, in general, see sections 29-812 to 29-821.

**53-1,109 Search warrants; contents; directed to peace officer.**

If the judge before whom any such complaint is made is satisfied that there is reasonable cause for such belief, he or she shall issue a warrant directed to any peace officer having jurisdiction, commanding him or her to enter the house, building, premises, boat, vehicle, receptacle, or other place described and designated with particularity and to make diligent and careful search for alcoholic liquor manufactured, possessed, or kept for sale, contrary to the Nebraska Liquor Control Act, and if any such alcoholic liquor is found, to seize the same, together with the vessels containing the same, and all property, implements, furniture, and vehicles kept or used for the purpose of violating, or with which to violate any of the provisions of the act, and to bring the same and any and all persons, if there are any, in whose possession they are found, before the judge who issued the warrant or some other judge having cognizance of the case.

**Source:** Laws 1935, c. 116, § 79, p. 415; C.S.Supp.,1941, § 53-379;  
R.S.1943, § 53-1,109; Laws 1994, LB 859, § 16.

**53-1,110 Arrest of persons found violating act.**

Nothing shall be construed to prevent any officer whose duty it is to make arrests from arresting with or without a warrant any person or persons found violating the Nebraska Liquor Control Act.

**Source:** Laws 1935, c. 116, § 80, p. 416; C.S.Supp.,1941, § 53-380;  
R.S.1943, § 53-1,110; Laws 1994, LB 859, § 17.

**53-1,111 Search warrants; search and seizure of property; sale; disposition of proceeds; arrests.**

Upon the issuance of any search warrant pursuant to section 53-1,108, it shall be the duty of the officers executing the same to enter the house, building, premises, boat, vehicle, receptacle, or other place described, either in the daytime or nighttime, by force if necessary and to remove and confiscate any alcoholic liquor manufactured, possessed, or kept for sale contrary to the terms of the Nebraska Liquor Control Act and any machinery, equipment, or material used in connection therewith and to hold such property until all prosecution arising out of such search and seizure shall have ended and determined. It shall be the duty of the officers executing such search warrant to arrest any person

or persons found using or in possession or control of such alcoholic liquor, articles, or things. All alcoholic liquor unlawfully manufactured, stored, kept, sold, or otherwise disposed of, and the containers thereof, and all equipment used or fit for use in the manufacture or production of the same which are found at or about any still or outfit for the unlawful manufacture of alcoholic liquor on unlicensed premises are hereby declared contraband, and no right of property shall be or exist in any person owning, furnishing, or possessing any such property, liquor, material, or equipment, but all such property, articles, and things, including alcoholic liquor, shall be sold upon an order of the court in the manner hereinafter provided, and the proceeds thereof shall be disposed of in the manner provided for the disposition of license money under the Constitution of Nebraska.

**Source:** Laws 1935, c. 116, § 80, p. 416; C.S.Supp.,1941, § 53-380; R.S.1943, § 53-1,111; Laws 1994, LB 859, § 18.

When an officer seizes alcoholic liquors under a search warrant, it is his duty to retain possession, where injunction to abate nuisance is pending, even though criminal complaint has been dismissed. Picard v. Steinacher, 135 Neb. 723, 283 N.W. 849 (1939).

**53-1,112 Search warrant; return; form and contents.**

Any officer executing a search warrant shall forthwith make his return thereon to the court or officer issuing such search warrant of the manner and date of his execution thereof, showing what, if anything, was seized and held by such search, together with the name of the owner or owners, if known, and shall attach to such return an accurate list or inventory of the articles and things so seized.

**Source:** Laws 1935, c. 116, § 80, p. 416; C.S.Supp.,1941, § 53-380; R.S.1943, § 53-1,112.

**53-1,113 Search warrant; sale of property seized; procedure; destruction, when required.**

It shall be the duty of the officer who has seized and is holding any of the property mentioned in section 53-1,111 to make application to the court on final determination of any prosecution arising under such search and seizure, and in which such prosecution has been commenced or prosecuted, for an order to sell such property. The court, if satisfied that the property so seized and held was at the time of its seizure being kept or used, or was fit for use in the unlawful manufacture or production of alcoholic liquor, shall make an order that such property and effects be sold by such officer and shall fix the time, place, manner, and notice of such sale. Nothing contained in the Nebraska Liquor Control Act shall be considered to authorize the sale of any alcoholic liquor unlawfully manufactured fit for human consumption which comes into the possession of any officer by seizure, confiscation, or forfeiture under the provisions of the act without the payment of all taxes and inspection fees required by the laws of this state and of the United States, and all such unlawfully manufactured alcoholic liquor which is unfit for human consumption shall be destroyed.

**Source:** Laws 1935, c. 116, § 80, p. 416; C.S.Supp.,1941, § 53-380; R.S.1943, § 53-1,113; Laws 1994, LB 859, § 19.

**53-1,114 Transferred to section 53-134.04.**

**53-1,115 Proceedings before commission; service upon parties; rehearings; costs.**

(1) A copy of the rule, regulation, order, or decision of the commission denying an application or suspending, canceling, or revoking a license or of any notice required by any proceeding before it, certified under the seal of the commission, shall be served upon each party of record to the proceeding before the commission. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the commission shall enter his or her appearance and indicate to the commission his or her address for such service. The mailing of a copy of any rule, regulation, order, or decision of the commission or of any notice by the commission, in the proceeding, to such party at such address shall be deemed to be service upon such party.

(2) Within thirty days after the service of any rule, regulation, order, or decision of the commission suspending, canceling, or revoking any license upon any party to the proceeding, as provided for by subsection (1) of this section, such party may apply for a rehearing with respect to any matters determined by the commission. The commission shall receive and consider such application for a rehearing within thirty days after its filing with the executive director of the commission. If such application for rehearing is granted, the commission shall proceed as promptly as possible to consider the matters presented by such application. No appeal shall be allowed from any decision of the commission except as provided in section 53-1,116.

(3) Upon final disposition of any proceeding, costs shall be paid by the party or parties against whom a final decision is rendered. Costs may be taxed or retaxed to local governing bodies as well as individuals. Only one rehearing referred to in subsection (2) of this section shall be granted by the commission on application of any one party.

(4) For purposes of this section, party of record means:

(a) In the case of an administrative proceeding before the commission on the application for a retail, craft brewery, or microdistillery license:

(i) The applicant;

(ii) Each individual protesting the issuance of such license pursuant to subdivision (1)(b) of section 53-133;

(iii) The local governing body if it is entering an appearance to protest the issuance of the license or if it is requesting a hearing pursuant to subdivision (1)(c) of section 53-133; and

(iv) The commission;

(b) In the case of an administrative proceeding before a local governing body to cancel or revoke a retail, craft brewery, or microdistillery license:

(i) The licensee; and

(ii) The local governing body; and

(c) In the case of an administrative proceeding before the commission to suspend, cancel, or revoke a retail, craft brewery, or microdistillery license:

(i) The licensee; and

(ii) The commission.

**Source:** Laws 1989, LB 781, § 15; Laws 1993, LB 183, § 17; Laws 1999, LB 267, § 16; Laws 2004, LB 485, § 30; Laws 2007, LB549, § 20.

**53-1,116 Appeal; procedure.**

Any order or decision of the commission granting, denying, suspending, canceling, revoking, or renewing or refusing to suspend, cancel, revoke, or renew a license, special designated permit, or permit for the sale of alcoholic liquor, including beer, may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1935, c. 116, § 90, p. 423; C.S.Supp.,1941, § 53-390; R.S.1943, § 53-1,116; Laws 1955, c. 207, § 1, p. 585; Laws 1976, LB 413, § 4; Laws 1980, LB 848, § 22; Laws 1983, LB 213, § 20; Laws 1984, LB 947, § 5; Laws 1986, LB 911, § 8; Laws 1988, LB 352, § 93; Laws 1988, LB 1089, § 29; Laws 1989, LB 781, § 16; Laws 1989, LB 780, § 14; Laws 1991, LB 344, § 74; Laws 1993, LB 183, § 18; Laws 1999, LB 267, § 17.

**Cross References**

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

This section, as amended by 1993 Neb. Laws, L.B. 183, is unenforceable. *Marting v. Nebraska Liquor Control Comm.*, 250 Neb. 134, 548 N.W.2d 326 (1996).

In proceedings in error, a reviewing court determines whether the liquor control commission acted within its jurisdiction and whether there is sufficient evidence as a matter of law to support the decision. *2301 Leavenworth v. Nebraska Liquor Control Comm.*, 244 Neb. 247, 505 N.W.2d 708 (1993).

The portion of this section amended by 1986 Neb. Laws, L.B. 911, is declared unconstitutional. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988).

For appeals pursuant to subsection (5) of this section, the district court may not disturb the decision of the Liquor Control Commission unless it was arbitrary and unreasonable. *R.D.B., Inc. v. Nebraska Liquor Control Comm.*, 229 Neb. 178, 425 N.W.2d 884 (1988).

Where district court sets aside order which denied issuance of liquor license, it should remand with directions to issue license. *Hadlock v. Nebraska Liquor Control Commission*, 193 Neb. 721, 228 N.W.2d 887 (1975).

The review of the discretion of the Nebraska Liquor Control Commission on appeal applies to the findings of fact and all applications of the law, including the penalty assessed. *Eleven Eighteen Co. v. Nebraska Liquor Control Commission*, 191 Neb. 572, 216 N.W.2d 720 (1974).

The statutory pattern for judicial review varies even for different types of decisions of the same agency. *The 20's Inc. v. Nebraska Liquor Control Commission*, 190 Neb. 761, 212 N.W.2d 344 (1973).

On trial de novo, courts should not reverse order of Nebraska Liquor Control Commission unless its action was unreasonable or arbitrary. *T & N P Co., Inc. v. Nebraska Liquor Control Commission*, 189 Neb. 708, 204 N.W.2d 809 (1973).

Under prior law, the procedure for appeal under this section is not applicable for an order of suspension by the Nebraska Liquor Control Commission, the procedure for such appeal being prescribed by section 84-917. *Happy Hour, Inc. v. Nebraska Liquor Control Commission*, 186 Neb. 533, 184 N.W.2d 630 (1971).

Under prior law, a suspension is not a revocation and is not governed by this section. *The Flamingo, Inc. v. Nebraska Liquor Control Commission*, 185 Neb. 22, 173 N.W.2d 369 (1969).

Under prior law, appeal to the courts is not provided from an order granting or refusing to grant a transfer of location of business. *City of Lincoln v. Nebraska Liquor Control Commission*, 181 Neb. 277, 147 N.W.2d 803 (1967).

Cited in making comparison of powers and duties of Liquor Control Commission with those of heads of executive departments. *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1946).

**53-1,117 Repealed. Laws 1991, LB 344, § 75.**

**53-1,118 Transferred to section 53-101.05.**

**53-1,119 Local law, ordinance, resolution, or rule; penalty for drinking or intoxication; prohibited.**

(1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) No county, municipality, or other political subdivision may interpret or apply any law of general application to circumvent subsection (1) of this section.

**Source:** Laws 1978, LB 593, § 2.

**53-1,120 Alcohol-related offenses; law, ordinance, resolution, or rule; effect.**

(1) Nothing in sections 53-1,119, 53-1,120, and 60-679 shall affect any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery, or other equipment or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons.

(2) The fact that a person is intoxicated or incapacitated by alcohol shall not prevent such person from being arrested or prosecuted for the commission of any criminal act or conduct not enumerated in subsection (1) of this section.

(3) No provision of such sections shall prevent such person from being taken into custody under the provisions of the Nebraska Mental Health Commitment Act as an alcoholic person who presents the risks enumerated in section 71-908.

(4) Nothing in sections 53-1,119, 53-1,120, and 60-679 shall be construed as a limitation upon the right of a police officer to make an otherwise legal arrest, even though the arrested person may be intoxicated or incapacitated by alcohol.

**Source:** Laws 1978, LB 593, § 3; Laws 1993, LB 370, § 45; Laws 2004, LB 1083, § 99.

**Cross References**

Nebraska Mental Health Commitment Act, see section 71-901.

**53-1,120.01 County resolution or city ordinance prohibiting smoking; not applicable to cigar bars.**

No county resolution or city ordinance that prohibits smoking in indoor areas shall apply to cigar bars.

**Source:** Laws 2009, LB355, § 5.

**53-1,121 Law enforcement officer; intoxicated person; removal; civil protective custody; procedure.**

(1) City police, county sheriffs, officers of the Nebraska State Patrol, and any other such law enforcement officer with power to arrest for traffic violations may take a person who is intoxicated and in the judgment of the officer dangerous to himself, herself, or others, or who is otherwise incapacitated, from any public or quasi-public property. An officer removing an intoxicated person from public or quasi-public property shall make a reasonable effort to take such intoxicated person to his or her home or to place such person in any hospital, clinic, alcoholism center, or with a medical doctor as may be necessary to preserve life or to prevent injury. Such effort at placement shall be deemed reasonable if the officer contacts those facilities or doctors which have previously represented a willingness to accept and treat such individuals and which regularly do accept such individuals. If such efforts are unsuccessful or are not feasible, the officer may then place such intoxicated person in civil

protective custody, except that civil protective custody shall be used only as long as is necessary to preserve life or to prevent injury, and under no circumstances for longer than twenty-four hours.

(2) The placement of such person in civil protective custody shall be recorded at the facility or jail to which he or she is delivered and communicated to his or her family or next of kin, if they can be located, or to such person designated by the person taken into civil protective custody.

(3) The law enforcement officer who acts in compliance with this section shall be deemed to be acting in the course of his or her official duty and shall not be criminally or civilly liable for such actions.

(4) The taking of an individual into civil protective custody under this section shall not be considered an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(5) For purposes of this section, public property shall mean any public right-of-way, street, highway, alley, park, or other state, county, or municipally owned property.

(6) For the purposes of this section, quasi-public property shall mean and include private or publicly owned property utilized for proprietary or business uses which invites patronage by the public or which invites public ingress and egress.

**Source:** Laws 1979, LB 376, § 2; Laws 1981, LB 87, § 1.

#### **53-1,122 Compliance checks; participation by minors; when.**

In order to further the public policy of deterring minors from illegally obtaining or consuming alcoholic liquor, persons under twenty-one years of age may be authorized to assist duly authorized law enforcement officers to determine compliance with sections 53-180 and 53-180.02. Such compliance checks shall be conducted pursuant to guidelines adopted and promulgated by the Nebraska State Patrol with input from the commission. Unless a person is an emancipated minor at least eighteen years of age, no person under twenty-one years of age shall be authorized to participate or assist law enforcement officers in such compliance checks without the written consent of his or her parents or legal guardian.

**Source:** Laws 2001, LB 114, § 7.

## **ARTICLE 2**

### **BEER DISTRIBUTION**

#### Section

- 53-201. Purpose of sections.
- 53-202. Definitions, where found.
- 53-203. Advertising, defined.
- 53-204. Agreement, defined.
- 53-205. Ancillary business, defined.
- 53-206. Control of a wholesaler's business, defined.
- 53-207. Designated member, defined.
- 53-208. Good faith, defined.
- 53-209. Reasonable qualifications, defined.
- 53-210. Retaliatory action, defined.
- 53-211. Sales territory, defined.
- 53-212. Substantial stockholder, substantial partner, and substantial member, defined.
- 53-213. Supplier, defined.

## Section

- 53-214. Transfer of the wholesaler's business, defined.  
53-215. Wholesaler, defined.  
53-216. Supplier; prohibited acts.  
53-217. Wholesaler; prohibited acts.  
53-218. Supplier; agreements; prohibited acts; changes or termination; procedures; quality control; temporary service interruption.  
53-219. Wholesaler's business; transfer; restrictions.  
53-220. Supplier; violations; compensation to wholesaler.  
53-221. Wholesaler; waiver of rights prohibited; dispute settlements.  
53-222. Applicability of sections; transfer of business; effect on agreements.  
53-223. Civil actions authorized; damages; jurisdiction.

**53-201 Purpose of sections.**

The purpose of sections 53-201 to 53-223 is to provide fair, efficient, and competitive distribution of beer by (1) regulating the termination, expiration, and renewal of distribution agreements between beer suppliers and beer wholesalers, (2) promoting a distribution system in which each beer wholesaler will devote reasonable efforts and resources to sales, distribution, and quality control of the beer it sells, (3) promoting the continued availability of good quality beer for the consumers of Nebraska through orderly marketing and vigorous interbrand competition, (4) preventing a beer supplier from unfairly depriving a beer wholesaler of the value of the investment the wholesaler made in its business in terms of money, time, effort, and skill, and (5) controlling the sale of malt beverages in this state and facilitating the lawful and orderly marketing of malt beverages pursuant to the police powers of this state.

**Source:** Laws 1989, LB 371, § 1.

**53-202 Definitions, where found.**

For purposes of sections 53-201 to 53-223, the definitions found in sections 53-203 to 53-215 shall be used.

**Source:** Laws 1989, LB 371, § 2.

**53-203 Advertising, defined.**

Advertising shall mean the commercial use of media forms used to make consumers aware of or familiar with the supplier's trademark, trade name, logo, slogan, colors, signs, or product. The term media forms shall include, but not be limited to, television, radio, newspaper, billboards, and point-of-sale signs produced by the supplier for use by the wholesaler. The terms promote, promotional, promotion, market, and marketing shall be considered separate and distinct from advertising in meaning and application.

**Source:** Laws 1989, LB 371, § 3.

**53-204 Agreement, defined.**

Agreement shall mean any agreement between a wholesaler and a supplier, whether oral or written, by which a wholesaler is granted the right to purchase and sell a brand or brands of beer sold by a supplier.

**Source:** Laws 1989, LB 371, § 4.

**53-205 Ancillary business, defined.**

Ancillary business shall mean a business owned by a wholesaler, by a substantial stockholder of a wholesaler, by a substantial partner of a wholesaler, or by a substantial member of a limited liability company, the primary business of which is directly related to the transporting, storing, or marketing of the brand or brands of beer of a supplier with whom the wholesaler has an agreement, or a business owned by a wholesaler, by a substantial stockholder of a wholesaler, by a substantial partner of a wholesaler, or by a substantial member of a limited liability company which recycles empty beverage containers.

**Source:** Laws 1989, LB 371, § 5; Laws 1993, LB 121, § 322.

**53-206 Control of a wholesaler's business, defined.**

Control of a wholesaler's business shall mean that combination of ownership interests which legally or in practical effect has the power to determine the policies under which the wholesaler's business shall be operated and shall include, but not be limited to, any change of ownership of twenty-five percent or more interest in the wholesaler's business or any change in the form of business entity being utilized by the wholesaler, including, but not limited to, a change from a sole proprietorship to a corporation.

**Source:** Laws 1989, LB 371, § 6.

**53-207 Designated member, defined.**

Designated member shall mean the spouse, child, grandchild, parent, brother, or sister of a deceased individual who owned an interest in a wholesaler who inherits the deceased individual's ownership interest under the terms of the deceased individual's will, who has otherwise succeeded the deceased individual in the wholesaler's business, or who inherits such ownership interest under the laws of intestate succession of this state. With respect to an incapacitated individual having an ownership interest in a wholesaler, the term shall mean the person appointed by the court as the conservator of such individual's property. The term shall also include the appointed and qualified personal representative and the testamentary trustee of a deceased individual having an ownership interest in a wholesaler.

**Source:** Laws 1989, LB 371, § 7.

**53-208 Good faith, defined.**

Good faith shall mean honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

**Source:** Laws 1989, LB 371, § 8; Laws 2005, LB 570, § 2.

**53-209 Reasonable qualifications, defined.**

Reasonable qualifications shall mean the standard of the reasonable criteria established and consistently used by the supplier for similarly situated Nebraska wholesalers that entered into, continued, or renewed an agreement with the supplier during a period of twenty-four months prior to the proposed transfer of the wholesaler's business or for similarly situated Nebraska wholesalers who have changed managers or designated managers during a period of twenty-four

months prior to the proposed change in the manager or successor manager of the wholesaler's business.

**Source:** Laws 1989, LB 371, § 9.

**53-210 Retaliatory action, defined.**

Retaliatory action shall include, but not be limited to, the refusal to continue an agreement or a material reduction in the quality of service or quantity of products available to a wholesaler under an agreement, which refusal or reduction is not made in good faith.

**Source:** Laws 1989, LB 371, § 10.

**53-211 Sales territory, defined.**

Sales territory shall mean an area of exclusive sales responsibility for the brand or brands and quality thereof granted to a wholesaler by a supplier as designated in an agreement between them.

**Source:** Laws 1989, LB 371, § 11.

**53-212 Substantial stockholder, substantial partner, and substantial member, defined.**

Substantial stockholder, substantial partner, or substantial member shall mean a stockholder of, partner in, or member of the wholesaler who owns fifty percent or more of the capital stock of a corporate wholesaler or of the partnership or the limited liability company.

**Source:** Laws 1989, LB 371, § 12; Laws 1993, LB 121, § 323.

**53-213 Supplier, defined.**

Supplier shall mean a manufacturer or importer of beer licensed by the State of Nebraska.

**Source:** Laws 1989, LB 371, § 13.

**53-214 Transfer of the wholesaler's business, defined.**

Transfer of the wholesaler's business shall mean the voluntary sale, assignment, or other transfer (1) of all or control of the wholesaler's business, (2) of all or substantially all of the assets of the wholesaler, or (3) of all or control of the capital stock of the wholesaler, including the sale or other transfer of capital stock or assets by merger, consolidation, or dissolution, or of the capital stock of the parent corporation, or of the capital stock or beneficial ownership of any other entity owning or controlling the wholesaler.

**Source:** Laws 1989, LB 371, § 14.

**53-215 Wholesaler, defined.**

Wholesaler shall mean a wholesaler of beer licensed by the State of Nebraska.

**Source:** Laws 1989, LB 371, § 15.

**53-216 Supplier; prohibited acts.**

A supplier shall not:

(1) Fail to provide each wholesaler of the supplier's brand or brands with a written agreement which contains the entire agreement with the wholesaler and designates a specific, exclusive sales territory. Any agreement which is in existence on April 18, 1989, shall be renewed in a manner consistent with sections 53-201 to 53-223, and the provisions of such sections may be incorporated by reference in the agreement. Nothing in such sections shall prevent a supplier from making a one-time appointment, for a period not to exceed ninety days, of a wholesaler to temporarily service a sales territory not designated to another wholesaler until such time as a wholesaler is appointed by the supplier. The wholesaler who is designated to service the sales territory during the period of temporary service shall not be in violation of such sections and, with respect to the temporary sales territory, shall not have any of the rights provided under sections 53-218 and 53-220. The temporary service period may be extended beyond ninety days by the Nebraska Liquor Control Commission if justifiable circumstances exist as determined by the commission;

(2) Fix, maintain, establish, or unduly influence the price at which a wholesaler shall be required to sell any beer;

(3) Enter into an additional agreement with any other wholesaler for or to sell to any other wholesaler the same brand or brands of beer in the same sales territory or any portion thereof or to sell directly to any retailer in this state;

(4) Coerce or attempt to coerce any wholesaler to accept delivery of any beer or other commodity which has not been ordered by the wholesaler, except that a supplier may impose reasonable inventory requirements upon a wholesaler if the requirements are made in good faith and are generally applied to other similarly situated Nebraska wholesalers having an agreement with the supplier;

(5) Coerce or attempt to coerce any wholesaler to accept delivery of any beer or other commodity ordered by a wholesaler if the order was canceled by the wholesaler in accordance with acceptable procedures;

(6) Coerce or attempt to coerce any wholesaler to do any illegal act or to violate any law, rule, or regulation by threatening to amend, modify, cancel, terminate, or refuse to renew any agreement existing between the supplier and wholesaler;

(7) Require a wholesaler to assent to any condition, stipulation, or provision limiting the wholesaler's right to sell the brand or brands of beer or other products of any other supplier unless the acquisition of the brand or brands or products of another supplier would materially impair or adversely affect the wholesaler's quality of service, sales, or ability to compete effectively in representing the brand or brands of the supplier presently being sold by the wholesaler. The supplier shall have the burden of proving that such acquisition of such other brand or brands or products would have such effect;

(8) Require a wholesaler to purchase one or more brands of beer or other products in order for the wholesaler to purchase another brand or brands of beer for any reason. A wholesaler that has agreed to distribute a brand or brands before April 18, 1989, shall continue to distribute the brand or brands in conformance with sections 53-201 to 53-223;

(9) Require a wholesaler to submit audited profit and loss statements, audited balance sheets, or audited financial records as a condition of renewal or continuation of an agreement. A supplier may require profit and loss statements, balance sheets, or financial records which are certified by the wholesaler or an officer thereof;

(10) Coerce, compel, or require a wholesaler to provide or divulge specific information regarding the wholesaler's individual accounts or customers or his or her exclusive relationship with them or coerce, compel, or require a wholesaler to provide specific information concerning competitive brands;

(11) Use the threat of losing or withholding its credit as a means of compelling a wholesaler to standards of performance in any area of business except that area directly relating to credit;

(12) Withhold delivery of beer ordered by a wholesaler or change a wholesaler's quota of a brand or brands if the withholding or change is not made in good faith;

(13) Require a wholesaler by any means directly to participate in or contribute to any local or national advertising fund controlled, directly or indirectly, by a supplier;

(14) Willfully discriminate, directly or indirectly, in price, programs, or terms of sale offered to franchisees if the effect of such discrimination may be to substantially lessen competition or to give to one holder of a franchise any economic, business, or competitive advantage not offered to all holders of the same or similar franchise. This subdivision shall not govern dock prices;

(15) Take any action against a wholesaler who files a complaint regarding an alleged violation by the supplier of a federal, state, or local law, rule, or regulation in retaliation for such complaint;

(16) Restrict or inhibit, directly or indirectly, the right of free association among wholesalers for any lawful purpose;

(17) Require or prohibit, without just cause, any change in the manager or successor manager of any wholesaler who has been approved by the supplier as of or subsequent to April 18, 1989. If a wholesaler changes an approved manager or successor manager, a supplier shall not require or prohibit the change unless the person selected by the wholesaler fails to meet the reasonable qualifications for managers of Nebraska wholesalers of the supplier, which reasonable qualifications previously have been consistently applied to similarly situated Nebraska wholesalers by the supplier. The supplier shall have the burden of proving that such person fails to meet such reasonable qualifications and that the qualifications have been consistently applied to similarly situated Nebraska wholesalers;

(18) Upon written notice of intent to transfer the wholesaler's business, interfere with, prevent, or unreasonably delay for a period of sixty days or more the transfer of the wholesaler's business if the proposed transferee is a designated member; or

(19) Upon written notice of intent to transfer the wholesaler's business other than to a designated member, withhold consent to or approval of, or unreasonably delay for a period of sixty days or more after receipt of all material information reasonably requested of the wholesaler a response to a request by the wholesaler for, any transfer of a wholesaler's business if the proposed transferee meets the reasonable qualifications required by the supplier for similarly situated Nebraska wholesalers. The supplier shall have the burden of proving that the proposed transferee fails to meet such reasonable qualifications and that the qualifications have been consistently applied to similarly situated Nebraska wholesalers.

**Source:** Laws 1989, LB 371, § 16.

**53-217 Wholesaler; prohibited acts.**

A wholesaler shall not:

(1) Fail to devote such efforts as are required in the agreement between the supplier and wholesaler within the supplier's designated sales territory relating to the sale and distribution of the supplier's brand or brands of beer which the wholesaler has been granted the right to sell or distribute;

(2) Sell or deliver beer to a retail licensee located outside the sales territory designated to the wholesaler by the supplier of a particular brand or brands of beer, except that during a period of temporary service interruption impacting a particular sales territory, a wholesaler who normally services the impacted sales territory shall file with the Nebraska Liquor Control Commission and give to the affected supplier written notice designating the specific wholesaler or wholesalers, not disapproved by the supplier, who will service the sales territory during the period of temporary service interruption and the approximate length of time of the service interruption. Each wholesaler designated to temporarily service a sales territory shall be a wholesaler who has a current agreement with a supplier for the brand or brands affected. When the temporary service interruption is over, the wholesaler who normally services the sales territory shall notify the commission, the supplier, and the wholesaler or wholesalers servicing the sales territory on a temporary basis of this fact in writing, and any wholesaler servicing the sales territory on a temporary basis shall cease servicing the sales territory upon receipt of the notice. A wholesaler who is designated to service a sales territory during a period of temporary service shall not be in violation of sections 53-201 to 53-223 and, with respect to the sales territory, shall not have any of the rights provided under sections 53-218 and 53-220; or

(3) Transfer his or her business without giving the supplier written notice of intent to transfer the business and, when required by sections 53-201 to 53-223, receiving the supplier's approval for the proposed transfer. Consent or approval from the supplier shall not be required for any transfer of the wholesaler's business to a designated member or any transfer of less than control of the wholesaler's business. The wholesaler shall give the supplier written notice of any change in ownership of the wholesaler.

**Source:** Laws 1989, LB 371, § 17.

**53-218 Supplier; agreements; prohibited acts; changes or termination; procedures; quality control; temporary service interruption.**

(1) Notwithstanding any agreement and except as otherwise provided for in sections 53-201 to 53-223, a supplier shall not amend or modify an agreement, cause a wholesaler to resign from an agreement, or cancel, terminate, fail to renew, or refuse to continue under an agreement unless the supplier has:

(a) Satisfied the applicable notice requirements of subsection (3) of this section;

(b) Acted in good faith; and

(c) Good cause for the amendment, modification, forced resignation, cancellation, termination, nonrenewal, or discontinuance.

(2) For each amendment, modification, cancellation, termination, nonrenewal, or discontinuance, the supplier shall have the burden of proving that it has acted in good faith, that the notice requirements under this section have been

complied with, and that there was good cause for the amendment, modification, cancellation, termination, nonrenewal, or discontinuance.

(3) Notwithstanding any agreement and except as to new products and as otherwise provided in this section and in addition to the time limits set forth in subdivision (4)(e) of this section, the supplier shall furnish written notice of the amendment, modification, cancellation, termination, nonrenewal, or discontinuance of an agreement to the wholesaler not less than thirty days before the effective date of the amendment, modification, cancellation, termination, nonrenewal, or discontinuance. The notice shall be sent by certified mail and shall contain:

(a) A statement of intention to amend, modify, cancel, terminate, not renew, or discontinue the agreement;

(b) A statement of the reason for the amendment, modification, cancellation, termination, nonrenewal, or discontinuance; and

(c) The date on which the amendment, modification, cancellation, termination, nonrenewal, or discontinuance shall take effect.

(4) Notwithstanding any agreement, good cause shall exist for the purposes of a cancellation, termination, nonrenewal, or discontinuance under subdivision (1)(c) of this section when:

(a) There is a failure by the wholesaler to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the wholesaler and the supplier;

(b) The supplier first acquired knowledge of the failure described in subdivision (a) of this subsection not more than twenty-four months before the date notification was given pursuant to subsection (3) of this section;

(c) The wholesaler was given notice by the supplier of failure to comply with the agreement within twenty-four months of such failure;

(d) The wholesaler was afforded a reasonable opportunity to assert good faith efforts to comply with the agreement within the time limits provided for in subdivision (e) of this subsection; and

(e) The wholesaler has been afforded thirty days in which to submit a plan of corrective action to comply with the agreement and an additional ninety days to cure such noncompliance in accordance with the plan.

(5) Notwithstanding subsections (1) and (3) of this section, a supplier may cancel, terminate, fail to renew, or discontinue an agreement immediately upon written notice given in the manner and containing the information required by subsection (3) of this section if:

(a) The wholesaler becomes insolvent, files or has filed against it a petition under any bankruptcy or receivership law, makes an assignment for the benefit of creditors, or is dissolved or liquidated and such action materially affects the wholesaler's ability to remain in business;

(b) The wholesaler's state or federal license is revoked or suspended by the appropriate regulatory agency and the wholesaler cannot service the wholesaler's sales territory for more than sixty-one days;

(c) The wholesaler or a partner, a member, or an individual who owns ten percent or more of the partnership, the limited liability company, or the stock of a corporate wholesaler has been convicted of a felony under the United States Code or the laws of any state which reasonably may adversely affect the

goodwill or interest of the wholesaler or supplier. An existing stockholder, partner, or member or a designated member shall have, subject to the provisions of sections 53-201 to 53-223, the right to purchase the partnership interest, the limited liability company member interest, or the stock of the offending partner or stockholder, and if the sale is completed prior to conviction, the provisions of this subdivision shall not apply; or

(d) The supplier and wholesaler agree to a termination.

(6) Notwithstanding subsections (1), (3), and (4) of this section, upon not less than fifteen days' written notice given in the manner and containing the information required by subsection (3) of this section, a supplier may cancel, terminate, fail to renew, or discontinue an agreement if:

(a) There was intentional fraudulent conduct relating to a material matter on the part of the wholesaler in dealings with the supplier or its producers. The supplier shall have the burden of proving intentional fraudulent conduct relating to a material matter on the part of the wholesaler;

(b) The wholesaler failed to confine its sales of a brand or brands to retailers in its designated sales territory. This subdivision shall not apply if there is a dispute between two or more wholesalers as to the boundaries of the assigned territory and the boundaries cannot be determined by a reading of the description contained in the agreements between the supplier and the wholesalers;

(c) A wholesaler who has failed to pay for beer ordered and delivered in accordance with established terms with the supplier fails to make full payment within two business days after receipt of written notice of the delinquency and demand for immediate payment from the supplier;

(d) A wholesaler intentionally has made a transfer of the wholesaler's business, other than a transfer to a designated member or pursuant to a loan agreement or debt instrument, without prior written notice to the supplier and has failed, within thirty days from the receipt of written notice from the supplier of its intent to terminate on the ground of such transfer, to reverse the transfer of the wholesaler's business;

(e) A wholesaler intentionally has made a transfer of his or her business, other than a transfer to a designated member, although the wholesaler has prior to the transfer received from the supplier a timely notice of disapproval of the transfer in accordance with sections 53-201 to 53-223; or

(f) The wholesaler intentionally ceases or ceases for a period of more than thirty-one days to carry on business with respect to any of the supplier's brand or brands previously serviced by a wholesaler in its sales territory designated by the supplier unless such cessation is due to a force beyond the control of the wholesaler or to a labor dispute and the wholesaler has made good faith efforts to overcome such events. This subdivision shall affect only that brand or brands with respect to which the wholesaler ceased to carry on business.

(7) Notwithstanding subsections (1), (3), (5), and (6) of this section, a supplier may cancel, terminate, not renew, or discontinue an agreement upon not less than thirty days' written notice if the supplier discontinues production or discontinues distribution in this state of all the brands sold by the supplier to the wholesaler. Nothing in this section shall prohibit a supplier from (a) upon not less than thirty days' written notice, discontinuing the distribution of any particular brand or package of beer or (b) conducting test marketing of a new brand of beer or of a brand of beer which is not currently being sold in this

state if the supplier has notified the Nebraska Liquor Control Commission in writing of its plans to test market. The notice to the commission shall describe the market area in which the test will be conducted, the name or names of the wholesaler or wholesalers who will be selling the beer, the name or names of the brand of beer being tested, and the period of time, not to exceed eighteen months, during which the testing will take place.

(8) Each wholesaler who sells beer to a retailer in this state shall service for the purpose of quality control all the beer it sells to that retailer. Each wholesaler shall, to the extent permitted by the Nebraska Liquor Control Act and the rules and regulations adopted and promulgated pursuant to such act:

(a) Rotate the beer it sold to a retailer no less frequently than may be specified from time to time by the brand owner so that beer produced first will be sold first;

(b) Clean and maintain tap equipment and provide related services as may be specified from time to time by the brand owner;

(c) Remove and replace with the same kind of beer any beer it sold to a retailer which has not been resold to a consumer within the time limits specified by the brand owner; and

(d) Provide whatever additional quality control services and comply with whatever additional quality control requirements are specified in writing from time to time by the brand owner, subject to the conditions that those services and requirements are reasonable and are reasonably related to promotion of quality control and that the wholesaler has received written notice of the services to be provided and the requirements to be satisfied and has been granted a reasonable time within which to comply.

(9) Except in the event of a temporary service interruption, a wholesaler shall not sell beer (a) to a retailer who does not have a location within the wholesaler's sales territory at which the retailer is entitled to resell beer to consumers or who the wholesaler knows or reasonably should know does not have a location within the wholesaler's sales territory at which the retailer is entitled to resell beer or (b) to any person who the wholesaler has reason to believe will sell or supply all or part of such beer to any retailer who does not have a location within the wholesaler's sales territory at which the retailer is entitled to resell beer. During a period of temporary service interruption impacting a particular wholesaler's sales territory, the wholesaler who normally services the sales territory shall file with the Nebraska Liquor Control Commission and serve on his or her suppliers a written notice stating that a temporary service interruption has occurred and indicating the anticipated duration of the temporary service interruption. After receiving such notice the supplier may designate another wholesaler or wholesalers to service the sales territory during the period of temporary service interruption. After the temporary service interruption, the wholesaler who normally services the sales territory shall file with the commission and serve on each wholesaler providing temporary service and each supplier a written notice stating that the temporary service interruption has ended. Each wholesaler providing temporary service shall cease servicing the sales territory after receiving such notice.

**Source:** Laws 1989, LB 371, § 18; Laws 1993, LB 121, § 324.

**Cross References**

Nebraska Liquor Control Act, see section 53-101.

**53-219 Wholesaler's business; transfer; restrictions.**

(1) Upon written notice of intent to transfer the wholesaler's business, any individual owning or personal representative of a deceased individual who owned an interest in a wholesaler's business may transfer the wholesaler's business to a designated member or to any other person who meets the reasonable qualifications required by the supplier for Nebraska wholesalers. The consent or approval of the supplier shall not be required of any transfer of the wholesaler's business, including the assignment of wholesaler's rights under the agreement, to a designated member except as provided in this subsection and shall not be withheld or unreasonably delayed to a proposed transferee other than a designated member who meets such reasonable qualifications. The supplier shall have the burden of proving that the proposed transferee fails to meet such reasonable qualifications and that the qualifications are consistently applied to Nebraska wholesalers by the supplier. A designated member or transferee shall not be qualified as a transferee without the written approval or consent of the supplier if such proposed transferee:

(a) Has been insolvent, has filed a voluntary or involuntary petition under any bankruptcy or receivership law, or has executed an assignment for the benefit of creditors;

(b) Has had a license issued under the Nebraska Liquor Control Act revoked or suspended for a period of sixty-one days or more;

(c) Has been convicted of a felony under the United States Code or the laws of any state which reasonably may adversely affect the goodwill or interest of the wholesaler or supplier; or

(d) Has had an agreement involuntarily canceled, terminated, not renewed, or discontinued by a supplier for good cause.

(2) The supplier shall not interfere with, prevent, or unreasonably delay the transfer of the wholesaler's business, including an assignment of wholesaler's rights under the agreement, if the proposed transferee is a designated member or if the transferee other than a designated member meets the reasonable qualifications required by the supplier for Nebraska wholesalers. When the transferee is other than a designated member, the supplier may, in good faith and for good cause related to the reasonable qualifications, refuse to accept the transfer of the wholesaler's business or the assignment of wholesaler's rights under the agreement. The supplier shall have the burden of proving that it has acted in good faith and that there was good cause for failure to accept or consent to the transfer of the wholesaler's business or the assignment of wholesaler's rights under the agreement.

**Source:** Laws 1989, LB 371, § 19.

**Cross References**

Nebraska Liquor Control Act, see section 53-101.

**53-220 Supplier; violations; compensation to wholesaler.**

A supplier that, in violation of section 53-218 or 53-219, (1) has amended, modified, canceled, terminated, or refused to renew any agreement, (2) has caused a wholesaler to resign from an agreement, or (3) has interfered with, prevented, or unreasonably delayed or, when required by sections 53-201 to 53-223, has unreasonably withheld or unreasonably delayed consent to or approval of any assignment or transfer of a wholesaler's business shall pay the

wholesaler reasonable compensation for the diminished value of the wholesaler's business, including any ancillary business which has been negatively affected by the act of the supplier. The value of the wholesaler's business or ancillary business shall include, but not be limited to, any goodwill. Nothing in such sections shall give rise to a claim against the supplier or wholesaler by any proposed purchaser of the wholesaler's business.

**Source:** Laws 1989, LB 371, § 20.

**53-221 Wholesaler; waiver of rights prohibited; dispute settlements.**

A wholesaler may not waive any of the rights granted in sections 53-201 to 53-223, and the provisions of any agreement which would have such an effect shall be null and void. Nothing in such sections shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

**Source:** Laws 1989, LB 371, § 21.

**53-222 Applicability of sections; transfer of business; effect on agreements.**

(1) Sections 53-201 to 53-223 shall apply to agreements in existence on April 18, 1989, and agreements entered into or renewed after such date.

(2) A transferee of a wholesaler that continues in business as a wholesaler shall have the benefit of and be bound by all terms and conditions of the agreement with the supplier in effect on the date of the transfer. A transfer of a wholesaler's business which requires the supplier's consent or approval but is disapproved by the supplier shall be null and void.

(3) A successor to a supplier that continues in business as a supplier shall be bound by all terms and conditions of each distribution agreement that the predecessor was a party to at the time of transfer with respect to each brand the successor continues to make available for sale in this state.

**Source:** Laws 1989, LB 371, § 22.

**53-223 Civil actions authorized; damages; jurisdiction.**

(1) If a supplier engages in conduct prohibited under sections 53-201 to 53-223, a wholesaler with whom the supplier has an agreement may maintain a civil action against the supplier to recover actual damages reasonably incurred as the result of the prohibited conduct. If a wholesaler engages in conduct prohibited under such sections, a supplier with whom the wholesaler has an agreement may maintain a civil action against the wholesaler to recover actual damages reasonably incurred as the result of the prohibited conduct.

(2) A supplier who violates any provision of such sections shall be liable for all actual damages, all court costs, and, in the court's discretion, reasonable attorney's fees incurred by a wholesaler as a result of the violation. A wholesaler who violates any provision of such sections shall be liable for all actual damages, all court costs, and, in the court's discretion, reasonable attorney's fees incurred by the supplier as a result of the violation.

(3) A supplier or wholesaler may bring an action for declaratory judgment for determination of any controversy arising pursuant to such sections.

(4) Upon proper application to the court, a supplier or wholesaler may obtain injunctive relief against any violation of such sections. If the court grants injunctive relief or issues a temporary restraining order, bond shall be posted.

(5) The remedies provided by such sections are not exclusive, and nothing contained in such sections shall abolish any cause of action or remedy available to the supplier or the wholesaler existing on April 18, 1989.

(6) Any legal action taken under such sections or relating to a dispute arising out of an agreement or breach thereof or over the provisions of an agreement shall be filed in a state or federal court located in Nebraska, which state court is located in, or which federal court has jurisdiction and venue of, the county in which the wholesaler maintains its principal place of business in this state.

**Source:** Laws 1989, LB 371, § 23.

### ARTICLE 3

#### NEBRASKA GRAPE AND WINERY BOARD

##### Section

53-301. Nebraska Grape and Winery Board; created.

53-302. Board; officers; terms; expenses.

53-303. Board; powers and duties.

53-304. Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.

53-305. Board; annual report.

##### **53-301 Nebraska Grape and Winery Board; created.**

(1) The Nebraska Grape and Winery Board is created. The board shall consist of five members to be appointed by the Governor on a nonpartisan basis. All board members shall be (a) citizens of Nebraska, (b) at least twenty-one years of age, and (c) either engaged in or previously engaged in wine or grape production or research in this state. At least two board members shall be members of the Nebraska Winery and Grape Growers Association. In addition, the Director of Agriculture and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources or their designees shall be ex officio members of the board but shall have no vote in board matters.

(2) Whenever a vacancy occurs on the board for any reason, the Governor shall appoint an individual to fill such vacancy pursuant to the qualifications set forth in subsection (1) of this section.

**Source:** Laws 2000, LB 477, § 1.

##### **53-302 Board; officers; terms; expenses.**

(1) Within thirty days after the appointment of the initial members of the Nebraska Grape and Winery Board, such board shall conduct its first regular meeting. During that meeting, the board members shall elect from among themselves, by majority vote, a chairperson, vice-chairperson, secretary, and treasurer, all to serve for terms of one year from the date of election. Subsequent board meetings shall take place at least once every six months and at such times as called by the chairperson or by any three board members.

(2) Each board member shall serve for a term of three years, upon completion of which he or she may, at the Governor's discretion, be reappointed.

(3) All voting board members shall be reimbursed for their actual and necessary expenses, as provided for in sections 81-1174 to 81-1177, while attending meetings of the board or while engaged in the performance of official responsibilities as determined by the board.

(4) A board member shall be removable by the Governor for cause. The board member shall first be given a written copy of the charges against him or her and also an opportunity to be heard publicly. In addition to all other causes, the failure of a board member to continue to meet any of the requirements for eligibility set out in section 53-301 shall be deemed sufficient cause for removal from office.

**Source:** Laws 2000, LB 477, § 2.

**53-303 Board; powers and duties.**

The duties and responsibilities of the Nebraska Grape and Winery Board include, but are not limited to, the following:

(1) To establish a public forum whereby any producer of wine, grapes, or other wine-producing agricultural products has the opportunity, at least once annually, to discuss with the board its policy and procedures;

(2) To keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the board and to make these records available for examination upon request by members of the public;

(3) To authorize and approve the Department of Agriculture's expenditure of funds collected pursuant to section 53-304;

(4) To serve as an advisory panel to the Nebraska Liquor Control Commission in all matters pertaining to the wine industry; and

(5) To adopt and promulgate rules and regulations to carry out sections 53-301 to 53-305.

**Source:** Laws 2000, LB 477, § 3.

**53-304 Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.**

Each Nebraska winery shall pay to the Nebraska Liquor Control Commission twenty dollars for every one hundred sixty gallons of juice produced or received by its facility. Gifts, grants, or bequests may be received for the support of the Nebraska Grape and Winery Board. Funds paid pursuant to the charge imposed by this section and funds received pursuant to subsection (4) of section 53-123.15 and from gifts, grants, or bequests shall be remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund which is hereby created. For administrative purposes, the fund shall be located in the Department of Agriculture. All revenue credited to the fund pursuant to the charge imposed by this section and excise taxes collected pursuant to section 2-5603 and any funds received as gifts, grants, or bequests and credited to the fund shall be used by the department, at the direction of and in cooperation with the board, to develop and maintain programs for the research and advancement of the growing, selling, marketing, and promotion of grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry. Such expenditures may include, but are not limited to, all necessary funding for the employment of experts in the fields of viticulture and enology, as deemed necessary by the board, and programs aimed at improving the promotion of all varieties of wines, grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry.

Funds credited to the fund shall be used for no other purposes than those stated in this section and any transfers authorized pursuant to section 2-5604. Any funds not expended during a fiscal year may be maintained in the fund for distribution or expenditure during subsequent fiscal years. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2000, LB 477, § 4; Laws 2003, LB 536, § 4; Laws 2007, LB441, § 7.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**53-305 Board; annual report.**

The Nebraska Grape and Winery Board shall make and publish an annual report on or before January 1 of each year, which report shall set forth in detail the following:

(1) The name and address of each board member and a copy of all rules and regulations adopted and promulgated by the board; and

(2) A detailed explanation of all programs for which the board approved funding that fiscal year, pursuant to section 53-304, for the research, discovery, promotion, and development of programs for the growing, production, and marketing of Nebraska wines, grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry.

Each annual report shall be presented to the Nebraska Liquor Control Commission within thirty days after its publication and made available also to any person who requests a copy. Except for the annual copy required by this section to be provided to the commission, the board may charge a nominal fee to cover the costs of printing and postage for making available copies of its annual reports.

**Source:** Laws 2000, LB 477, § 5.

**ARTICLE 4**

**MINOR ALCOHOLIC LIQUOR LIABILITY ACT**

**Section**

53-401. Act, how cited.

53-402. Purposes of act.

53-403. Terms, defined.

53-404. Cause of action authorized.

53-405. Defense.

53-406. Limitation on cause of action.

53-407. Damages.

53-408. Statute of limitation.

53-409. Effect of settlement and release; offset; joint and several liability; right of contribution.

**53-401 Act, how cited.**

Sections 53-401 to 53-409 shall be known and may be cited as the Minor Alcoholic Liquor Liability Act.

**Source:** Laws 2007, LB573, § 1.

**53-402 Purposes of act.**

The purposes of the Minor Alcoholic Liquor Liability Act are to prevent intoxication-related traumatic injuries, deaths, and other damages and to establish a legal basis for obtaining compensation for persons suffering damages as a result of provision or service of alcoholic liquor to minors under circumstances described in the act.

**Source:** Laws 2007, LB573, § 2.

**53-403 Terms, defined.**

For purposes of the Minor Alcoholic Liquor Liability Act:

- (1) Alcoholic liquor has the definition found in section 53-103.02;
- (2) Intoxication means an impairment of a person's mental or physical faculties as a result of his or her use of alcoholic liquor so as to diminish the person's ability to think and act in the manner of a reasonably prudent person in full possession of his or her faculties using reasonable care under the same or similar circumstances;
- (3) Licensee means a person holding a license issued under the Nebraska Liquor Control Act to sell alcoholic liquor at retail;
- (4) Minor has the definition found in section 53-103.23;
- (5) Retailer means a licensee, any agent or employee of the licensee acting within the scope and course of his or her employment, or any person who at the time of the events leading to an action under the Minor Alcoholic Liquor Liability Act was required to have a license issued under the Nebraska Liquor Control Act in order to sell alcoholic liquor at retail;
- (6) Service of alcoholic liquor means any sale, gift, or other manner of conveying possession of alcoholic liquor; and
- (7) Social host means a person who knowingly allows consumption of alcoholic liquor in his or her home or on property under his or her control by one or more minors. Social host does not include (a) a parent providing alcoholic liquor to only his or her minor child and to no other minors or (b) a religious corporation, organization, association, or society, and any authorized representative of such religious corporation, organization, association, or society, dispensing alcoholic liquor as part of any bona fide religious rite, ritual, or ceremony.

**Source:** Laws 2007, LB573, § 3; Laws 2010, LB861, § 79.

**Cross References**

Nebraska Liquor Control Act, see section 53-101.

**53-404 Cause of action authorized.**

Any person who sustains injury or property damage, or the estate of any person killed, as a proximate result of the negligence of an intoxicated minor shall have, in addition to any other cause of action available in tort, a cause of action against:

- (1) A social host who allowed the minor to consume alcoholic liquor in the social host's home or on property under his or her control;

(2) Any person who procured alcoholic liquor for the minor, other than with the permission and in the company of the minor's parent or guardian, when such person knew or should have known that the minor was a minor; or

(3) Any retailer who sold alcoholic liquor to the minor. The absolute defenses found in section 53-180.07 shall be available to a retailer in any cause of action brought under this section.

**Source:** Laws 2007, LB573, § 4.

#### **53-405 Defense.**

It shall be a complete defense in any action brought under the Minor Alcoholic Liquor Liability Act that the intoxication did not contribute to the negligent conduct.

**Source:** Laws 2007, LB573, § 5.

#### **53-406 Limitation on cause of action.**

No cause of action under the Minor Alcoholic Liquor Liability Act shall be available to the intoxicated person, his or her estate, or anyone whose claim is based upon injury to or death of the intoxicated person.

**Source:** Laws 2007, LB573, § 6.

#### **53-407 Damages.**

In an action under the Minor Alcoholic Liquor Liability Act, damages may be awarded for all actual damages, including damages for wrongful death, as in other tort actions.

**Source:** Laws 2007, LB573, § 7.

#### **53-408 Statute of limitation.**

Notwithstanding any other provision of law, any action under the Minor Alcoholic Liquor Liability Act shall be brought within four years after the occurrence causing the injury, property damage, or death.

**Source:** Laws 2007, LB573, § 8.

#### **53-409 Effect of settlement and release; offset; joint and several liability; right of contribution.**

(1) A plaintiff's settlement and release of one defendant in an action under the Minor Alcoholic Liquor Liability Act does not bar claims against any other defendant.

(2) The amount paid to a plaintiff in consideration for the settlement and release of a defendant in an action under the act shall be offset against all other subsequent judgments awarded to the plaintiff.

(3) The retailer, licensee, social host, person procuring alcoholic liquor for a minor, and minor who are defendants in an action brought under the act are jointly and severally liable in such action as provided in section 25-21,185.10 for those who act in concert to cause harm.

(4) In an action based on the act, the retailer, licensee, social host, person procuring alcoholic liquor for a minor, and minor shall have a right of contribution and not a right of subrogation from one another.

**Source:** Laws 2007, LB573, § 9.

**LIVESTOCK**

**CHAPTER 54**  
**LIVESTOCK**

Article.

1. Livestock Brand Act. 54-101 to 54-1,127.
2. Liens. 54-201 to 54-209.
3. Herd Laws. 54-301 to 54-315.
4. Estrays and Trespassing Animals. 54-401 to 54-425.
5. Food Supply Animal Veterinary Incentive Program Act. 54-501 to 54-508.
6. Dogs and Cats.
  - (a) Dogs. 54-601 to 54-616.
  - (b) Dangerous Dogs. 54-617 to 54-624.
  - (c) Commercial Dog and Cat Operator Inspection Act. 54-625 to 54-643.
  - (d) Dog and Cat Purchase Protection Act. 54-644 to 54-650.
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  - (e) Anthrax. 54-754 to 54-784.
  - (f) Import Control. 54-784.01 to 54-796.
  - (g) Livestock Certification Program. 54-797 to 54-7,103.
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8. Commercial Feed. 54-801 to 54-863.
9. Livestock Animal Welfare Act. 54-901 to 54-912.
10. Registration of Stallions and Jacks. Repealed.
11. Livestock Auction Market Act. 54-1101 to 54-1186.
12. Grazing Cattle of Another State. Repealed.
13. Brucellosis.
  - (a) General Provisions. 54-1301 to 54-1347. Repealed.
  - (b) Nebraska Swine Brucellosis Act. 54-1348 to 54-1366.
  - (c) Nebraska Bovine Brucellosis Act. 54-1367 to 54-1384.
14. Scabies. 54-1401 to 54-1413.
15. Hog Cholera.
  - (a) Destruction of Hogs. 54-1501 to 54-1512.
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17. Livestock Dealer Licensing Act. 54-1701 to 54-1711.
18. Sale of Livestock. 54-1801 to 54-1811.
19. Nebraska Meat and Poultry Inspection Law. 54-1901 to 54-1915.
20. Nebraska Livestock Market Act. Repealed.
21. Beef Industry Development. Repealed.
22. Pseudorabies. 54-2201 to 54-22,100.
23. Domesticated Cervine Animal Act. 54-2301 to 54-2324.
24. Livestock Waste Management Act. 54-2401 to 54-2438.
25. Controlled Substances Animal Welfare Act. 54-2501 to 54-2506.
26. Competitive Livestock Markets Act. 54-2601 to 54-2631.
27. Scrapie Control and Eradication Act. 54-2701 to 54-2761.
28. Livestock Production. 54-2801, 54-2802.

**LIVESTOCK**  
**ARTICLE 1**  
**LIVESTOCK BRAND ACT**

Section	
54-101.	Repealed. Laws 1999, LB 778, § 84.
54-101.01.	Repealed. Laws 1999, LB 778, § 84.
54-102.	Repealed. Laws 1999, LB 778, § 84.
54-103.	Repealed. Laws 1999, LB 778, § 84.
54-104.	Repealed. Laws 1999, LB 778, § 84.
54-104.01.	Repealed. Laws 1999, LB 778, § 84.
54-105.	Repealed. Laws 1999, LB 778, § 84.
54-106.	Repealed. Laws 1999, LB 778, § 84.
54-107.	Repealed. Laws 1999, LB 778, § 84.
54-108.	Repealed. Laws 1999, LB 778, § 84.
54-109.	Repealed. Laws 1999, LB 778, § 84.
54-109.01.	Repealed. Laws 1999, LB 778, § 84.
54-110.	Repealed. Laws 1999, LB 778, § 84.
54-111.	Repealed. Laws 1957, c. 236, § 1.
54-112.	Repealed. Laws 1999, LB 778, § 84.
54-113.	Repealed. Laws 1980, LB 797, § 27.
54-114.	Repealed. Laws 1999, LB 778, § 84.
54-115.	Repealed. Laws 1999, LB 778, § 84.
54-116.	Repealed. Laws 1999, LB 778, § 84.
54-117.	Repealed. Laws 1999, LB 778, § 84.
54-118.	Repealed. Laws 1999, LB 778, § 84.
54-119.	Repealed. Laws 1999, LB 778, § 84.
54-120.	Repealed. Laws 1963, c. 317, § 2.
54-121.	Repealed. Laws 1999, LB 778, § 84.
54-122.	Repealed. Laws 1963, c. 317, § 2.
54-123.	Repealed. Laws 1963, c. 317, § 2.
54-124.	Repealed. Laws 1979, LB 564, § 21.
54-125.	Repealed. Laws 1999, LB 778, § 84.
54-126.	Repealed. Laws 1999, LB 778, § 84.
54-127.	Repealed. Laws 1971, LB 323, § 25.
54-128.	Repealed. Laws 1979, LB 564, § 21.
54-129.	Repealed. Laws 1999, LB 778, § 84.
54-130.	Repealed. Laws 1999, LB 778, § 84.
54-131.	Repealed. Laws 1999, LB 778, § 84.
54-132.	Repealed. Laws 1999, LB 778, § 84.
54-133.	Repealed. Laws 1999, LB 778, § 84.
54-133.01.	Repealed. Laws 1999, LB 778, § 84.
54-133.02.	Repealed. Laws 1980, LB 797, § 27.
54-133.03.	Repealed. Laws 1999, LB 778, § 84.
54-134.	Repealed. Laws 1999, LB 778, § 84.
54-134.01.	Repealed. Laws 1980, LB 797, § 27.
54-134.02.	Repealed. Laws 1980, LB 797, § 27.
54-134.03.	Repealed. Laws 1980, LB 797, § 27.
54-134.04.	Repealed. Laws 1980, LB 797, § 27.
54-134.05.	Repealed. Laws 1980, LB 797, § 27.
54-134.06.	Repealed. Laws 1980, LB 797, § 27.
54-134.07.	Repealed. Laws 1996, LB 1174, § 9.
54-134.08.	Repealed. Laws 1980, LB 797, § 27.
54-135.	Repealed. Laws 1999, LB 778, § 84.
54-135.01.	Repealed. Laws 1999, LB 778, § 84.
54-136.	Repealed. Laws 1999, LB 778, § 84.
54-137.	Repealed. Laws 1999, LB 778, § 84.
54-137.01.	Repealed. Laws 1999, LB 778, § 84.
54-137.02.	Repealed. Laws 1980, LB 797, § 27.
54-138.	Repealed. Laws 1999, LB 778, § 84.
54-139.	Repealed. Laws 1969, c. 450, § 21.
54-140.	Repealed. Laws 1999, LB 778, § 84.

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54-141.	Repealed. Laws 1999, LB 778, § 84.
54-141.01.	Repealed. Laws 1985, LB 16, § 1.
54-142.	Repealed. Laws 1999, LB 778, § 84.
54-143.	Repealed. Laws 1999, LB 778, § 84.
54-143.01.	Repealed. Laws 1999, LB 778, § 84.
54-143.02.	Repealed. Laws 1999, LB 778, § 84.
54-144.	Repealed. Laws 1999, LB 778, § 84.
54-145.	Repealed. Laws 1971, LB 323, § 25.
54-145.01.	Repealed. Laws 1999, LB 778, § 84.
54-145.02.	Repealed. Laws 1999, LB 778, § 84.
54-145.03.	Repealed. Laws 1999, LB 778, § 84.
54-145.04.	Repealed. Laws 1999, LB 778, § 84.
54-145.05.	Repealed. Laws 1999, LB 778, § 84.
54-145.06.	Repealed. Laws 1999, LB 778, § 84.
54-146.	Repealed. Laws 1971, LB 323, § 25.
54-147.	Repealed. Laws 1999, LB 778, § 84.
54-147.01.	Repealed. Laws 1999, LB 778, § 84.
54-148.	Repealed. Laws 1999, LB 778, § 84.
54-149.	Repealed. Laws 1971, LB 323, § 25.
54-150.	Repealed. Laws 1999, LB 778, § 84.
54-151.	Repealed. Laws 1981, LB 545, § 52.
54-152.	Repealed. Laws 1999, LB 778, § 84.
54-153.	Repealed. Laws 1999, LB 778, § 84.
54-153.01.	Repealed. Laws 1999, LB 778, § 84.
54-153.02.	Repealed. Laws 1999, LB 778, § 84.
54-153.03.	Repealed. Laws 1999, LB 778, § 84.
54-154.	Repealed. Laws 1969, c. 450, § 21.
54-155.	Repealed. Laws 1999, LB 778, § 84.
54-156.	Repealed. Laws 1999, LB 778, § 84.
54-157.	Transferred to section 54-1522.
54-158.	Transferred to section 54-1523.
54-159.	Repealed. Laws 1999, LB 778, § 84.
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**54-101.01 Repealed. Laws 1999, LB 778, § 84.**

**54-102 Repealed. Laws 1999, LB 778, § 84.**

**54-103 Repealed. Laws 1999, LB 778, § 84.**

**54-104 Repealed. Laws 1999, LB 778, § 84.**

**54-104.01 Repealed. Laws 1999, LB 778, § 84.**

**54-105 Repealed. Laws 1999, LB 778, § 84.**

- 54-106 Repealed. Laws 1999, LB 778, § 84.
- 54-107 Repealed. Laws 1999, LB 778, § 84.
- 54-108 Repealed. Laws 1999, LB 778, § 84.
- 54-109 Repealed. Laws 1999, LB 778, § 84.
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- 54-134.04 Repealed. Laws 1980, LB 797, § 27.
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- 54-134.06 Repealed. Laws 1980, LB 797, § 27.
- 54-134.07 Repealed. Laws 1996, LB 1174, § 9.
- 54-134.08 Repealed. Laws 1980, LB 797, § 27.
- 54-135 Repealed. Laws 1999, LB 778, § 84.
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- 54-136 Repealed. Laws 1999, LB 778, § 84.
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- 54-137.01 Repealed. Laws 1999, LB 778, § 84.
- 54-137.02 Repealed. Laws 1980, LB 797, § 27.
- 54-138 Repealed. Laws 1999, LB 778, § 84.
- 54-139 Repealed. Laws 1969, c. 450, § 21.
- 54-140 Repealed. Laws 1999, LB 778, § 84.
- 54-141 Repealed. Laws 1999, LB 778, § 84.
- 54-141.01 Repealed. Laws 1985, LB 16, § 1.
- 54-142 Repealed. Laws 1999, LB 778, § 84.
- 54-143 Repealed. Laws 1999, LB 778, § 84.
- 54-143.01 Repealed. Laws 1999, LB 778, § 84.
- 54-143.02 Repealed. Laws 1999, LB 778, § 84.
- 54-144 Repealed. Laws 1999, LB 778, § 84.
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54-146 Repealed. Laws 1971, LB 323, § 25.  
54-147 Repealed. Laws 1999, LB 778, § 84.  
54-147.01 Repealed. Laws 1999, LB 778, § 84.  
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54-153.02 Repealed. Laws 1999, LB 778, § 84.  
54-153.03 Repealed. Laws 1999, LB 778, § 84.  
54-154 Repealed. Laws 1969, c. 450, § 21.  
54-155 Repealed. Laws 1999, LB 778, § 84.  
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54-167 Repealed. Laws 1999, LB 778, § 84.  
54-168 Repealed. Laws 1999, LB 778, § 84.  
54-169 Repealed. Laws 1999, LB 778, § 84.  
54-170 Act, how cited.

Sections 54-170 to 54-1,127 shall be known and may be cited as the Livestock Brand Act.

**Source:** Laws 1999, LB 778, § 1; Laws 2000, LB 213, § 3.

**54-171 Definitions; where found.**

For purposes of the Livestock Brand Act, the definitions found in sections 54-172 to 54-190 shall be used.

**Source:** Laws 1999, LB 778, § 2.

**54-172 Bill of sale, defined.**

Bill of sale means a formal instrument for the conveyance or transfer of title to livestock or other goods and chattels. The bill of sale shall state the buyer's name and address, the date of transfer, the guarantee of title, the number of livestock transferred, the sex of such livestock, the brand or brands, the location of the brand or brands or a statement to the effect that the animal is unbranded, and the name and address of the seller. The signature of the seller shall be attested by at least one witness or acknowledged by a notary public or by some other officer authorized by state law to take acknowledgments. A properly executed bill of sale means a bill of sale that is provided by the seller and received by the buyer.

**Source:** Laws 1999, LB 778, § 3.

**54-173 Brand clearance, defined.**

Brand clearance means the documentary evidence of ownership that is issued and signed by a brand inspector and given to persons who have legally purchased cattle at a livestock auction or sale where a brand inspection service is provided. The brand clearance shall give the name and address of sale or auction where issued, the name of purchaser, the number and sex of cattle, the brands, if any, and the location on the cattle.

**Source:** Laws 1999, LB 778, § 4.

**54-174 Brand inspection agency, defined.**

Brand inspection agency means an agency of a state, or a duly organized livestock association of a state, authorized by state law and registered with the Packers and Stockyards Division of the United States Department of Agriculture to charge and collect, at designated stockyards, packing plants, sales barns, or farm and ranch loading points, a reasonable and nondiscriminatory fee for the inspection of brands, marks, and other identifying characteristics of livestock originating in or shipped from such state for the purpose of determining the ownership of such livestock.

**Source:** Laws 1999, LB 778, § 5.

**54-175 Brand inspection area, defined.**

Brand inspection area means that portion of the State of Nebraska designated in section 54-1,109, where brand inspection is mandatory.

**Source:** Laws 1999, LB 778, § 6.

**54-176 Brand inspector, defined.**

Brand inspector means a person employed by the Nebraska Brand Committee, or some other brand inspection agency, inside or outside of the State of Nebraska, for the purpose of identifying brands, marks, or other identifying characteristics of livestock to determine the existence of such brands, marks, or identifying characteristics and from such determinations attempt to establish correct and true ownership of such livestock, and generally carry out the provisions and enforcement of all laws pertaining to brands, brand inspection, and associated livestock laws.

**Source:** Laws 1999, LB 778, § 7.

**54-177 Carcass, defined.**

Carcass means the body, or part thereof but not less than one-fourth of a body, of any dead or slaughtered livestock.

**Source:** Laws 1999, LB 778, § 8.

**54-178 Cattle, defined.**

Cattle means bovine cattle only and does not relate to or include any other kind of animal.

**Source:** Laws 1999, LB 778, § 9.

**54-179 Certificate of inspection, defined.**

Certificate of inspection means the official document issued and signed by a brand inspector authorizing (1) movement of livestock from a point of origin within the brand inspection area to a destination either inside or outside of the brand inspection area or outside of this state, (2) slaughter of livestock as specified on such certificate, or (3) the change of ownership of livestock as specified on such certificate. A certificate of inspection shall designate, as needed, the name of the shipper, consignor, or seller of the livestock, the purchaser or consignee of the livestock, the destination of the livestock, the method of transportation, the vehicle license number or railroad car number when available, the miles driven by an inspector to perform inspection, the amount of inspection fees collected, the number and sex of the livestock to be moved or slaughtered, the brands, if any, on the livestock, and the brand owner. A certificate of inspection shall be construed and is intended to be documentary evidence of ownership on all livestock covered by such document.

**Source:** Laws 1999, LB 778, § 10.

**54-180 Estray, defined.**

Estray means any livestock found running at large upon public or private lands, either fenced or unfenced, whose owner is unknown in the area where found, any such livestock which is branded with a brand which is not on record in the office of the Nebraska Brand Committee, or any livestock for which ownership has not been established as provided in section 54-1,118.

**Source:** Laws 1999, LB 778, § 11.

**54-181 Freeze brand, defined.**

Freeze brand means a mark or brand that is created on a live animal in a depigmentation technique, whereby the pigment-producing cells in the skin of an animal are destroyed by the application of intense cold to the skin area.

**Source:** Laws 1999, LB 778, § 12.

**54-182 Investigator, defined.**

Investigator means an employee of the Nebraska Brand Committee who is also a deputy state sheriff and has the duty, responsibility, and authority to enforce all state statutes pertaining to brands, brand inspection, and associated livestock laws. An investigator is also responsible for the investigation of all problems associated with brands, brand inspection, and associated livestock enforcement problems.

**Source:** Laws 1999, LB 778, § 13.

Failure to give cautionary instruction with reference to testimony of investigator for Nebraska Brand Committee was not reversible error. State v. Nelson, 182 Neb. 31, 152 N.W.2d 10 (1967).

**54-183 Livestock, defined.**

Livestock means any domestic cattle, horses, mules, donkeys, sheep, or swine.

**Source:** Laws 1999, LB 778, § 14.

Dogs are not livestock and the care or production of dogs cannot be included in the term animal husbandry. City of Beatrice v. Goodenkauf, 219 Neb. 756, 366 N.W.2d 411 (1985).

**54-184 Mark, defined.**

A mark means a physical identification that includes, but is not limited to, visible characteristics on an animal such as a natural, accidental, or manmade blemish that sets apart a particular animal from all others. Such marks include, but are not limited to, hair coloration, scars, brands, earmarks, or tattoos.

**Source:** Laws 1999, LB 778, § 15.

**54-185 Market agency, defined.**

Market agency means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services, meaning services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivering, shipping, weighing, or handling, in commerce, of livestock.

**Source:** Laws 1999, LB 778, § 16.

**54-186 Open market, defined.**

Open market means a sales barn, market agency, stockyard, packing plant, or terminal market located outside of the brand inspection area or located outside of this state where brand inspection is maintained either by employees of the Nebraska Brand Committee or by some other state under a reciprocal agreement as allowed under the federal Packers and Stockyards Act, 1921, 7 U.S.C. 181 et seq., as amended.

**Source:** Laws 1999, LB 778, § 17.

**54-187 Person, defined.**

Person means any individual, partnership, limited liability company, corporation, association, firm, or agents or servants of an individual or business entity.

**Source:** Laws 1999, LB 778, § 18.

**54-188 Registered feedlot, defined.**

Registered feedlot means a feedlot registered under section 54-1,120.

**Source:** Laws 1999, LB 778, § 19.

**54-189 Satisfactory evidence of ownership, defined.**

Satisfactory evidence of ownership consists of the brands, tattoos, or marks on the livestock; point of origin of livestock; the physical description of the livestock; the documentary evidence, such as bills of sale, brand clearance, certificates of inspection, breed registration certificates, animal health or testing certificates, recorded brand certificates, purchase sheets, scale tickets, disclaimers of interest, affidavits, court orders, security agreements, powers of attorney, canceled checks, bills of lading, or tags; and such other facts, statements, or circumstances that taken in whole or in part cause an inspector to believe that proof of ownership is established.

**Source:** Laws 1999, LB 778, § 20.

**54-190 Tattoo, defined.**

Tattoo means the conspicuous curvilinear marks or patterns brought about by pricking a pigment coloration into the skin of an animal by using a needle or similar device or the act of marking, coloring, or pricking into the skin of an animal coloring matter or ink which forms an indelible mark or figure.

**Source:** Laws 1999, LB 778, § 21.

**54-191 Nebraska Brand Committee; created; members; terms; vacancy; bond or insurance; expenses; purpose.**

The Nebraska Brand Committee is hereby created. Beginning August 28, 2007, the brand committee shall consist of five members appointed by the Governor. At least three appointed members shall be active cattlemen and at least one appointed member shall be an active cattle feeder. The Secretary of State and the Director of Agriculture, or their designees, shall be nonvoting, ex officio members of the brand committee. The appointed members shall be owners of cattle within the brand inspection area, shall reside within the brand inspection area, shall be owners of Nebraska-recorded brands, and shall be persons whose principal business and occupation is the raising or feeding of cattle within the brand inspection area. The members of the brand committee shall elect a chairperson and vice-chairperson from among its appointed members during the first meeting held after September 1 each calendar year. A member may be reelected to serve as chairperson or vice-chairperson. The Secretary of State shall remain a member of the brand committee in the capacity as chairperson of the brand committee until a chairperson is elected as provided in this section. The terms of the members shall be four-year, staggered terms. At the expiration of the term of an appointed member, the Governor shall appoint a successor. The members of the brand committee serving on August 28, 2007, shall be considered appointed to serve the remainder of their

terms. The Governor shall complete any additional appointment of members as necessary to fulfill the membership of the brand committee as prescribed by Laws 2007, LB 422, on or before August 28, 2007. If there is a vacancy on the brand committee, the Governor shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. The action of a majority of the members shall be deemed the action of the brand committee. No appointed member shall hold any elective or appointive state or federal office while serving as a member of the brand committee. Each member and each brand committee employee who collects or who is the custodian of any funds shall be bonded or insured as required under section 11-201. The appointed members of the brand committee shall be paid their actual and necessary traveling expenses in attending meetings of the brand committee or in performing any other duties that are prescribed in the Livestock Brand Act or section 54-415, as provided for in sections 81-1174 to 81-1177.

The purpose of the Nebraska Brand Committee is to protect Nebraska brand and livestock owners from the theft of livestock through established brand recording, brand inspection, and livestock theft investigation.

**Source:** Laws 1999, LB 778, § 22; Laws 2004, LB 884, § 26; Laws 2007, LB422, § 1.

**54-192 Nebraska Brand Committee; employees; director; duties; brand recorder; grievance procedure.**

(1) The Nebraska Brand Committee shall employ such employees as may be necessary to properly carry out the Livestock Brand Act and section 54-415, fix the salaries of such employees, and make such expenditures as are necessary to properly carry out such act and section. Employees of the brand committee shall receive mileage computed at the rate provided in section 81-1176. The brand committee shall select and designate a location or locations where the brand committee shall keep and maintain an office and where records of the brand inspection and investigation proceedings, transactions, communications, brand registrations, and official acts shall be kept.

(2) The brand committee shall employ a director as the executive officer of the brand committee, and the director shall also be the chief brand inspector, the chief investigator, and, for administrative purposes, the brand committee head. The director shall keep a record of all proceedings, transactions, communications, and official acts of the brand committee, shall be custodian of all records of the brand committee, and shall perform such other duties as may be required by the brand committee. The director shall call a meeting at the direction of the chairperson of the brand committee, or in his or her absence the vice-chairperson, or upon the written request of two or more members of the brand committee. The director shall have supervisory authority to direct and control all full-time and part-time employees of the brand committee. This authority allows the director to hire employees as are needed on an interim basis subject to approval or confirmation by the brand committee for regular employment. The director may place employees on probation and may discharge an employee. In the absence of the director, by reason of illness, vacation, or official business away from the committee's headquarters, the assistant director shall have similar authority as outlined in this section for the director.

(3) The brand committee shall employ a brand recorder who shall be responsible for the processing of all applications for new livestock brands, the transfer of ownership of existing livestock brands, the maintenance of accurate and permanent records relating to livestock brands, and such other duties as may be required by the brand committee.

(4) If any employee of the brand committee after having been disciplined, placed on probation, or having had his or her services terminated desires to have a hearing before the entire brand committee, such a hearing shall be granted as soon as is practicable and convenient for all persons concerned. The request for such a hearing shall be made in writing by the employee alleging the grievance and shall be directed to the director. After hearing all testimony surrounding the grievance of such employee, the brand committee, at its discretion, may approve, rescind, nullify, or amend all actions as previously taken by the director.

**Source:** Laws 1999, LB 778, § 23; Laws 2007, LB422, § 2.

#### **54-193 Nebraska Brand Committee; brand publication.**

The Nebraska Brand Committee shall periodically have published in book form, electronic medium, or such other method prescribed by the committee a list of all brands recorded with the brand committee at the time of such publication. Such publication may be supplemented from time to time. The publication shall contain a facsimile of all recorded brands, together with the owner's name and post office address, and shall be arranged in convenient form for reference. The brand committee shall send, without any charge, the publication as required by section 51-413 to the Nebraska Publications Clearinghouse and shall provide the publication to each inspector of record and to the county sheriff of each county in the State of Nebraska, which shall be kept as a matter of public record. The publication may be sold to the general public for a price equal to or less than the actual cost of production.

**Source:** Laws 1999, LB 778, § 24; Laws 2002, LB 589, § 1.

#### **54-194 Documents; signature and seal requirements.**

The director of the Nebraska Brand Committee or the chairperson of the brand committee shall have the authority to sign all certificates and other documents that may by law require certification by signature. Such documents shall include, but not be limited to, new brand certificates, brand transfer certificates, duplicate brand certificates, and brand renewal receipts. A facsimile of the brand committee seal and the signature of the brand recorder shall also be placed on all brand certificates.

**Source:** Laws 1999, LB 778, § 25; Laws 2007, LB422, § 3.

#### **54-195 Promotional materials and assessments.**

(1) The Nebraska Brand Committee may authorize and direct its employees to disseminate or otherwise distribute various materials promoting the cattle industry.

(2) The brand committee may contract to collect assessments made by any public, quasi-public, or private agency or organization on the sale of cattle, beef, and beef products in Nebraska by producers and importers of such cattle, beef, and beef products. The brand committee may charge such agency or

organization for collection of the assessments. The charge for collection of assessments shall be used to cover administrative costs of the brand committee, but such charge shall not exceed five percent of the assessments collected.

**Source:** Laws 1999, LB 778, § 26.

#### **54-196 Rules and regulations.**

The Nebraska Brand Committee may adopt and promulgate rules and regulations to carry out the Livestock Brand Act and section 54-415.

**Source:** Laws 1999, LB 778, § 27.

Delegation of power to make rules and regulations was essential to complete exercise of powers conferred. *Satterfield v. State*, 172 Neb. 275, 109 N.W.2d 415 (1961).

#### **54-197 Nebraska Brand Inspection and Theft Prevention Fund; created; use; investment.**

The Nebraska Brand Inspection and Theft Prevention Fund is created. Fees and money collected pursuant to the Livestock Brand Act not otherwise provided for in the act shall be remitted to the State Treasurer for credit to the fund. The fund shall be used by the Nebraska Brand Committee in the administration and enforcement of the act and section 54-415. All expenses and salaries provided for under such act or incurred by reason thereof shall be paid out 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.

**Source:** Laws 1999, LB 778, § 28.

#### **Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

#### **54-198 Recorded livestock brand; requirements; in-herd identification; prohibited act.**

(1) Any person having livestock may record a brand, which he or she has the exclusive right to use in this state, and it is unlawful to use any brand for branding any livestock unless the person using such brand has recorded that brand with the Nebraska Brand Committee. A brand is a mark consisting of symbols, characters, numerals, or a combination of such intended as a visual means of identification when applied to the hide of an animal or another method of livestock identification approved by rule and regulation of the brand committee, including an electronic device used for livestock identification. Only a hot iron or freeze brand or other method approved by the brand committee shall be used to brand a live animal.

(2) A hot iron brand or freeze brand may be used for in-herd identification purposes such as for year or production records. With respect to hot iron brands used for in-herd identification, the numerals 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9 in singular or triangular position are reserved on both the right and left shoulder of all cattle, except that such shoulder location for a single-number hot iron brand may be used for year branding for in-herd identification purposes, and an alphabetical letter may be substituted for one of the numerals used in a triangular configuration for in-herd identification purposes. Hot iron brands used for in-herd identification shall be used in conjunction with the

recorded hot iron brand and shall be on the same side of the animal as the recorded hot iron brand. Freeze branding for in-herd identification may be applied in any location and any configuration with any combination of numerals or alphabetical letters.

(3) It shall be unlawful to knowingly maintain a herd containing one or more animals which the possessor has branded, or caused to be branded, in violation of this section or any other provision of the Livestock Brand Act.

**Source:** Laws 1999, LB 778, § 29; Laws 2000, LB 213, § 4; Laws 2002, LB 589, § 2.

**54-199 Livestock brand; application; fee; requirements; issuance.**

(1) To record a brand, a person shall forward to the Nebraska Brand Committee a facsimile or description of the brand desired to be recorded, a written application, and a recording fee established by the brand committee. Such recording fee may vary according to the number of locations and methods of brand requested but shall not be more than one hundred dollars per application.

(2) For recording of visual brands, upon receipt of a facsimile of the brand, an application, and the required fee, the brand committee shall determine compliance with the following requirements:

(a) The brand shall be an identification mark that is applied to the hide of a live animal by hot iron branding or by either hot iron branding or freeze branding. The brand shall be on either side of the animal in any one of three locations, the shoulder, ribs, or hip;

(b) The brand is not recorded under the name of any other person and does not conflict with or closely resemble a prior recorded brand;

(c) The brand application specifies the left or right side of the animal and the location on that side of the animal where the brand is to be placed;

(d) The brand is not recorded as a trade name nor as the name of any profit or nonprofit corporation, unless such trade name or corporation is of record, in current good standing, with the Secretary of State; and

(e) The brand is, in the judgment of the brand committee, legible, adequate, and of such a nature that the brand when applied can be properly read and identified by employees of the brand committee.

(3) All visual brands shall be recorded as a hot iron brand only unless a co-recording as a freeze brand or other approved method of branding is requested by the applicant. The brand committee shall approve co-recording a brand as a freeze brand unless the brand would not be distinguishable from in-herd identification applied by freeze branding.

(4) The brand committee may, by rule and regulation, provide for the recording and use of brands by electronic device or other nonvisual method of livestock identification. Any such method of livestock identification shall be approved as a brand only if it functions as a means of identifying ownership of livestock so branded that is equal to, or superior to, visual methods of livestock branding. Before approving any nonvisual method of branding, the brand committee shall consider the degree to which such method may be susceptible to error, failure, or fraudulent alteration. Any rule or regulation shall be adopted only after public hearing conducted in compliance with the Administrative Procedure Act.

(5) If the facsimile, the description, or the application does not comply with the requirements of this section, the brand committee shall not record such brand as requested but shall return the recording fee to the forwarding person. The power of examination and rejection is vested in the brand committee, and if the brand committee determines that the application for a visual brand falls within the category set out in subdivision (2)(e) of this section, it shall decide whether or not a recorded brand shall be issued. The brand committee shall make such examination as promptly as possible. If the brand is recorded, the ownership vests from the date of filing of the application.

**Source:** Laws 1999, LB 778, § 30; Laws 2000, LB 213, § 5; Laws 2002, LB 589, § 3; Laws 2005, LB 441, § 1.

**Cross References**

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

Brand on livestock is presumptive evidence of ownership.  
*Whiteside v. Whiteside*, 159 Neb. 362, 67 N.W.2d 141 (1954).

**54-1,100 Recorded brand; transfer; lien or security interest; notice; effect; fee; effect.**

A recorded brand is the property of the person causing such record to be made and is subject to sale, assignment, transfer, devise, and descent as personal property. Any instrument of writing evidencing the sale, assignment, or transfer of a recorded brand shall be effective upon its recording with the Nebraska Brand Committee. No such instrument shall be accepted for recording if the brand committee has been duly notified of the existence of a lien or security interest against livestock owned or thereafter acquired by the owner of such brand by the holder of such lien or security interest. Written notification from the holder of such lien or security interest that the lien or security interest has been satisfied or consent from the holder of such lien or security interest shall be required in order for the brand committee to accept for recording an instrument selling, assigning, or transferring such recorded brand. The fee for recording such an instrument shall be established by the brand committee and shall not be more than forty dollars. Such instrument shall give notice to all third persons of the matter recorded in the instrument and shall be acknowledged by a notary public or any other officer qualified under law to administer oaths.

**Source:** Laws 1999, LB 778, § 31; Laws 2002, LB 589, § 4; Laws 2009, LB142, § 1.

**54-1,101 Recorded brand; owner; copies of record.**

The owner of a recorded brand is entitled to one certified copy of the record of such brand from the Nebraska Brand Committee without charge. Additional certified copies of the record may be obtained by anyone upon the payment of one dollar for each copy.

Copies of any other document of the brand committee may be requested, and a fee of one dollar shall be collected for each page copied. Only personnel authorized by the brand committee shall make copies and collect such fees. The party requesting the copies is responsible for payment of the fee and shall reimburse the brand committee for the research time necessary to furnish the requested documents at a rate of not less than twelve nor more than twenty

dollars per hour of research time. The rate shall be reviewed and set annually by the brand committee.

**Source:** Laws 1999, LB 778, § 32.

**54-1,102 Recorded brand; use; expiration date; renewal fee; expired brand; reinstated.**

(1) A recorded brand may be applied by its owner until its expiration date.

(2) On and after January 1, 1994, the expiration date of a recorded brand is the last day of the calendar quarter of the renewal year as designated by the Nebraska Brand Committee in the records of the brand committee.

(3) The brand committee shall notify every owner of a recorded brand of its expiration date at least sixty days prior to the expiration date, and the owner of the recorded brand shall pay a renewal fee established by the brand committee which shall not be more than fifty dollars and furnish such other information as may be required by the brand committee. The renewal fee is due and payable on or before the expiration date and renews a recorded brand for a period of four years regardless of the number of locations on one side of an animal on which the brand is recorded. If any owner fails, refuses, or neglects to pay the renewal fee by the expiration date, the brand shall expire and be forfeited.

(4) The brand committee has the authority to hold an expired brand for one year following the date of expiration. An expired brand may be reinstated by the same owner during such one-year period upon return of a brand application form and payment of the recording fee for such brand established by the brand committee under section 54-199 plus a penalty of five dollars for each month or part of a month which has passed since the date of expiration. A properly reinstated brand may be transferred to another person during such one-year period upon completion of a transfer form, with a notarized bill of sale signed by the prior owner attached to such transfer form.

**Source:** Laws 1999, LB 778, § 33; Laws 2002, LB 589, § 5.

**54-1,103 Reserved brands; use.**

(1) Cattle brands consisting of alphabetical letters A through Z, and numbers 1, 2, 3, 4, 5, 6, 7, 8, and 9 on the left or right jaw are reserved for assignment by the brand recorder, as designated by the Nebraska Brand Committee. The brand recorder shall not assign such brands to any person in the State of Nebraska unless authorized by the brand committee, and it shall be unlawful for any person to use such brands except as provided in subsection (2) of this section.

(2) Every person when spaying heifers, upon request of the owner thereof, shall brand such heifers with the alphabetical letter O on the left jaw and furnish the owner with a certificate that all heifers so branded have been properly spayed by a licensed veterinarian. Permission may be granted by the brand committee to state and federal animal disease control agencies to require the use of the letters F, V, B, S, and T and an open-end spade on either the right or left jaw of cattle in a manner consistent with animal disease control laws.

**Source:** Laws 1999, LB 778, § 34.

**54-1,104 Brand assigned to committee.**

There is a recorded brand consisting of the alphabetical letter N on the entire right and left sides which is assigned to the Nebraska Brand Committee to be used only by authorized personnel of the brand committee to permanently identify livestock which are suspected of having been stolen and may be used as evidence in any court proceeding. It shall in no way signify that the brand committee (1) is the owner of livestock so branded or (2) claims ownership in any livestock carrying such brand. It shall only be construed and intended that livestock so branded are evidence or portions of evidence seized relative to an alleged theft of livestock.

**Source:** Laws 1999, LB 778, § 35.

**54-1,105 Brands; distinction requirements.**

(1) Cattle branded with a Nebraska-recorded visual brand shall be branded so that the recorded brand of the owner shows distinctly. Sheep may be marked distinctly with such mark or device as may be sufficient to distinguish the same readily should they become intermixed with other flocks of sheep.

(2) If the owners of recorded brands which conflict with or closely resemble each other maintain their herds in close proximity to each other, the brand committee has the authority to decide, after hearing as to which at least ten days' written notice has been given, any dispute arising therefrom and to direct such change or changes in the position or positions where such recorded brand or brands are to be placed as will remove any confusion that might result from such conflict or close resemblance.

**Source:** Laws 1999, LB 778, § 36; Laws 2002, LB 589, § 6.

**54-1,106 Grazing livestock; requirements.**

A person who brings livestock into any county of this state for grazing purposes which are already branded shall provide the Nebraska Brand Committee with a statement of the brands of such livestock. Failure to comply with this section renders the violating person liable for all damages resulting from such failure.

**Source:** Laws 1999, LB 778, § 37.

**54-1,107 Recorded brand; evidentiary effect.**

A recorded brand is prima facie evidence of ownership of livestock and is admissible into evidence in any court in this state if the brand meets the requirements of and is recorded as provided in section 54-199. Other documentary evidence such as bills of sale or certificates of brand clearance transferring title from an owner to another party may also be introduced as evidence of livestock ownership in any court in this state. The recording of instruments of writing evidencing the sale, assignment, or transfer of a recorded brand gives notice to all third persons of the matter recorded, and certified copies are admissible in evidence without further foundation. In all suits at law or in equity, in any criminal proceedings, or when determining the ownership of estrays wherein the title to livestock is an issue, the certified copy of the record of a recorded brand or instrument of writing evidencing sale, assignment, or transfer of a recorded brand is prima facie evidence of the ownership of such livestock by the person possessing such livestock.

**Source:** Laws 1999, LB 778, § 38.

“Prima facie evidence of ownership” means that in the absence of other evidence, proof of ownership of the brand is sufficient to constitute a prima facie case which will withstand a motion for a directed verdict on that issue. *Broken Bow Prod. Credit Assn. v. Western Iowa Farms*, 232 Neb. 357, 440 N.W.2d 480 (1989).

Ownership of brand is prima facie evidence of ownership of animal. *Bush v. Kramer*, 185 Neb. 1, 173 N.W.2d 367 (1969).

Brand upon cattle is prima facie evidence of title. *Coomes v. Drinkwalter*, 181 Neb. 450, 149 N.W.2d 60 (1967).

Registration of brand in decedent’s name raised prima facie presumption of ownership of branded cattle. *Whiteside v. Whiteside*, 159 Neb. 362, 67 N.W.2d 141 (1954).

Brand on livestock is only prima facie evidence of ownership which may be rebutted. *Bendfeldt v. Lewis*, 149 Neb. 107, 30 N.W.2d 293 (1948).

Evidence of brands, and that defendant claimed title, held to support findings that cattle delivered to sale barn were those described in financing statement and government was entitled to recover proceeds to apply on secured loan by Farmers Home Administration. *United States v. Pirnie*, 339 F.Supp. 702 (D. Neb. 1972).

#### **54-1,108 Brand inspections; when; fees; reinspection; when.**

(1) All brand inspections provided for in the Livestock Brand Act or section 54-415 shall be from sunrise to sundown or during such other hours and under such conditions as the Nebraska Brand Committee determines.

(2) A fee, established by the Nebraska Brand Committee, of not more than seventy-five cents per head shall be charged for all cattle inspected in accordance with the Livestock Brand Act or section 54-415 or inspected within the brand inspection area by court order or at the request of any bank, credit agency, or lending institution with a legal or financial interest in such cattle. Such fee may vary to encourage inspection to be performed at times and locations that reduce the cost of performing the inspection but shall otherwise be uniform. The inspection fee for court-ordered inspections shall be paid from the proceeds of the sale of such cattle if ordered by the court or by either party as the court directs. For other inspections, the person requesting the inspection of such cattle is responsible for the inspection fee. If stray cattle are identified as a result of the inspection, such cattle shall be processed in the manner provided by section 54-415.

(3) Any person who has reason to believe that cattle were shipped erroneously due to an inspection error during a brand inspection may request a reinspection. The person making such request shall be responsible for the expenses incurred as a result of the reinspection unless the results of the reinspection substantiate the claim of inspection error, in which case the brand committee shall be responsible for the reinspection expenses.

**Source:** Laws 1999, LB 778, § 39; Laws 2002, LB 589, § 7; Laws 2005, LB 441, § 2.

#### **54-1,109 Brand inspection area; designation.**

The brand inspection area of Nebraska consists of the following land area of counties and parts thereof: Arthur, Banner, Blaine, Box Butte, Boyd, Brown, Buffalo, Chase, Cherry, Cheyenne, Custer, Dawes, Dawson, Deuel, Dundy, Franklin, Frontier, part of the south half of section 1, township 3 north, range 21, on railroad right-of-way in the west part of Oxford Town called Burlington addition in Furnas, Garden, Garfield, Gosper, Grant, Greeley, all of lots 1, 7, and 8 in block 48 in original town of Grand Island, and all of the southeast quarter lying south of the Union Pacific Railroad Company’s right-of-way in section 24, township 11 north, range 10, in Hall, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Kearney, Keith, Keya Paha, Kimball, all of Knox except Eastern, Dolphin, Dowling, Columbia, Morton, Peoria, Addison, Herrick, Frankfort, and Lincoln townships, Lincoln, Logan, Loup, McPherson, Morrill, Perkins, Phelps, Red Willow, Rock, Scotts Bluff, Sheridan, Sherman, Sioux, Thomas, Valley, the existing livestock auction markets in Blue Hill, all of lots 1

to 6, and lots 7 and 8, except twenty-two feet of the east side of lot 8, all in block 6, original town of Blue Hill, and Red Cloud, part of lot A, Roats subdivision to Red Cloud, lots 1 and 2 and the south one-half of block 32 in original town of Red Cloud, and all of annex lot 21, Red Cloud, in Webster, and all of Wheeler.

**Source:** Laws 1999, LB 778, § 40.

**54-1,110 Brand inspection area; brand inspection requirements.**

(1) Except as provided in subsections (2) and (3) of this section, no person shall move, in any manner, cattle from a point within the brand inspection area to a point outside the brand inspection area unless such cattle first have a brand inspection by the Nebraska Brand Committee and a certificate of inspection is issued. A copy of such certificate shall accompany the cattle and shall be retained by all persons moving such cattle as a permanent record.

(2) Cattle in a registered feedlot registered under sections 54-1,120 to 54-1,122 or a registered dairy registered under sections 54-1,122.01 and 54-1,122.02 are not subject to the brand inspection of subsection (1) of this section. Possession by the shipper or trucker of a shipping certificate from the registered feedlot or registered dairy constitutes compliance if the cattle being shipped are as represented on such shipping certificate.

(3) If the line designating the brand inspection area divides a farm or ranch or lies between noncontiguous parcels of land which are owned or operated by the same cattle owner or owners, a permit may be issued, at the discretion of the Nebraska Brand Committee, to the owner or owners of cattle on such farm, ranch, or parcels of land to move the cattle in and out of the brand inspection area without inspection. If the line designating the brand inspection area lies between a farm or ranch and nearby veterinary medical facilities, a permit may be issued, at the discretion of the brand committee, to the owner or owners of cattle on such farm or ranch to move the cattle in and out of the brand inspection area without inspection to obtain care from the veterinary medical facilities. The brand committee shall issue initial permits only after receiving an application which includes an application fee established by the brand committee which shall not be more than fifteen dollars. The brand committee shall mail all current permitholders an annual renewal notice, for January 1 renewal, which requires a renewal fee established by the brand committee which shall not be more than fifteen dollars. If the permit conditions still exist, the cattle owner or owners may renew the permit.

(4) No person shall sell any cattle knowing that the cattle are to be moved, in any manner, in violation of this section. Proof of shipment or removal of the cattle from the brand inspection area by the buyer or his or her agent is prima facie proof of knowledge that sale was had for removal from the brand inspection area.

(5) In cases of prosecution for violation of this section, venue may be established in the county of origin or any other county through which the cattle may pass in leaving the brand inspection area.

**Source:** Laws 1999, LB 778, § 41; Laws 2000, LB 213, § 6; Laws 2002, LB 589, § 8.

Brand Inspection Act is not special legislation and is constitutional. *Satterfield v. State*, 172 Neb. 275, 109 N.W.2d 415 (1961).

**54-1,111 Brand inspection area; sale or trade of cattle; requirements.**

(1) Except as provided in subsection (2) of this section, no person shall sell or trade any cattle located within the brand inspection area, nor shall any person buy or purchase any such cattle unless the cattle have been inspected for brands and ownership and a certificate of inspection or brand clearance has been issued by the Nebraska Brand Committee. Any person selling such cattle shall present to the brand inspector a properly executed bill of sale, brand clearance, or other satisfactory evidence of ownership which shall be filed with the original certificate of inspection in the records of the brand committee. Any time a brand inspection is required by law, a brand investigator or brand inspector may transfer evidence of ownership of such cattle from a seller to a buyer by issuing a certificate of inspection.

(2) A brand inspection is not required:

(a) For cattle of a registered feedlot registered under sections 54-1,120 to 54-1,122 shipped for direct slaughter or sale on any terminal market;

(b) For cattle of a registered dairy registered under sections 54-1,122.01 and 54-1,122.02 shipped for direct slaughter or sale on any terminal market;

(c) For cattle that are transferred to a family corporation when all the shares of capital stock of the corporation are owned by the husband, wife, children, or grandchildren of the transferor and there is no consideration for the transfer other than the issuance of stock of the corporation to such family members;

(d) When the change of ownership of cattle is a change in form only and the surviving interests are in the exact proportion as the original interests of ownership. When there is a change of ownership described in subdivision (2)(c) or (d) of this section, an affidavit, on a form prescribed by the Nebraska Brand Committee, signed by the transferor and stating the nature of the transfer and the number of cattle involved and the brands presently on the cattle, shall be filed with the brand committee;

(e) For cattle sold or purchased for educational or exhibition purposes or other recognized youth activities if a properly executed bill of sale is exchanged and presented upon demand. Educational or exhibition purpose means cattle sold or purchased for the purpose of being fed, bred, managed, or tended in a program designed to demonstrate or instruct in the use of various feed rations, the selection of individuals of certain physical conformation or breeds, the measurement and recording of rate of gain in weight or fat content of meat or milk produced, or the preparation of cattle for the purpose of exhibition or for judging as to quality and conformation;

(f) For calves under the age of thirty days sold or purchased at private treaty if a bill of sale is exchanged and presented upon demand; and

(g) For purebred cattle raised by the seller and individually registered with an organized breed association if a properly executed bill of sale is exchanged and presented upon demand.

**Source:** Laws 1999, LB 778, § 42; Laws 2000, LB 213, § 7.

**54-1,112 Brand inspection area; slaughter and hide records.**

(1) Any person located within the brand inspection area who slaughters or has cattle slaughtered for sale or distribution shall keep, in a book for that purpose, a true and faithful record of all cattle purchased and slaughtered.

Such record shall also contain a description of the marks, brands, age, weight, and color of all cattle slaughtered. Such record shall contain the date when the cattle were slaughtered and a notation which sets forth by whom the cattle were raised or from whom purchased.

(2) All persons who purchase hides shall keep a record of all hides of cattle purchased by them, which record shall state the name or names of the person or persons from whom purchased, their place of residence, the date of purchase, and all marks and brands on the hide, and the record shall at all times be open for inspection by any peace officer.

**Source:** Laws 1999, LB 778, § 43.

**54-1,113 Sale or trade of carcass; requirements.**

(1)(a) Inside of the brand inspection area, no person shall sell or trade or offer for sale or trade the carcass of a beef or veal, or any portion thereof, including the hide of such carcass, unless a certificate of inspection is secured from a brand inspector. Such person shall exhibit the certificate of inspection upon the demand of any person.

(b) Outside of the brand inspection area, no person shall sell or offer for sale, except as a butcher bonded under section 54-1,114, the carcass of a beef or veal, or any portion thereof, without first exhibiting the intact hide of the same and exposing the brand upon the hide, if any, to the purchaser. A person selling or offering for sale any such carcass of beef or veal shall preserve the hide of the same for a period of fifteen days unless a certificate of inspection is secured from a brand inspector, and such person shall exhibit the certificate of inspection upon the demand of any person.

(2) No person shall kill for his, her, or its own use and consumption any cattle for beef or veal without preserving the hide of such animal intact with a complete unskinned tail attached thereto for a period of not less than fifteen days unless a certificate of inspection is secured from a brand inspector, and such hide shall be presented for inspection upon demand of any person.

**Source:** Laws 1999, LB 778, § 44.

**54-1,114 Slaughter of cattle; brand inspection requirements.**

(1) Except as provided in subsections (2) and (3) of this section, no butcher, packer, or vendor engaged in the slaughter of cattle within the brand inspection area shall kill or otherwise dispose of any cattle until a brand inspection is performed by the Nebraska Brand Committee on the premises where such slaughter is to take place and until a certificate of inspection from the brand committee is filed and is made a part of such operator's permanent records. All such certificates of inspection shall, upon demand, be displayed to any peace officer or to the brand committee at any time.

(2) If cattle requiring inspection under this section are to be slaughtered and are purchased by such butcher, packer, or vendor at a regularly brand-inspected sales barn and are destined for direct slaughter upon reaching their destination, the brand inspector at such sales barn shall be advised that such cattle are destined for direct slaughter. The brand inspector shall then issue a certificate of inspection for the cattle, such certificate to indicate that the cattle are to go to direct slaughter and that the cattle are not to be retained by such butcher, packer, or vendor for longer than ninety-six hours prior to slaughter.

Cattle inspected at the point of origin by a brand inspector shall not require an additional brand inspection upon reaching a destination within the state if the certificate of inspection designates that the cattle are to go directly for slaughter and not to be retained by such butcher, packer, or vendor longer than ninety-six hours prior to slaughter.

(3) If cattle required to be inspected under this section are offered for slaughter and satisfactory evidence of ownership has not been provided, the butcher, packer, or vendor may, with the approval of the brand inspector, slaughter the cattle and hold the meat until such time as satisfactory evidence of ownership is provided to the brand committee. The brand inspector shall provide the butcher, packer, or vendor with an official notice advising the operator not to release the meat until authorized by the brand committee. The brand committee may provide for a cash bond to be posted with the director of the brand committee so that the meat may be released prior to the establishment of satisfactory evidence of ownership. The amount of the bond shall be set at the approximate value of the cattle. When satisfactory evidence of ownership has been provided by the person offering the cattle for slaughter, the director shall authorize the release of the meat or the return of the bond.

**Source:** Laws 1999, LB 778, § 45.

**54-1,115 Livestock transportation permit; requirements.**

(1)(a) Any person, other than the owner or the owner's employee, using a motor vehicle or trailer to transport livestock or carcasses over any land within the brand inspection area not owned or rented by such person or who is so transporting such livestock upon a highway, public street, or thoroughfare within the brand inspection area shall have in his or her possession a livestock transportation permit, certificate of inspection, or shipping certificate from a registered feedlot or registered dairy, authorizing such movement as to each head of livestock transported by such vehicle.

(b) Any such person outside the brand inspection area transporting livestock shall have in his or her possession a livestock transportation permit or other proof of ownership acceptable to the peace officer, the number of livestock, and the destination of the livestock, which permit shall be delivered to the public market or anyone to whom the livestock are being delivered.

(2) A livestock transportation permit shall be in writing and shall state the name of the owner of the livestock, the owner's post office address, the place from which the livestock are being moved, including the name of the ranch, if any, the destination, the name and address of the carrier, the license number and make of motor vehicle to which consigned, together with the number of livestock and a description thereof including kind, sex, breed, color, and marks, if any, and in the case of livestock shipments originating within the brand inspection area, the brands, if there are any. The permit shall be signed by the owner of the livestock or the owner's authorized agent. Livestock transportation permits shall be made in quadruplicate: One to be delivered to the motor carrier or motor carrier's agent, one to be retained by the owner of the livestock to be shipped, one to be delivered to the agent of the yard company receiving such livestock, and one to be delivered to the consignee at destination upon delivery of the consignment. Such permits shall be on forms approved by the Nebraska Brand Committee.

(3) Any peace officer, based upon probable cause to question the ownership of the livestock being transported, may stop a motor vehicle or motor vehicle and trailer and request exhibition of any permit or certificate required by this section.

**Source:** Laws 1999, LB 778, § 46; Laws 2000, LB 213, § 8.

**Cross References**

Duty to care for livestock, violation, penalty, see section 54-7,104.

**54-1,116 Satisfactory evidence of ownership.**

All livestock sold or otherwise disposed of shall be accompanied by a properly executed bill of sale in writing or, for cattle, a certificate of inspection. All owners of or persons possessing livestock have a duty to exhibit, upon request of any person, the bill of sale or other satisfactory evidence of ownership of the livestock.

**Source:** Laws 1999, LB 778, § 47.

**54-1,117 Brand inspection area; intermingling of livestock; effect.**

No consignment of livestock within, entering into, or passing through the brand inspection area, after having been inspected by a brand inspector, shall be permitted to intermingle with any other livestock located within the brand inspection area. If, at any time after brand inspection has been performed or a certificate of inspection has been issued on any shipment of livestock, the livestock become intermingled with other livestock located within the brand inspection area, the original brand inspection is void and before further movement of the livestock out of the brand inspection area may be made, reinspection for identification of brands is required. A brand inspector may require reinspection if he or she has reason to believe a consignment of livestock has become intermingled.

**Source:** Laws 1999, LB 778, § 48.

**54-1,118 Livestock; questions of ownership; procedure.**

If any livestock inspected under the Livestock Brand Act or section 54-415 is unbranded or bears a brand or brands in addition to, or other than, the recorded brand or brands of the shipper or seller, then the shipper or seller may be required to establish his or her ownership of such livestock by exhibiting to the Nebraska Brand Committee a bill of sale to such livestock or by other satisfactory evidence of ownership. If ownership of the livestock is not established, the livestock may be sold, and the selling agent who sells such livestock shall hold the proceeds of the sale. If any shipper or seller who has offered such livestock for sale refuses to accept the bids offered, ownership must be established, or a cash bond posted with the selling agent in an amount equal to the approximate value of the livestock and payable to the brand committee, before such livestock may be removed from the premises. When ownership has been established the cash bond shall be returned to the person who or which posted it.

The shipper or seller of the livestock is required to establish ownership of such livestock within sixty days after its sale. If such shipper or seller establishes ownership of such livestock, the Nebraska Brand Committee shall order the selling agent of such livestock to pay the proceeds of sale to the shipper or

seller. If such shipper or seller fails to establish ownership within the sixty days, such livestock shall be considered an estray and the Nebraska Brand Committee shall order the selling agent to pay the proceeds of sale over to the brand committee. All funds that the brand committee receives from the sale of any estray shall be placed in a separate custodial fund known as the estray fund. The brand committee shall determine the ownership of estrays that originate within the brand inspection area. Such funds shall be disposed of in the manner provided in section 54-415.

**Source:** Laws 1999, LB 778, § 49.

Shipper may be required to establish ownership. Coomes v. Drinkwalter, 181 Neb. 450, 149 N.W.2d 60 (1967).

**54-1,119 Open market; designation; brand inspection requirements.**

(1) Any livestock market, whether within or outside of the state, or any meat packing plant which maintains brand inspection under the supervision of the Nebraska Brand Committee and under such rules and regulations as are specified by the United States Department of Agriculture, may be designated by the brand committee as an open market.

(2) When cattle originating from within the brand inspection area are consigned for sale to any commission company at any open market designated as such by the Nebraska Brand Committee where brand inspection is maintained, no brand inspection is required at the point of origin but is required at the point of destination unless the point of origin is a registered feedlot or registered dairy. If cattle are consigned to a commission company at an open market, the carrier transporting the cattle shall not allow the owner, shipper, or party in charge to change the billing to any point other than the commission company at the open market designated on the original billing, unless the carrier secures from the brand committee a certificate of inspection on the cattle so consigned. Any cattle originating in a registered feedlot or registered dairy consigned to a commission company at any terminal market destined for direct slaughter may be shipped in accordance with rules and regulations governing registered feedlots or registered dairies.

(3) Until the cattle are inspected for brands on the premises by the Nebraska Brand Committee, no person shall sell or cause to be sold or offer for sale (a) any cattle at a livestock auction market located within the brand inspection area or at a farm or ranch sale located within the brand inspection area or (b) any cattle originating within the brand inspection area consigned to an open market.

**Source:** Laws 1999, LB 778, § 50; Laws 2000, LB 213, § 9.

**54-1,120 Registered feedlot; application; requirements; fee; inspections; records.**

(1) Any person who operates a cattle feeding operation located within the brand inspection area may make application to the Nebraska Brand Committee for registration as a registered feedlot. The application form shall be prescribed by the brand committee and shall be made available by the director of the brand committee for this purpose upon written request. If the applicant is an individual, the application shall include the applicant's social security number. After the brand committee has received a properly completed application, an

agent of the brand committee shall within thirty days make an investigation to determine if the following requirements are satisfied:

- (a) The operator's feedlot must be permanently fenced; and
- (b) The operator must commonly practice feeding cattle to finish for slaughter.

If the application is satisfactory, and upon payment of a registration fee by the applicant, the brand committee shall issue a registration number and registration certificate valid for one year unless rescinded for cause. If the registration is rescinded for cause, any registration fee shall be forfeited by the applicant. The fees for registered feedlots shall be not less than one hundred dollars nor more than six hundred fifty dollars for each such registered feedlot having one thousand head or less capacity and an equal amount for each additional one thousand head capacity, or part thereof, of such registered feedlot. The brand committee shall set the fee per one thousand head capacity so as to correspond with the inspection fee provided under section 54-1,108. The registration fee shall be paid on an annual basis.

(2) The brand committee may adopt and promulgate rules and regulations for the operation of registered feedlots to assure that brand laws are complied with, that registered feedlot shipping certificates are available, and that proper records are maintained. Violation of sections 54-1,120 to 54-1,122 subjects the operator to revocation or suspension of the feedlot registration issued. Sections 54-1,120 to 54-1,122 shall not be construed as prohibiting the operation of nonregistered feedlots.

(3) Registered feedlots are subject to inspection at any reasonable time at the discretion of the brand committee and its authorized agents, and the operator shall show cattle purchase records or certificates of inspection to cover all cattle in his or her feedlot. Cattle having originated from such registered feedlots may from time to time, at the discretion of the committee, be subject to a spot-check inspection and audit at destination to enable the brand committee to assure satisfactory compliance with the brand laws by the registered feedlot operator.

(4) The operator of a registered feedlot shall keep cattle inventory records. A form for such purpose shall be prescribed by the brand committee. The brand committee and its employees may from time to time make spot checks and audits of the registered feedlots and the records of cattle on feed in such feedlots.

(5) The brand committee may rescind the registration of any registered feedlot operator who fails to cooperate or violates the laws or rules and regulations of the brand committee covering registered feedlots.

**Source:** Laws 1999, LB 778, § 51.

#### **54-1,121 Registered feedlot; cattle shipment; requirements.**

Cattle sold or shipped from a registered feedlot, for purposes other than direct slaughter or sale on any terminal market, are subject to the brand inspection under sections 54-1,110 to 54-1,119, and the seller or shipper shall bear the cost of such inspection at the regular fee.

Any other cattle shipped from a registered feedlot are not subject to brand inspection at origin or destination, but the shipper must have a shipping certificate from the registered feedlot. The shipping certificate form shall be

prescribed by the Nebraska Brand Committee and shall show the registered feedlot operator's name and registration number, date shipped, destination, agency receiving the cattle, number of head in the shipment, and sex of the cattle. The shipping certificate shall be completed in triplicate by the registered feedlot operator at the time of shipment. One copy thereof shall be delivered to the brand inspector at the market along with shipment, if applicable, one copy shall be sent to the brand committee by the tenth day of the following month, and one copy shall be retained by the registered feedlot operator. If a shipping certificate does not accompany a shipment of cattle from a registered feedlot to any destination where brand inspection is maintained by the brand committee, all such cattle shall be subject to a brand inspection and inspection fees shall be charged for the service.

**Source:** Laws 1999, LB 778, § 52; Laws 2000, LB 213, § 10.

**54-1,122 Registered feedlot; cattle received; requirements.**

Any cattle originating in a state that has a brand inspection agency and which are accompanied by a certificate of inspection or brand clearance issued by such agency may be moved directly from the point of origin into a registered feedlot. Any cattle not accompanied by such a certificate of inspection or brand clearance or by satisfactory evidence of ownership from states or portions of states not having brand inspection shall be inspected for brands by the Nebraska Brand Committee within a reasonable time after arrival at a registered feedlot, and the inspection fee provided under section 54-1,108 shall be collected by the brand inspector at the time the inspection is performed.

**Source:** Laws 1999, LB 778, § 53.

**54-1,122.01 Registered dairy; application; requirements; fee; inspections; records.**

(1) Any person who operates a dairy operation located within the brand inspection area may make application to the Nebraska Brand Committee for registration as a registered dairy. The application form shall be prescribed by the brand committee and shall be made available by the director of the brand committee for this purpose upon written request. If the applicant is an individual, the application shall include the applicant's social security number. After the brand committee has received a properly completed application, an agent of the brand committee shall within thirty days make an investigation to determine if the following requirements are satisfied:

- (a) The operator's dairy must be permanently fenced; and
- (b) The operator must identify each animal individually as directed by the Nebraska Brand Committee.

If the application is satisfactory, and upon payment of a registration fee by the applicant, the brand committee shall issue a registration number and registration certificate valid for one year unless rescinded for cause. If the registration is rescinded for cause, any registration fee shall be forfeited by the applicant. The fee for a registered dairy shall be not less than one hundred dollars nor more than six hundred fifty dollars for each such registered dairy having one thousand head or less capacity and an equal amount for each additional one thousand head capacity, or part thereof, of such registered dairy. The brand committee shall set the fee per one thousand head capacity so as to

correspond with the inspection fee provided under section 54-1,108. The registration fee shall be paid on an annual basis.

(2) The brand committee may adopt and promulgate rules and regulations for the operation of registered dairies to assure that brand laws are complied with, that registered dairy shipping certificates are available, and that proper records are maintained. This section shall not be construed as prohibiting the operation of nonregistered dairies.

(3) A registered dairy is subject to inspection at any reasonable time at the discretion of the brand committee and its authorized agents, and the operator shall show cattle purchase records or certificates of inspection to cover all cattle in his or her dairy. Cattle having originated from any such registered dairy may from time to time, at the discretion of the committee, be subject to a spot-check inspection and audit at the destination to enable the brand committee to assure satisfactory compliance with the brand laws by the registered dairy operator.

(4) The operator of a registered dairy shall keep cattle inventory records. A form for such purpose shall be prescribed by the brand committee. The brand committee and its employees may from time to time make spot checks and audits of registered dairies and the records of cattle in such registered dairies.

(5) The brand committee may rescind or suspend the registration of any registered dairy operator who fails to cooperate or violates the laws or rules and regulations of the brand committee covering registered dairies.

**Source:** Laws 2000, LB 213, § 1.

**54-1,122.02 Registered dairy; cattle shipment or receipt; requirements.**

(1) Cattle sold or shipped from a registered dairy, for purposes other than direct slaughter or sale on any terminal market, are subject to the brand inspection under sections 54-1,110 to 54-1,119 and the seller or shipper shall bear the cost of such inspection at the regular fee.

(2) Any other cattle shipped from a registered dairy are not subject to brand inspection at origin or destination, but the shipper must have a shipping certificate from the registered dairy. The shipping certificate form shall be prescribed by the Nebraska Brand Committee and shall show the registered dairy operator's name and registration number, date shipped, destination, agency receiving the cattle, number of head in the shipment, and sex of the cattle. The shipping certificate shall be completed in triplicate by the registered dairy operator at the time of shipment. One copy thereof shall be delivered to the brand inspector at the market along with shipment, if applicable, one copy shall be sent to the brand committee by the tenth day of the following month, and one copy shall be retained by the registered dairy operator. If a shipping certificate does not accompany a shipment of cattle from a registered dairy to any destination where brand inspection is maintained by the brand committee, all such cattle are subject to a brand inspection and inspection fees shall be charged for the service.

(3) Any cattle originating in a state that has a brand inspection agency and which are accompanied by a certificate of inspection or brand clearance issued by such agency may be moved directly from the point of origin into a registered dairy. Any cattle not accompanied by such a certificate of inspection or brand clearance or by satisfactory evidence of ownership from states or portions of

states not having brand inspection shall be inspected for brands by the Nebraska Brand Committee within a reasonable time after arrival at a registered dairy, and the inspection fee provided under section 54-1,108 shall be collected by the brand inspector at the time the inspection is performed.

**Source:** Laws 2000, LB 213, § 2.

**54-1,123 Prohibited sale; violation; penalty.**

No person, other than the owner of the livestock, shall sell or offer for sale or trade or otherwise dispose of any livestock unless the person so offering has the bill of sale, a power of attorney from the owner of such livestock authorizing such sale, or other satisfactory evidence of ownership. A violation of this section is a Class III felony.

**Source:** Laws 1999, LB 778, § 54.

Bill of sale of cattle must state the statutory details required. *Coomes v. Drinkwalter*, 181 Neb. 450, 149 N.W.2d 60 (1967). Trade of livestock is not limited by this section. *Bendfeldt v. Lewis*, 149 Neb. 107, 30 N.W.2d 293 (1948).

**54-1,124 Prohibited brand; violation; penalty.**

If any person willfully and knowingly brands, marks, or causes to be branded or marked, livestock owned by another with the intent to deprive such owner of the livestock or willfully and knowingly effaces, defaces, or obliterates any mark upon any livestock owned by another with the intent to deprive such owner of the livestock, such person is guilty of a Class III felony.

**Source:** Laws 1999, LB 778, § 55.

Failure to instruct upon effect of this section was prejudicial error. *Coomes v. Drinkwalter*, 181 Neb. 450, 149 N.W.2d 60 (1967).

**54-1,125 False documents; violation; penalty.**

(1) Any person who offers as evidence of ownership for any livestock sold, traded, or otherwise disposed of as provided in the Livestock Brand Act or section 54-415, any forged, altered, or otherwise falsely prepared document or form, knowing the same to be forged, altered, or otherwise falsely prepared, is guilty of the Class IV felony of criminal possession of a forged instrument as defined in section 28-604.

(2) Any person who forges, alters, or otherwise changes in any manner any of the forms or documents which are satisfactory evidence of ownership or any other form or document required by or provided for in the Livestock Brand Act or section 54-415, is guilty of second degree forgery as defined in section 28-603, and shall be punished in accordance with such section.

(3) Any person who knowingly misrepresents or misuses any certificate of inspection or other satisfactory evidence of ownership is guilty of a Class II misdemeanor.

**Source:** Laws 1999, LB 778, § 56.

**54-1,126 General penalty.**

Any person who violates any provision of the Livestock Brand Act is guilty of a Class II misdemeanor unless another penalty is specifically provided for such violation.

**Source:** Laws 1999, LB 778, § 57.

**54-1,127 Violations; arresting peace officer; powers.**

Whenever any person is arrested for a violation of the Livestock Brand Act or section 54-415 punishable as a misdemeanor, the arresting peace officer shall, except as otherwise provided in this section, take the name and address of such person and the license number of his or her motor vehicle. The peace officer shall issue a summons or otherwise notify him or her in writing to appear at a time and place to be specified in such summons or notice. Such time shall be at least five days after such arrest, unless the person arrested demands an earlier hearing. Such person, if he or she so desires, has a right to an immediate hearing or a hearing within twenty-four hours at a convenient hour, such hearing to be before a magistrate within the county where such offense was committed. The peace officer shall thereupon, and upon the giving by such person of his or her written promise to appear at such time and place, forthwith release him or her from custody. Any person refusing to give such written promise to appear shall be taken immediately by the arresting peace officer before the nearest or most accessible magistrate.

**Source:** Laws 1999, LB 778, § 58.

**ARTICLE 2****LIENS**

## Section

- 54-201. Agister's lien; domestic and foreign; perfection; financing statement; filing; enforcement; fee.
- 54-201.01. Legislative intent.
- 54-202. Transferred to section 52-1501.
- 54-203. Transferred to section 52-1502.
- 54-204. Transferred to section 52-1503.
- 54-205. Transferred to section 52-1504.
- 54-206. Transferred to section 52-1505.
- 54-207. Transferred to section 52-1506.
- 54-208. Lien for feed, feed ingredients, and related costs; perfection; financing statement; filing; enforcement; fee.
- 54-209. Lien satisfied; termination statement; procedure.

**54-201 Agister's lien; domestic and foreign; perfection; financing statement; filing; enforcement; fee.**

(1) When any person, firm, corporation, partnership, or limited liability company not provided for in subsection (2) of this section procures, contracts with, or hires any other person, firm, corporation, partnership, or limited liability company to feed and take care of any kind of livestock, the person, firm, corporation, partnership, or limited liability company so procured, contracted with, or hired shall have a first, paramount, and prior lien upon such livestock for the feed and care furnished for the contract price agreed upon or, in case no price has been agreed upon, for the reasonable value of such feed and care, as long as the holders of any prior liens shall have agreed in writing to the contract for the feed and care of the livestock involved. A lien created under this subsection shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. A lien created under this subsection shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed prior to

removal of such livestock from the premises of the person, firm, corporation, partnership, or limited liability company entitled to a lien and shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the person, firm, corporation, partnership, or limited liability company claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished, (c) a description of the livestock fed and furnished care, and (d) the amount justly due for the feeding and care. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(2) When any person, firm, corporation, partnership, or limited liability company whose residence or principal place of business is located outside the State of Nebraska procures, contracts with, or hires any other person, firm, corporation, partnership, or limited liability company within the State of Nebraska to feed and take care of any kind of livestock, the person, firm, corporation, partnership, or limited liability company so procured, contracted with, or hired shall have a first, paramount, and prior lien upon such livestock for the feed and care furnished for the contract price agreed upon or, in case no price has been agreed upon, for the reasonable value of such feed and care. A lien created under this subsection shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. A lien created under this subsection shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed prior to removal of such livestock from the premises of the person, firm, corporation, partnership, or limited liability company entitled to a lien and shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the person, firm, corporation, partnership, or limited liability company claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished, (c) a description of the livestock fed and furnished care, and (d) the amount justly due for the feeding and care. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

**Source:** Terr. Laws 1867, § 1, p. 12; Laws 1889, c. 31, § 1, p. 378; R.S.1913, § 89; C.S.1922, § 97; C.S.1929, § 54-201; Laws 1935, c. 118, § 1, p. 433; C.S.Supp.,1941, § 54-201; R.S.1943, § 54-201; Laws 1982, LB 962, § 2; Laws 1984, LB 808, § 7;

Laws 1988, LB 943, § 18; Laws 1993, LB 121, § 335; Laws 1998, LB 1321, § 96; Laws 1999, LB 550, § 36; Laws 2001, LB 54, § 25.

1. Nature of lien
2. Priority of lien
3. Miscellaneous

#### 1. Nature of lien

This section provides the agister with a lien upon the stock for the agister's keeping, and the owner cannot lawfully obtain possession of the stock until the owner has paid or tendered to the agister the amount due for the feed and care. *Graff v. Burnett*, 226 Neb. 710, 414 N.W.2d 271 (1987).

Priority, as used in this section and UCC section 9-310, means first in time. *Washington County Bank v. Red Socks Stables*, 221 Neb. 300, 376 N.W.2d 782 (1985).

Subsection (1) of this section gives Nebraska agisters a first lien for services rendered to a Nebraska livestock owner if the holders of any prior liens on that livestock agree in writing to the contract for the care and feeding of that livestock. *Washington County Bank v. Red Socks Stables*, 221 Neb. 300, 376 N.W.2d 782 (1985).

Subsection (2) of this section gives Nebraska agisters a lien prior to any other liens without a written agreement to the contract for care and feeding of the livestock, if the party contracting for the agister's services is a nonresident of Nebraska. *Washington County Bank v. Red Socks Stables*, 221 Neb. 300, 376 N.W.2d 782 (1985).

This section creates a statutory agister's lien within the meaning of UCC section 9-310. *Washington County Bank v. Red Socks Stables*, 221 Neb. 300, 376 N.W.2d 782 (1985).

Caretaker has lien for care of livestock. *Stickell v. Hagerty*, 158 Neb. 34, 62 N.W.2d 107 (1954).

One who receives animals under an agreement to share in increase has an agister's lien. *Schrandt v. Young*, 62 Neb. 254, 86 N.W. 1085 (1901).

Lien arises only by contract. *Hale v. Wigton*, 20 Neb. 83, 29 N.W. 177 (1886).

#### 54-201.01 Legislative intent.

The Legislature hereby recognizes and declares that the livestock industry is an integral component in the economy of this state and that the continued viability of such industry is essential to the prosperity and well-being of all citizens of this state. The Legislature further recognizes that the livestock industry of this state provides food for the state, the nation, and the world, and that the benefits of a financially sound industry are far reaching. It is hereby declared to be the purpose of sections 54-201 and 54-201.01 to afford protection to those persons involved in the care and feeding of livestock in this state by providing some security of compensation for services rendered.

**Source:** Laws 1982, LB 962, § 1.

**54-202 Transferred to section 52-1501.**

**54-203 Transferred to section 52-1502.**

**54-204 Transferred to section 52-1503.**

**54-205 Transferred to section 52-1504.**

#### 2. Priority of lien

Agister's lien under feeding contract is superior to subsequent chattel mortgage. *Hoerler v. Prey*, 125 Neb. 822, 252 N.W. 327 (1934).

Lien is superior to mortgage executed after it has attached and while property is in possession of agister. *Becker v. Brown*, 65 Neb. 264, 91 N.W. 178 (1902).

Under this section, a prior recorded chattel mortgage is superior to claim of agister for keeping animals. *State Bank of Nebraska v. Lowe*, 22 Neb. 68, 33 N.W. 482 (1887).

Lien of liveryman failing to maintain possession of horses is inferior to mortgage executed after possession is relinquished. *Marseilles Mfg. Co. v. Morgan*, 12 Neb. 66, 10 N.W. 462 (1881).

#### 3. Miscellaneous

Once it is determined a person is protected by the statutory lien granted an agister, the statute will be liberally construed so its object will be effectuated. *Mousel v. Daringer*, 190 Neb. 77, 206 N.W.2d 579 (1973).

It is not necessary for agister to follow statute in foreclosure if consent of bailor is had, and under circumstances not tending to injure third parties. *Dale v. Council Bluffs Savings Bank*, 65 Neb. 692, 91 N.W. 526 (1902); reversed on rehearing, 65 Neb. 694, 94 N.W. 983 (1903).

The taking by the owner of livestock from the possession of agister without his consent does not divest his lien, and subsequent purchaser is charged with notice of the lien. *Weber Bros. v. Whetstone*, 53 Neb. 371, 73 N.W. 695 (1898).

One who cares for livestock under contract with owner has agister's lien, and owner cannot obtain possession by legal process until he has paid or tendered the full amount due. *Kroll v. Ernst*, 34 Neb. 482, 51 N.W. 1032 (1892).

Person furnishing feed and care to livestock can hold stock against owner who contracted for care until amount due is paid, but cannot hold where contract was not made with owner. *Gates v. Parrott*, 31 Neb. 581, 48 N.W. 387 (1891).

**54-206 Transferred to section 52-1505.**

**54-207 Transferred to section 52-1506.**

**54-208 Lien for feed, feed ingredients, and related costs; perfection; financing statement; filing; enforcement; fee.**

When any person, firm, partnership, limited liability company, or corporation contracts or agrees with another person, firm, partnership, limited liability company, or corporation to deliver any feed or feed ingredients for any kind of livestock, the person, firm, partnership, limited liability company, or corporation so contracted or agreed with shall have a lien upon such livestock for the feed or feed ingredients and related costs incurred in the delivery of such feed or feed ingredients for the agreed-upon contract price or, in case no price has been agreed upon, for the reasonable value of such feed or feed ingredients and related delivery costs, which shall be a first, paramount, and prior lien if the holders of any prior liens have agreed in writing to the contract for the feed or feed ingredients and related delivery costs. The lien may only be enforced against the person, firm, partnership, limited liability company, or corporation who has contracted or agreed for such feed or feed ingredients and related costs incurred in the delivery of such feed or feed ingredients.

A lien created under this section shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall contain or have attached thereto:

- (1) The name and address and the social security number or federal tax identification number of the person, firm, partnership, limited liability company, or corporation claiming the lien;
- (2) The name and address and the social security number or federal tax identification number, if known, of the person, firm, partnership, limited liability company, or corporation for whom such feed or feed ingredients were delivered;
- (3) The amount due for such feed or feed ingredients and related delivery costs covered by the lien;
- (4) The place where such livestock are located;
- (5) A reasonable description of such livestock including the number and type of such livestock; and
- (6) The last date on which such feed or feed ingredients were delivered.

The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person, firm, partnership, limited liability company, or corporation for whom the feed or feed ingredients were delivered.

Such lien shall attach and have priority as of the date of the filing if filed in the manner provided in this section. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code.

The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

Nothing in this section shall be construed to amend or repeal section 54-201 relating to agisters' liens.

**Source:** Laws 1984, LB 1064, § 1; Laws 1988, LB 943, § 19; Laws 1993, LB 121, § 336; Laws 1998, LB 1321, § 97; Laws 1999, LB 550, § 37; Laws 2001, LB 54, § 26.

**54-209 Lien satisfied; termination statement; procedure.**

(1) When a lien created under section 54-201 or 54-208 is satisfied, the lienholder shall file in the office where the lien is filed a termination statement to the effect that he or she no longer claims an interest under the lien, which shall be identified by file number. A termination statement signed by a person other than the lienholder of record shall be accompanied by a separate written statement of assignment signed by the lienholder of record complying with subsection (b) of section 9-514, Uniform Commercial Code, including payment of the required fee, or reflect that the person signing the termination statement is a successor of the lienholder of record. If the affected lienholder fails to file such a termination statement within thirty days after such lienholder no longer claims an interest, he or she shall be liable to the person, firm, partnership, limited liability company, or corporation for whom the feeding and care were furnished or the feed or feed ingredients were delivered for any losses caused to such person, firm, partnership, limited liability company, or corporation by such failure and for reasonable attorney's fees and court costs.

(2) On presentation to the filing officer of such a termination statement, he or she shall note it in the index. If the filing officer has received the termination statement in duplicate, he or she shall return one copy of the termination statement to the lienholder stamped to show the time of receipt.

(3) There is no fee for the filing of a termination statement.

(4) This section does not apply to a lien created under section 54-201 or 54-208 filed as an agricultural lien under article 9, Uniform Commercial Code, on or after July 1, 2001.

**Source:** Laws 1985, LB 606, § 16; Laws 1988, LB 943, § 20; Laws 1999, LB 550, § 38; Laws 2001, LB 54, § 27.

**ARTICLE 3**

**HERD LAWS**

Section

- 54-301. Herd laws; stock grower, cattle drover, defined.
- 54-302. Driving off another's livestock; penalty.
- 54-303. Herd laws; actions; proof of ownership.
- 54-304. Male animal running at large; liability of owner.
- 54-305. Cattle drover; duty to prevent trespassing animals.
- 54-306. Cattle drover; trespassing; penalty; liability for damages.
- 54-307. Cattle drover; driving off another's livestock; liability.
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- 54-315. Wells and pitfalls; violation; penalty.

**54-301 Herd laws; stock grower, cattle drover, defined.**

Every person who shall keep neat cattle, horses, mules, sheep, or goats, for their growth or increase within the state, shall be deemed a stock grower. Any person who shall drive or bring neat cattle into or through this state shall be deemed a cattle drover.

**Source:** Laws 1879, § 1, p. 67; R.S.1913, § 96; C.S.1922, § 104; C.S.1929, § 54-301; R.S.1943, § 54-301.

**54-302 Driving off another's livestock; penalty.**

Any cattle drover, or his employee, who shall drive off any neat cattle, horses, mules, or sheep belonging to another person, intentionally or through neglect, shall be guilty of a Class V misdemeanor.

**Source:** Laws 1879, § 2, p. 67; R.S.1913, § 97; C.S.1922, § 105; C.S.1929, § 54-302; R.S.1943, § 54-302; Laws 1977, LB 39, § 17.

**54-303 Herd laws; actions; proof of ownership.**

In any indictment or complaint under sections 54-301 to 54-310, the description of any kind or class of neat cattle shall be deemed sufficient if described as cattle; and the proof of brand shall be deemed to be prima facie evidence of ownership of such stock.

**Source:** Laws 1879, § 3, p. 68; R.S.1913, § 98; C.S.1922, § 106; C.S.1929, § 54-303; R.S.1943, § 54-303.

**54-304 Male animal running at large; liability of owner.**

The owner of any stallion, jack, bull, buck, or boar shall restrain the same, and any person may take possession of any such animal running at large in the county in which such person resides, or in which he or she occupies or uses real estate. He or she shall give notice thereof to the sheriff or any constable in the county in which such animal is taken, who shall give notice to the owner of such animal, if known to him or her, by delivering a written notice to the owner, or leaving the same at his or her usual place of abode, giving a description of the animal so taken. If such owner does not appear within ten days after such notice to claim his or her property and pay costs and damages if any, then the sheriff or constable shall sell the animal so taken, at public auction to the highest bidder for cash, having given twenty days' notice of the time and place of sale, with a description of the property, by posting such notice in three public places in the township or precinct in which such animal was found at large. Out of the proceeds of such sale he or she shall pay all costs and any damages done by such animal, to be ascertained and determined by him or her, and the sheriff or constable shall pay the remainder, if any, into the county treasury for the use of the county. If legal proof is made to the county board by the owner of such animal of a right thereto at any time within one year of the sale, the county board shall order the proper amount to be paid to the owner by its warrant drawn for that purpose. If the owner, or any person for him or her, on or before the day of sale shall pay the costs thus far made and all damages, to be determined by the sheriff or constable if the parties cannot agree, and make satisfactory proof of ownership, the sheriff or constable shall release the animal to him or her. This remedy shall not be construed as a

bar to any suit for damages sustained and not covered by the proceeds of the sale as hereinbefore provided.

**Source:** Laws 1879, § 4, p. 68; Laws 1901, c. 3, § 1, p. 45; R.S.1913, § 99; C.S.1922, § 107; C.S.1929, § 54-304; R.S.1943, § 54-304; Laws 1996, LB 299, § 25.

The herd laws pertain to damage to property and do not alter the common law liability for personal injuries caused by trespassing bulls. *Foland v. Malander*, 222 Neb. 1, 381 N.W.2d 914 (1986).

The duty imposed by this statute, unlike that of section 54-401, RRS1943, is not restricted to cultivated lands. *Fuchser v. Jacobson*, 205 Neb. 786, 290 N.W.2d 449 (1980).

#### **54-305 Cattle drover; duty to prevent trespassing animals.**

Any person owning or having charge of any drove of cattle, horses or sheep, numbering one head or more, who shall drive the same into or through any county of Nebraska of which the owner is not a resident, or landowner, or stock grower, and when the land in said county is occupied, it shall be the duty of such owner or person in charge of such horses, cattle or sheep to prevent the same from mixing with the cattle, horses or sheep belonging to the occupiers. The owner shall also prevent the drove from trespassing on such land as may be the property of the actual occupier, or may be held by him under a preemption, or a leasehold right, and used by him for the grazing of animals, growing hay or timber, or other agricultural purposes, or doing injury to the ditches made for irrigation of crops.

**Source:** Laws 1879, § 5, p. 68; R.S.1913, § 100; C.S.1922, § 108; C.S.1929, § 54-305; R.S.1943, § 54-305.

The herd laws pertain to damage to property and do not alter the common law liability for personal injuries caused by trespassing bulls. *Foland v. Malander*, 222 Neb. 1, 381 N.W.2d 914 (1986).

#### **54-306 Cattle drover; trespassing; penalty; liability for damages.**

If any owner or person in charge of any drove of cattle, horses or sheep shall willfully, carelessly or negligently injure any resident within the state by driving such drove from the public highways and herding the same on the lands occupied and improved by persons in possession of the same, he shall be deemed guilty of a Class V misdemeanor, and shall be liable for such damages as may be done to the property.

**Source:** Laws 1879, § 5, p. 69; R.S.1913, § 100; C.S.1922, § 108; C.S.1929, § 54-305; R.S.1943, § 54-306; Laws 1977, LB 39, § 18.

#### **54-307 Cattle drover; driving off another's livestock; liability.**

When the stock of any person shall be driven off its range within Nebraska against his will by the drovers of any drove, and the same shall be found in such drove, every person engaged as drover of such drove shall be liable for damages to the party injured to the amount of the full value of the animal for each head so driven off, together with all costs accruing in the trial of the cause, and the herd of stock shall be liable for the same, or a sufficient number to cover all damages and costs.

**Source:** Laws 1879, § 6, p. 69; R.S.1913, § 101; C.S.1922, § 109; C.S.1929, § 54-306; R.S.1943, § 54-307.

#### **54-308 Cattle drover; mixing of cattle; duty to separate; penalty.**

When the stock of any resident of the State of Nebraska shall mix with any drove of any animals, it shall be the duty of the drover or drovers, or person in charge of such drove, to cut out and separate such stock from such droves immediately. Every person, either owner or drover, or otherwise connected with such drove, who shall neglect to comply with the provisions of this section, shall be fined in any sum not exceeding one thousand dollars.

**Source:** Laws 1879, § 7, p. 69; R.S.1913, § 102; C.S.1922, § 110; C.S. 1929, § 54-307; R.S.1943, § 54-308.

**54-309 Cattle or sheep; hides; removal by other than owner; prohibited; exception.**

It shall be unlawful for any person other than the owner or his agent or employee, to skin or remove from the carcass the skin, hide or pelt of any neat cattle or sheep found dead, except when such stock is killed by railroad trains, when the employees of such railroads may remove the hides from stock so killed.

**Source:** Laws 1879, § 8, p. 70; R.S.1913, § 103; C.S.1922, § 111; C.S. 1929, § 54-308; R.S.1943, § 54-309.

**54-310 Herd laws; violations; rewards; authorized.**

The county boards of the several counties may offer and pay rewards for the detection of those violating sections 54-301 to 54-309.

**Source:** Laws 1879, § 9, p. 70; R.S.1913, § 104; C.S.1922, § 112; C.S. 1929, § 54-309; R.S.1943, § 54-310.

**54-311 Wells and pitfalls; prohibited acts.**

It shall be unlawful for the owner or holder of any real estate in the State of Nebraska to leave uncovered any well or other pitfall into which any person or animal may fall or receive injury. Every pitfall shall be filled, adequately covered, or enclosed so as not to constitute a safety hazard. Every well not in use shall be decommissioned or properly placed in inactive status in accordance with the Water Well Standards and Contractors' Practice Act so as not to constitute a safety hazard.

**Source:** Laws 1897, c. 6, § 1, p. 46; R.S.1913, § 105; C.S.1922, § 113; C.S.1929, § 54-310; R.S.1943, § 54-311; Laws 2003, LB 245, § 9; Laws 2007, LB463, § 1173.

**Cross References**

**Abandoned water wells:**

Duty of licensed water well contractor to plug, see section 46-1234.

Duty of owner to decommission and notify Department of Natural Resources, see section 46-602.

Penalty for failure to decommission, see section 46-1240.

Standards for decommissioning, see section 46-1227.

**Water Well Standards and Contractors' Practice Act**, see section 46-1201.

**54-312 Repealed. Laws 2003, LB 245, § 19.**

**54-313 Repealed. Laws 2003, LB 245, § 19.**

**54-314 Repealed. Laws 2003, LB 245, § 19.**

**54-315 Wells and pitfalls; violation; penalty.**

Any person who violates section 54-311 shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1897, c. 6, § 4, p. 47; R.S.1913, § 108; C.S.1922, § 116; C.S.1929, § 54-313; R.S.1943, § 54-315; Laws 2003, LB 245, § 10.

**ARTICLE 4**

**ESTRAYS AND TRESPASSING ANIMALS**

Section

- 54-401. Estrays, trespassing animals; damages; liability.
- 54-402. Trespassing animals; damages; lien.
- 54-403. Trespassing animals; distraint; notice.
- 54-404. Trespassing animals; distraint; damages; owner's failure to pay; sale.
- 54-405. Distraint; arbitrators; number; powers.
- 54-406. Distraint; arbitration award; enforcement; appeal.
- 54-407. Estrays; owner unknown; procedure.
- 54-408. Repealed. Laws 1996, LB 1174, § 9.
- 54-409. Repealed. Laws 1965, c. 333, § 2.
- 54-410. Repealed. Laws 1965, c. 333, § 2.
- 54-411. Repealed. Laws 1965, c. 333, § 2.
- 54-412. Repealed. Laws 1965, c. 333, § 2.
- 54-413. Repealed. Laws 1965, c. 333, § 2.
- 54-414. Repealed. Laws 1965, c. 333, § 2.
- 54-415. Estrays; distraint; sale; procedure; disposition of proceeds; violations; penalty.
- 54-416. Feral swine; applicability of sections; destruction; when.
- 54-417. Repealed. Laws 1965, c. 333, § 2.
- 54-418. Repealed. Laws 1965, c. 333, § 2.
- 54-419. Repealed. Laws 1965, c. 333, § 2.
- 54-420. Repealed. Laws 1965, c. 333, § 2.
- 54-421. Repealed. Laws 1965, c. 333, § 2.
- 54-422. Repealed. Laws 1965, c. 333, § 2.
- 54-423. Repealed. Laws 1965, c. 333, § 2.
- 54-424. Repealed. Laws 1965, c. 333, § 2.
- 54-425. Repealed. Laws 1965, c. 333, § 2.

**54-401 Estrays, trespassing animals; damages; liability.**

The owners of cattle, horses, mules, swine, sheep, and goats in this state are liable for all damages done by such stock upon the lands of another in this state as provided by section 54-402 if the damages to the lands are not the result of negligent or willful damage to the division fence by the person claiming damages to the land.

**Source:** Laws 1871, § 1, p. 120; R.S.1913, § 109; C.S.1922, § 117; C.S. 1929, § 54-401; R.S.1943, § 54-401; Laws 1983, LB 149, § 1; Laws 1996, LB 1174, § 5; Laws 2008, LB925, § 1.

- 1. Persons liable
- 2. Lien
- 3. Remedies
- 4. Miscellaneous

**1. Persons liable**

Joint owners of herd are liable jointly. *Wilson v. White*, 77 Neb. 351, 109 N.W. 367 (1906).

Mortgagee, without possession, is not owner within meaning of statute. *Goff v. Byers Bros. & Co.*, 70 Neb. 1, 96 N.W. 1037 (1903).

The term owners is construed to include depasturer. *Laflin v. Svoboda*, 37 Neb. 368, 55 N.W. 1049 (1893).

**2. Lien**

Owner of land damaged by trespassing stock has lien thereon for damages done and for care and feed while impounded. *Angus Cattle Co. v. McLeod*, 98 Neb. 108, 152 N.W. 322 (1915).

**3. Remedies**

Negligence of plaintiff in maintenance of division fence immaterial in action for damages by livestock upon cultivated lands. *Fiene v. Robertson*, 184 Neb. 668, 171 N.W.2d 179 (1969).

Action for damages by stock ranging at large upon uncultivated land will not lie, but driving of animals thereon is actionable wrong. Meyers v. Menter, 63 Neb. 427, 88 N.W. 662 (1902).

Remedy herein is not exclusive, and common-law liability is not abrogated. Lorance v. Hillyer, 57 Neb. 266, 77 N.W. 755 (1898).

Injunction will lie to restrain threatened trespass of stock. State Bank of Nebraska of Seward v. Rohren, 55 Neb. 223, 75 N.W. 543 (1898).

Where owner drives his stock upon unenclosed and uncultivated lands of another he is liable for trespass. Delaney v. Errickson, 11 Neb. 533, 10 N.W. 451 (1881).

4. Miscellaneous

The herd laws pertain to damage to property and do not alter the common law liability for personal injuries caused by trespassing bulls. Foland v. Malander, 222 Neb. 1, 381 N.W.2d 914 (1986).

A fenced pasture planted to wheat grass and not surrounded by a plowed strip constitutes "cultivated lands" for purposes of this statute. Fuchser v. Jacobson, 205 Neb. 786, 290 N.W.2d 449 (1980).

Section is not applicable to uncultivated, unenclosed wild prairie lands of state. Delaney v. Errickson, 10 Neb. 492, 6 N.W. 600 (1880).

54-402 Trespassing animals; damages; lien.

All damages to property so committed by such stock running at large shall be paid by the owners of such stock; and the person, whose property is so damaged thereby, may have a lien upon such trespassing animals for the full amount of damages and costs, and may enforce the collection of the same by the proper civil action.

Source: Laws 1871, § 2, p. 120; R.S.1913, § 110; C.S.1922, § 118; C.S. 1929, § 54-402; R.S.1943, § 54-402.

The herd laws pertain to damage to property and do not alter the common law liability for personal injuries caused by trespassing bulls. Foland v. Malander, 222 Neb. 1, 381 N.W.2d 914 (1986).

Burden of restraining domestic animals is upon owner and ordinarily no excuse for failure to restrain them is recognized. Fiene v. Robertson, 184 Neb. 668, 171 N.W.2d 179 (1969).

Lien includes value of feed and care, together with damages to land. Angus Cattle Co. v. McLeod, 98 Neb. 108, 152 N.W. 322 (1915).

Remedy afforded not exclusive. Object of statute was to give one injured right to possession of trespassing animals, lien thereon, and right to hold animals until damages were adjusted. Lorance v. Hillyer, 57 Neb. 266, 77 N.W. 755 (1898).

Lien attaches to stock trespassing on cultivated lands within cities of metropolitan class. Lingonner v. Ambler, 44 Neb. 316, 62 N.W. 486 (1895).

Damages may be recovered by owner of unenclosed land, but he has no lien on stock. Brown v. Sylvester, 37 Neb. 870, 56 N.W. 709 (1893).

Waiving of lien by surrender of possession of cattle does not prevent person injured from maintaining action for damages. Laffin v. Svoboda, 37 Neb. 368, 55 N.W. 1049 (1893).

Remedy for trespass provided herein is cumulative and not exclusive. Keith & Barton v. Tilford, 12 Neb. 271, 11 N.W. 315 (1882).

54-403 Trespassing animals; distraint; notice.

When any such stock is found upon the lands of another, it is lawful for the owner or person in possession of such lands to impound such stock. If the owner of the stock can be found, and is known to the distrainer, it is the duty of the distrainer to notify the owner by leaving a written notice at his or her usual place of residence with some member of the family over the age of fourteen or, in the absence of such person, by posting on the door of such residence a copy of the notice of the distraint of the stock, describing it, and stating the amount of damages claimed and the name of the arbitrator. The notice shall also require the owner within forty-eight hours after receiving such notice to take the stock away, after making full payment of all damages and costs to the satisfaction of the distrainer of trespassing animals. The notice may be in the following form:

You are hereby notified that on this ..... day of ..... 20...., your stock, of which I now have in my possession ..... (here describe the animal or animals) did trespass upon my land, and damage it to the amount of ..... You are required to pay the above charges within forty-eight hours from the delivery of this notice or the stock will be sold as provided by law. I have appointed ..... to act as arbitrator should you not feel satisfied with the amount of damages claimed in the within notice.

No claim for damages shall be maintained by the distrainer without the notice contemplated in this section having been given when the owner is known by the distrainer of such stock.

**Source:** Laws 1871, § 3, p. 120; R.S.1913, § 111; C.S.1922, § 119; C.S. 1929, § 54-403; R.S.1943, § 54-403; Laws 1996, LB 1174, § 6; Laws 2004, LB 813, § 25.

1. Constitutionality
2. Notice
3. Award
4. Miscellaneous

#### 1. Constitutionality

The herd law provides a reasonable method of procedure in the nature of an action in rem against trespassing stock and is constitutional. *Randall v. Gross*, 67 Neb. 255, 93 N.W. 223 (1903).

#### 2. Notice

Mortgagee is not bound unless notified. *Goff v. Byers Bros. & Co.*, 70 Neb. 1, 96 N.W. 1037 (1903).

Lienholder must comply with statute, and reasonableness of notice is a question of fact. *Sloan v. Bain*, 47 Neb. 914, 66 N.W. 1013 (1896).

Owner has forty-eight hours after receipt of notice in which to pay damages and take stock away, and no greater damages than amount specified in notice can be claimed. *Allen v. Van Ostrand*, 19 Neb. 578, 27 N.W. 642 (1886).

Notice and substantial compliance with statute necessary for right to enforce lien. *Bucher v. Wagoner*, 13 Neb. 424, 14 N.W. 160 (1882).

Notice must be given within reasonable time as determined by circumstances. *Haggard v. Wallen*, 6 Neb. 271 (1877).

Notice and demand must conform to statute. *McAllister v. Wrede*, 5 Neb. Unof. 82, 97 N.W. 318 (1903).

#### 3. Award

Arbitrators' award is not a bar to action for negligence. *Richardson v. Halstead*, 44 Neb. 606, 62 N.W. 1077 (1895).

#### 4. Miscellaneous

Act is superior to city ordinances. *Lingonner v. Ambler*, 44 Neb. 316, 62 N.W. 486 (1895).

Taker-up must comply substantially with requirements of statute or he will acquire no lien. *Hanscom v. Burmood*, 35 Neb. 504, 53 N.W. 371 (1892).

If person taking up stock does not comply with statute by refusing to select arbitrator, he acquires no lien and loses right to possession. *Deirks v. Wielage*, 18 Neb. 176, 24 N.W. 728 (1885).

Owner may replevin upon tender of damages. *Shroaf v. Allen*, 12 Neb. 109, 10 N.W. 551 (1881).

Owner must tender full amount. *McAllister v. Wrede*, 5 Neb. Unof. 82, 97 N.W. 318 (1903).

### 54-404 Trespassing animals; distraint; damages; owner's failure to pay; sale.

If the owner of such stock shall refuse, within forty-eight hours after having been notified in writing, to pay the damages claimed or appoint an arbitrator to represent his interests, the animal or animals shall be sold upon execution as required by law, when the amount of damages and costs have been filed with the county court of the county within which the damages have been sustained.

**Source:** Laws 1871, § 4, p. 121; R.S.1913, § 112; C.S.1922, § 120; C.S. 1929, § 54-404; R.S.1943, § 54-404; Laws 1972, LB 1032, § 259.

#### Cross References

**Uniform Arbitration Act**, applicability, see section 25-2602.01.

Essentials of jurisdiction of justice of peace are stated. *Randall v. Gross*, 67 Neb. 255, 93 N.W. 223 (1903).

Issuance and service of summons are not necessary to give justice jurisdiction to issue execution, nor does void judgment

destroy jurisdiction. *Holmes v. Irwin*, 17 Neb. 99, 22 N.W. 124 (1885), 22 N.W. 347 (1885).

Object of law is to afford speedy and inexpensive mode of ascertaining damages. *Haggard v. Wallen*, 6 Neb. 271 (1877).

### 54-405 Distraint; arbitrators; number; powers.

In case the parties interested cannot agree as to the amount of damages and costs sustained, each party may choose a man, and, in case the two men chosen cannot agree, they shall choose a third man, and, after being duly sworn for the purpose herein named, the three shall proceed to assess the damages, possessing for that purpose the general power of arbitrators.

**Source:** Laws 1871, § 5, p. 121; R.S.1913, § 113; C.S.1922, § 121; C.S. 1929, § 54-405; R.S.1943, § 54-405.

## Cross References

**Uniform Arbitration Act**, applicability, see section 25-2602.01.

Provisions of this section are not compulsory upon either party. *Randall v. Gross*, 67 Neb. 255, 93 N.W. 223 (1903).

Arbitrators' award is not a bar to action for negligence of distrainer. *Richardson v. Halstead*, 44 Neb. 606, 62 N.W. 1077 (1895).

Purpose of law is that taker-up of stock shall have a lien for only such damages as could be ascertained by arbitrators to be immediately appointed. *Deirks v. Wielage*, 18 Neb. 176, 24 N.W. 728 (1885).

**54-406 Distraint; arbitration award; enforcement; appeal.**

The arbitrators shall make an award in writing, which, if not paid within five days after the award has been made, may be filed with the county court and shall operate as a judgment, which judgment shall be a lien upon the stock so distrained, and execution may issue upon such stock for the collection of such damages and costs as in other cases; *Provided*, either party may have an appeal from the judgment as in other cases in county court. The arbitrators shall be allowed two dollars each for their services.

**Source:** Laws 1871, § 6, p. 121; R.S.1913, § 114; C.S.1922, § 122; C.S. 1929, § 54-406; R.S.1943, § 54-406; Laws 1972, LB 1032, § 260.

## Cross References

**Uniform Arbitration Act**, applicability, see section 25-2602.01.

Owner of stock, after tendering the proper amount of damages sustained, may replevin the stock. *Randall v. Gross*, 67 Neb. 255, 93 N.W. 223 (1903).

Authority of arbitrators is merely to appraise damages and costs sustained by landowner. *Richardson v. Halstead*, 44 Neb. 606, 62 N.W. 1077 (1895).

Judgment on award may be appealed from. Sections of civil code relating to arbitration are not applicable. *Holub v. Mitchell*, 42 Neb. 389, 60 N.W. 596 (1894).

**54-407 Estrays; owner unknown; procedure.**

In case the owner of such stock is not known or found in the county, the distrainer of the stock so trespassing upon lands shall proceed as provided by law regulating estrays and the stock shall be held liable for all damages and costs.

**Source:** Laws 1871, § 7, p. 121; R.S.1913, § 115; C.S.1922, § 123; C.S. 1929, § 54-407; R.S.1943, § 54-407; Laws 1996, LB 1174, § 7.

**54-408 Repealed. Laws 1996, LB 1174, § 9.**

**54-409 Repealed. Laws 1965, c. 333, § 2.**

**54-410 Repealed. Laws 1965, c. 333, § 2.**

**54-411 Repealed. Laws 1965, c. 333, § 2.**

**54-412 Repealed. Laws 1965, c. 333, § 2.**

**54-413 Repealed. Laws 1965, c. 333, § 2.**

**54-414 Repealed. Laws 1965, c. 333, § 2.**

**54-415 Estrays; distraint; sale; procedure; disposition of proceeds; violations; penalty.**

Any person taking up an estray shall report the same within seven days thereafter to the Nebraska Brand Committee, if within the brand inspection area, or to the county sheriff of the county where the estray was taken up, if not within the brand inspection area. If the animal is determined to be an estray by

a representative of the Nebraska Brand Committee or the county sheriff, as the case may be, such animal shall, as promptly as may be practicable, be sold through the most convenient livestock auction market. The proceeds of such sale, after deducting the selling expenses, shall be paid over to the Nebraska Brand Committee to be placed in the estray fund identified in section 54-1,118, if such estray was taken up within the brand inspection area, and otherwise to the treasurer of the county in which such estray was taken up. During the time such proceeds are impounded, any person taking up such estray may file claim with the Nebraska Brand Committee or the county treasurer, as the case may be, for the expense of feeding and keeping such estray while in his or her possession. When such claim is filed it shall be the duty of the Nebraska Brand Committee or the county board, as the case may be, to decide on the validity of the claim so filed and allow the claim for such amount as may be deemed equitable. When the estray originates within the brand inspection area such proceeds shall be impounded for one year, unless ownership is determined sooner by the Nebraska Brand Committee, and if ownership is not determined within such one-year period, the proceeds shall be paid into the permanent school fund, less the actual expenses incurred in the investigation and processing of the estray fund. Any amount deducted as actual expenses incurred shall be deposited in the Nebraska Brand Inspection and Theft Prevention Fund. When the estray is located outside the brand inspection area and ownership cannot be determined by the county board, the county board shall then order payment of the balance of the sale proceeds less expenses, to the permanent school fund. If the brand committee or the county board determines ownership of an estray sold in accordance with this section by means of evidence of ownership other than the owner's recorded Nebraska brand, an amount not to exceed the actual investigative costs or expenses may be deducted from the proceeds of the sale. Any person who violates this section is guilty of a Class II misdemeanor. The definitions found in sections 54-172 to 54-190 apply to this section.

**Source:** R.S.1866, p. 154; R.S.1913, § 123; C.S.1922, § 131; C.S.1929, § 54-415; R.S.1943, § 54-415; Laws 1965, c. 333, § 1, p. 953; Laws 1967, c. 344, § 1, p. 920; Laws 1977, LB 39, § 19; Laws 1979, LB 564, § 19; Laws 1980, LB 797, § 23; Laws 1983, LB 536, § 5; Laws 1999, LB 778, § 61.

**54-416 Feral swine; applicability of sections; destruction; when.**

The duties and liabilities imposed by sections 54-401 to 54-415 do not apply in the case of estray or trespass of feral swine as defined in section 37-524.01. Feral swine may be destroyed as provided in section 37-524.01.

**Source:** Laws 2005, LB 20, § 2.

**54-417 Repealed. Laws 1965, c. 333, § 2.**

**54-418 Repealed. Laws 1965, c. 333, § 2.**

**54-419 Repealed. Laws 1965, c. 333, § 2.**

**54-420 Repealed. Laws 1965, c. 333, § 2.**

**54-421 Repealed. Laws 1965, c. 333, § 2.**

**54-422 Repealed. Laws 1965, c. 333, § 2.**

**54-423 Repealed. Laws 1965, c. 333, § 2.**

**54-424 Repealed. Laws 1965, c. 333, § 2.**

**54-425 Repealed. Laws 1965, c. 333, § 2.**

**ARTICLE 5**

**FOOD SUPPLY ANIMAL VETERINARY INCENTIVE PROGRAM ACT**

Section

54-501. Act, how cited.

54-502. Terms, defined.

54-503. Program; participation; incentives.

54-504. Applicant; eligibility; preference.

54-505. Distribution of program funds.

54-506. Release from program; when; recovery of payments.

54-507. Food Supply Animal Veterinary Incentive Fund; created; use; investment.

54-508. Rules and regulations.

**54-501 Act, how cited.**

Sections 54-501 to 54-508 shall be known and may be cited as the Food Supply Animal Veterinary Incentive Program Act.

**Source:** Laws 2008, LB1172, § 1.

**54-502 Terms, defined.**

For purposes of the Food Supply Animal Veterinary Incentive Program Act:

(1) Department means the Department of Agriculture;

(2) Food supply animal includes cattle, hogs, sheep, goats, and poultry;

(3) Food supply animal veterinarian means a veterinarian who is engaged in general or food supply animal practice as his or her primary focus of practice and who has a substantial portion of his or her practice devoted to food supply animal veterinary medicine;

(4) Program means the Food Supply Animal Veterinary Incentive Program; and

(5) Rural mixed animal veterinary practice means practice as a food supply animal veterinarian in a rural area and a substantial portion of the practice involves food supply animal veterinary practice.

**Source:** Laws 2008, LB1172, § 2.

**54-503 Program; participation; incentives.**

Each year the department shall select from a pool of applicants up to four veterinarians to participate in the program. The selected veterinarians are eligible to receive up to eighty thousand dollars under the program as an incentive to locate in rural Nebraska and practice food supply animal veterinary medicine.

**Source:** Laws 2008, LB1172, § 3.

**54-504 Applicant; eligibility; preference.**

(1) To be eligible for funds under the program, an applicant shall:

- (a) Be a graduate of an approved veterinary medical school;
- (b) Be licensed to practice veterinary medicine in this state;
- (c) Enter into a contract with the department to provide full-time veterinary medicine services as a food supply animal veterinarian in a food supply animal veterinary practice or in a rural mixed animal veterinary practice for four years in one or more communities approved by the department; and
- (d) Be accredited by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services to provide services relating to food supply animals by the end of the first year of service.

(2) The department shall give preference for approving communities for purposes of subdivision (1)(c) of this section to communities located in areas designated by the department as shortage areas for food supply animal veterinary medical services. In designating such areas, the department may initially utilize shortage areas as designated by the American Veterinary Medical Association on July 18, 2008, and may revise designations as necessary and appropriate to achieve the purposes of the program.

**Source:** Laws 2008, LB1172, § 4.

#### **54-505 Distribution of program funds.**

(1) To the extent that funds are available, program funds shall be distributed as follows:

- (a) After completing the first year of service under the contract, the veterinarian is eligible to receive up to fifteen thousand dollars;
- (b) After completing the second year of service under the contract, the veterinarian is eligible to receive up to fifteen thousand dollars;
- (c) After completing the third year of service under the contract, the veterinarian is eligible to receive up to twenty-five thousand dollars; and
- (d) After completing the fourth year of service under the contract, the veterinarian is eligible to receive up to twenty-five thousand dollars.

(2) If the veterinarian does not complete an entire year of service or if sufficient funds are not available to provide the full dollar amount of incentive in a year, the amount distributed under this section for that year shall be prorated.

**Source:** Laws 2008, LB1172, § 5.

#### **54-506 Release from program; when; recovery of payments.**

(1) A veterinarian shall be released from the program contract without penalty if:

- (a) The veterinarian has completed the service requirements of the contract;
- (b) The veterinarian is unable to complete the service requirements of the contract because of a permanent physical disability;
- (c) The veterinarian demonstrates extreme hardship or shows other good cause justifying the release; or
- (d) The veterinarian dies.

(2)(a) A veterinarian shall be released from further performance of veterinary services under the program contract if he or she is unable to perform his or her contractual obligations to provide veterinary services due to the suspension or

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revocation of his or her federal accreditation or denial, refusal of renewal, limitation, suspension, revocation, or other disciplinary measure taken against his or her license to practice in Nebraska pursuant to section 71-1,163 until December 1, 2008, and section 38-3324 on and after December 1, 2008.

(b) If a veterinarian is released from his or her contract pursuant to subdivision (a) of this subsection, the department may recover a portion of or all of the payments made to such veterinarian under section 54-505. The department shall remit any such funds to the State Treasurer for credit to the Food Supply Animal Veterinary Incentive Fund. The department may use appropriate remedies available to enforce this subdivision.

(3) The State of Nebraska shall be released from any further obligation under the Food Supply Animal Veterinary Incentive Program Act or any contract entered into with a veterinarian under the act if the veterinarian is released from the program pursuant to this section.

**Source:** Laws 2008, LB1172, § 6.

**54-507 Food Supply Animal Veterinary Incentive Fund; created; use; investment.**

The Food Supply Animal Veterinary Incentive Fund is created. The fund may be used to carry out the purposes of the Food Supply Animal Veterinary Incentive Program Act. The State Treasurer shall credit to the fund any money appropriated to the fund by the Legislature and any money received as gifts or grants or other private or public funds received under the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2008, LB1172, § 7.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-508 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to carry out the Food Supply Animal Veterinary Incentive Program Act.

**Source:** Laws 2008, LB1172, § 8.

**ARTICLE 6  
DOGS AND CATS**

(a) DOGS

- Section 54-601. Dogs; personal property; owner liable for damages; exceptions.
- 54-602. Dogs owned by different persons; joint liability.
- 54-603. Dogs; license tax; amount; service animal; license; county, city, or village; collect fee; disposition.
- 54-604. Dogs; killing; when permitted.
- 54-605. Dogs; collar required.
- 54-606. Dogs; collarless; who deemed owner.
- 54-607. Dogs; running at large; penalty.
- 54-608. Dogs in counties having a population of 80,000 inhabitants or more; responsibilities of owners.

## LIVESTOCK

### Section

- 54-609. Repealed. Laws 2008, LB 1055, § 24.
- 54-610. Dogs in counties having a population of 80,000 inhabitants or more; poundmaster; duties; filing complaint.
- 54-611. Dogs in counties having a population of 80,000 inhabitants or more; convictions; disposition of offending dog; costs.
- 54-612. Repealed. Laws 1969, c. 445, § 13.
- 54-613. Violations; penalties.
- 54-614. County; license tax; regulate dogs running at large; appeal process.
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### (b) DANGEROUS DOGS

- 54-617. Dangerous dogs; terms, defined.
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- 54-622.01. Dangerous dogs; serious bodily injury; penalty; defense.
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- 54-625. Act, how cited.
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- 54-629. Rules and regulations.
- 54-630. Application; denial; appeal.
- 54-631. Licensee; duties; disciplinary actions.
- 54-632. Notice or order; service requirements; hearing; appeal.
- 54-633. Enforcement powers; administrative fine.
- 54-634. Violation; penalty.
- 54-634.01. Prohibited acts.
- 54-635. Commercial Dog and Cat Operator Inspection Program Cash Fund; created; use; investment.
- 54-636. Department; enforcement powers.
- 54-637. Information on spaying and neutering; requirements.
- 54-638. Provision for spaying or neutering; when.
- 54-639. Adopter or purchaser; agreement; requirements.
- 54-640. Commercial breeder; duties.
- 54-641. Licensees; primary enclosures; requirements.
- 54-642. Department; submit report of costs and revenue.
- 54-643. Administrative fines; disposition; lien; collection.

### (d) DOG AND CAT PURCHASE PROTECTION ACT

- 54-644. Act, how cited.
- 54-645. Terms, defined.
- 54-646. Seller; written disclosure statement; contents; receipt; notice of purchaser's rights and responsibilities; health certificate; retention of records.
- 54-647. Recourse to remedies; purchaser; duties; notice to seller; remedies.
- 54-648. Denial of refund, reimbursement of fees, or replacement; conditions.
- 54-649. Purchaser; file action; seller's rights; limit of recovery.
- 54-650. Other rights and remedies not limited; act; how construed.

## (a) DOGS

**54-601 Dogs; personal property; owner liable for damages; exceptions.**

(1) Dogs are hereby declared to be personal property for all intents and purposes, and, except as provided in subsection (2) of this section, the owner or owners of any dog or dogs shall be liable for any and all damages that may accrue (a) to any person, other than a trespasser, by reason of having been bitten by any such dog or dogs and (b) to any person, firm, or corporation by reason of such dog or dogs killing, wounding, injuring, worrying, or chasing any person or persons or any sheep or other domestic animals belonging to such person, firm, or corporation. Such damage may be recovered in any court having jurisdiction of the amount claimed.

(2)(a) A governmental agency or its employees using a dog in military or police work shall not be liable under subsection (1) of this section to a party to, participant in, or person reasonably suspected to be a party to or participant in the act that prompted the use of the dog in the military or police work if the officers of the governmental agency were complying with a written policy on the necessary and appropriate use of a dog for military or police work adopted by the governmental agency and if the damage occurred while the dog was responding to a harassing or provoking act or the damage was the result of a reasonable use of force while the dog or dogs were assisting an employee of the agency in any of the following:

(i) The apprehension or holding of a suspect if the employee has a reasonable suspicion of the suspect's involvement in criminal activity;

(ii) The investigation of a crime or possible crime;

(iii) The execution of a warrant; or

(iv) The defense of a peace officer or another person other than the suspect.

(b) For purposes of this subsection, harassing or provoking act means knowingly and intentionally attempting to interfere with, interfering with, teasing or harassing such dog in order to distract, or agitating or harming such dog.

**Source:** Laws 1877, § 1, p. 156; Laws 1899, c. 4, § 1, p. 54; R.S.1913, § 172; C.S.1922, § 169; C.S.1929, § 54-601; R.S.1943, § 54-601; Laws 1947, c. 192, § 1, p. 629; Laws 1961, c. 268, § 1, p. 786; Laws 1992, LB 1011, § 1; Laws 2009, LB347, § 1.

**1. Liability of owner****2. Miscellaneous****1. Liability of owner**

While this section exempts a dog owner from strict liability for injuries to a trespasser caused by the owner's dog, it does not cut off the common-law tort remedy available to a trespasser for a dog bite. *Guzman v. Barth*, 250 Neb. 763, 552 N.W.2d 299 (1996).

The strict liability of an owner of a dog for all damages that may accrue to any person, other than a trespasser, by reason of having been bitten by such dog, does not extend to the owners of leased property upon which the dog is harbored. *McCullough v. Bozarth*, 232 Neb. 714, 442 N.W.2d 201 (1989).

Dog owners are statutorily liable for any and all damages inflicted by their dog to any person, other than a trespasser, without proof of scienter or knowledge of the dangerous propensities of the dogs for biting and by reason of such dog or dogs killing, wounding, worrying, or chasing domestic animals. *Paulsen v. Courtney*, 202 Neb. 791, 277 N.W.2d 233 (1979).

In an action based upon statutory liability for injury by a dog, the injured person will be barred from recovering if he intentionally provoked the dog, and thereby caused it to attack him. *Paulsen v. Courtney*, 202 Neb. 791, 277 N.W.2d 233 (1979).

The merely playful acts of dogs do not give rise to a cause of action or damages hereunder. *Donner v. Plymate*, 193 Neb. 647, 228 N.W.2d 612 (1975).

Evidence was insufficient to show that injury to sheep was caused by defendant's dogs. *Norman v. Sprague*, 167 Neb. 528, 93 N.W.2d 637 (1958).

Owner of dogs not liable when evidence fails to show injuries to horses directly attributable to dogs. *Cook v. Pickrel*, 20 Neb. 433, 30 N.W. 421 (1886).

This civil dog bite statute creates a cause of action based upon strict liability on the part of the dog owner. *State v. Ruisi*, 9 Neb. App. 435, 616 N.W.2d 19 (2000).

2. Miscellaneous

When the words killing, wounding, worrying, or chasing as used in this section are read together, they exclude playful and mischievous acts of dogs. *Holden v. Schwer*, 242 Neb. 389, 495 N.W.2d 269 (1993).

Question whether seven-year-old child was a trespasser under statute was question for jury, which should have been instructed on definition of trespasser, including element of intent. *Kenney v. Barna*, 215 Neb. 863, 341 N.W.2d 901 (1983).

This section removes the common law restriction of proving scienter or knowledge of the dangerous propensities of dogs, but only as it applies to the actions of dogs specified in the statute. *Paulsen v. Courtney*, 202 Neb. 791, 277 N.W.2d 233 (1979).

Purpose of statute is to protect domestic animals, ordinarily the prey of dogs. No right exists to kill dog for past conduct. *Brown v. Graham*, 80 Neb. 281, 114 N.W. 153 (1907).

Owner can recover value of dog killed, if not running at large. *Nehr v. State*, 35 Neb. 638, 53 N.W. 589 (1892).

**54-602 Dogs owned by different persons; joint liability.**

If two or more dogs owned by different persons shall kill, wound, chase or worry any sheep or other domestic animal, such persons shall be jointly and severally liable for all damage done by such dogs.

**Source:** Laws 1877, § 2, p. 156; R.S.1913, § 173; C.S.1922, § 170; C.S. 1929, § 54-602; R.S.1943, § 54-602.

**54-603 Dogs; license tax; amount; service animal; license; county, city, or village; collect fee; disposition.**

(1) Any county, city, or village shall have authority by ordinance or resolution to impose a license tax, in an amount which shall be determined by the appropriate governing body, on the owner or harbinger of any dog or dogs, to be paid under such regulations as shall be provided by such ordinance or resolutions.

(2) Every service animal shall be licensed as required by local ordinances or resolutions, but no license tax shall be charged. Upon the retirement or discontinuance of the animal as a service animal, the owner of the animal shall be liable for the payment of a license tax as prescribed by local ordinances or resolutions.

(3) Any county, city, or village that imposes a license tax on the owner or harbinger of any cat or cats or any dog or dogs under this section shall, in addition to the license tax imposed by the licensing jurisdiction, collect from the licensee a fee of one dollar. The person designated by the licensing jurisdiction to collect and administer the license tax shall act as agent for the State of Nebraska in the collection of the fee. From each one-dollar fee collected, such person shall retain three cents and remit the balance to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund. If the person collecting the fee is the licensing jurisdiction, the three cents shall be credited to the licensing jurisdiction's general fund. If the person collecting the fee is a private contractor, the three cents shall be credited to an account of the private contractor. The remittance to the State Treasurer shall be made at least annually at the conclusion of the licensing jurisdiction's fiscal year, except that any licensing jurisdiction or private contractor that collects fifty dollars or less of such fees during the fiscal year may remit the fees when the cumulative amount of fees collected reaches fifty dollars.

**Source:** Laws 1877, § 3, p. 156; R.S.1913, § 174; C.S.1922, § 171; C.S. 1929, § 54-603; R.S.1943, § 54-603; Laws 1976, LB 515, § 2; Laws 1997, LB 814, § 7; Laws 2008, LB806, § 13; Laws 2010, LB910, § 3.

Cross References

For other provisions authorizing municipalities to impose license tax on dogs, see sections 14-102, 15-220, 16-206, and 17-526.

In action against county for loss of sheep killed by dogs, based on statute giving new remedy and prescribing prerequisite conditions, plaintiff must allege that conditions have been performed. *McCullough v. Colfax County*, 4 Neb. Unof. 543, 95 N.W. 29 (1903).

#### **54-604 Dogs; killing; when permitted.**

Any person shall have the right to kill any dog found doing any damage as mentioned in sections 54-601 and 54-602 to any sheep or domestic animal, or if he shall have just and reasonable ground to believe that such dog has been killing, wounding, chasing or worrying such sheep or animal; and no action shall be maintained for such killing.

**Source:** Laws 1877, § 4, p. 156; R.S.1913, § 175; C.S.1922, § 172; C.S. 1929, § 54-604; R.S.1943, § 54-604.

#### **54-605 Dogs; collar required.**

It shall be the duty of every owner or owners of any dog or dogs to securely place upon the neck of such dog or dogs a good and sufficient collar with a metallic plate thereon. The plate shall be plainly inscribed with the name of such owner.

**Source:** Laws 1877, § 5, p. 157; R.S.1913, § 176; C.S.1922, § 173; C.S. 1929, § 54-605; R.S.1943, § 54-605; Laws 1990, LB 50, § 12.

Dog under control of owner is not running at large. *Brown v. Graham*, 80 Neb. 281, 114 N.W. 153 (1907).

Dog is running at large when he leaves the owner's premises or goes upon the public road, and no one having control of him is near. *Nehr v. State*, 35 Neb. 638, 53 N.W. 589 (1892).

#### **54-606 Dogs; collarless; who deemed owner.**

Every person who shall harbor about his or her premises a collarless dog for the space of ten days shall be taken and held as the owner, and shall be liable for all damages which such dog shall commit.

**Source:** Laws 1877, § 6, p. 157; R.S.1913, § 177; C.S.1922, § 174; C.S. 1929, § 54-606; R.S.1943, § 54-606.

Dog that assails people along a public road is a nuisance and may be killed by person assailed. *Nehr v. State*, 35 Neb. 638, 53 N.W. 589 (1892).

#### **54-607 Dogs; running at large; penalty.**

The owner of any dog running at large for ten days without a collar as required in section 54-605 shall be fined an amount not to exceed twenty-five dollars.

**Source:** Laws 1877, § 7, p. 157; R.S.1913, § 178; C.S.1922, § 175; C.S. 1929, § 54-607; R.S.1943, § 54-607; Laws 2008, LB1055, § 8.

#### **54-608 Dogs in counties having a population of 80,000 inhabitants or more; responsibilities of owners.**

In counties having a population of eighty thousand or more inhabitants and cities of the first class contained in such counties, it shall be unlawful for any person, firm, partnership, limited liability company, or corporation to have any dog which is owned, kept, harbored, or allowed to be habitually in or upon premises occupied by him, her, or it or under his, her, or its control to be at large.

**Source:** Laws 1961, c. 268, § 2, p. 787; Laws 1988, LB 630, § 1; Laws 2008, LB1055, § 9.

**54-609 Repealed. Laws 2008, LB 1055, § 24.****54-610 Dogs in counties having a population of 80,000 inhabitants or more; poundmaster; duties; filing complaint.**

In counties having a population of eighty thousand or more inhabitants and cities of the first class contained in such counties, whenever complaints are made to the poundmaster or the person or corporation performing the duties of poundmaster that a dog is at large, it shall be the duty of such poundmaster, person, or corporation to investigate such complaint. If upon such investigation it appears that the complaint is founded upon facts, it shall be the duty of such poundmaster, person, or corporation to take such dog into custody and he, she, or it may file or cause to be filed a complaint in the county court against such person, firm, partnership, limited liability company, or corporation owning, keeping, or harboring such dog charging a violation of section 54-601 or 54-608.

**Source:** Laws 1961, c. 268, § 4, p. 787; Laws 1988, LB 630, § 3; Laws 1988, LB 801, § 1; Laws 1993, LB 121, § 338; Laws 2008, LB1055, § 10.

**54-611 Dogs in counties having a population of 80,000 inhabitants or more; convictions; disposition of offending dog; costs.**

In counties having a population of eighty thousand or more inhabitants and cities of the first class contained in such counties, if upon final hearing the defendant is adjudged guilty of any violation of section 54-601 or 54-608, the court may, in addition to the penalty provided in section 54-613, order such disposition of the offending dog as may seem reasonable and proper. Disposition includes sterilization, seizure, permanent assignment of the dog to a court-approved animal shelter or animal rescue as such terms are defined in section 28-1018, or destruction of the dog in an expeditious and humane manner. Reasonable costs for such disposition are the responsibility of the defendant.

**Source:** Laws 1961, c. 268, § 5, p. 787; Laws 1988, LB 630, § 4; Laws 1988, LB 801, § 2; Laws 2008, LB1055, § 11; Laws 2010, LB910, § 4.

Because restitution is imposed as punishment and is part of the criminal sentence, a dispositional order pursuant to this section is akin to a sentencing order, and an appellate court reviews the order for an abuse of discretion. *State v. Dittoe*, 269 Neb. 317, 693 N.W.2d 261 (2005).

The provision in this section that allows the court to order disposition of an offending dog is similar to section 29-2280, which allows a court to order restitution to the victim of a crime. *State v. Dittoe*, 269 Neb. 317, 693 N.W.2d 261 (2005).

**54-612 Repealed. Laws 1969, c. 445, § 13.****54-613 Violations; penalties.**

Any person in violation of section 54-601 or 54-608 shall be deemed guilty of a Class IV misdemeanor.

**Source:** Laws 1961, c. 268, § 7, p. 788; Laws 1977, LB 39, § 20; Laws 1988, LB 630, § 5; Laws 1988, LB 801, § 3; Laws 2008, LB1055, § 12.

**54-614 County; license tax; regulate dogs running at large; appeal process.**

(1) A county may collect a license tax in an amount which shall be determined by the appropriate governing body from the owners and harborers of

dogs and may enforce such tax by appropriate penalties. A county may impound any dog if the owner or harbinger shall refuse or neglect to pay such license tax. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals.

(2) A county may regulate or prohibit the running at large of dogs, adopt regulations to guard against injuries or annoyances therefrom, and authorize the destruction, adoption, or other disposition of such dogs when running at large contrary to the provisions of this subsection or any regulations adopted in accordance with this subsection. A county adopting regulations in accordance with this subsection shall provide for an appeal process with respect to such regulations.

**Source:** Laws 1963, c. 104, § 1, p. 429; Laws 1986, LB 1063, § 1; Laws 1997, LB 814, § 8; Laws 2008, LB806, § 14; Laws 2008, LB1055, § 13.

**54-615 County; impound dog; cost and penalties.**

A county may impound any dog deemed to be running at large. The owner of such dog shall pay the reasonable cost and penalties provided for the violation of such prohibition, including the expense of impounding and keeping the dog.

**Source:** Laws 1963, c. 104, § 2, p. 429; Laws 2008, LB1055, § 14.

**54-616 County; pounds; erection; keepers; compensation; rules and regulations.**

A county may provide for the erection of any pounds needed within the county, appoint and compensate keepers thereof, and establish and enforce rules governing such pounds.

**Source:** Laws 1963, c. 104, § 3, p. 430; Laws 2008, LB1055, § 15.

(b) DANGEROUS DOGS

**54-617 Dangerous dogs; terms, defined.**

For purposes of sections 54-617 to 54-624:

(1) Animal control authority means an entity authorized to enforce the animal control laws of a county, city, or village or this state and includes any local law enforcement agency or other agency designated by a county, city, or village to enforce the animal control laws of such county, city, or village;

(2) Animal control officer means any individual employed, appointed, or authorized by an animal control authority for the purpose of aiding in the enforcement of sections 54-617 to 54-624 or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal;

(3)(a) Dangerous dog means a dog that, according to the records of an animal control authority: (i) Has killed a human being; (ii) has inflicted injury on a human being that requires medical treatment; (iii) has killed a domestic animal without provocation; or (iv) has been previously determined to be a potentially dangerous dog by an animal control authority, the owner has received notice from an animal control authority or an animal control officer of such determi-

nation, and the dog inflicts an injury on a human being that does not require medical treatment, injures a domestic animal, or threatens the safety of humans or domestic animals.

(b)(i) A dog shall not be defined as a dangerous dog under subdivision (3)(a)(ii) of this section, and the owner shall not be guilty under section 54-622.01, if the individual was tormenting, abusing, or assaulting the dog at the time of the injury or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog.

(ii) A dog shall not be defined as a dangerous dog under subdivision (3)(a)(iv) of this section, and the owner shall not be guilty under section 54-622.01, if the injury, damage, or threat was sustained by an individual who, at the time, was committing a willful trespass as defined in section 20-203, 28-520, or 28-521, was committing any other tort upon the property of the owner of the dog, was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog, or was committing or attempting to commit a crime.

(iii) A dog shall not be defined as a dangerous dog under subdivision (3)(a) of this section if the dog is a police animal as defined in section 28-1008;

(4) Domestic animal means a cat, a dog, or livestock. Livestock includes buffalo, deer, antelope, fowl, and any other animal in any zoo, wildlife park, refuge, wildlife area, or nature center intended to be on exhibit;

(5) Medical treatment means treatment administered by a physician or other licensed health care professional that results in sutures or surgery or treatment for one or more broken bones;

(6) Owner means any person, firm, corporation, organization, political subdivision, or department possessing, harboring, keeping, or having control or custody of a dog; and

(7) Potentially dangerous dog means (a) any dog that when unprovoked (i) inflicts an injury on a human being that does not require medical treatment, (ii) injures a domestic animal, or (iii) chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack or (b) any specific dog with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals.

**Source:** Laws 1989, LB 208, § 1; Laws 2008, LB1055, § 16; Laws 2009, LB494, § 8.

**54-618 Dangerous dogs; actions required; costs; limitations on transport; permanent relocation; procedure.**

(1) A dangerous dog that has been declared as such shall be spayed or neutered and implanted with a microchip identification number by a licensed veterinarian within thirty days after such declaration. The cost of both procedures is the responsibility of the owner of the dangerous dog. Written proof of both procedures and the microchip identification number shall be provided to the animal control authority after the procedures are completed.

(2) No owner of a dangerous dog shall permit the dog to go beyond the property of the owner unless the dog is restrained securely by a chain or leash.

(3) Except as provided in subsection (4) of this section or for a reasonable veterinary purpose, no owner of a dangerous dog shall transport such dog or

permit such dog to be transported to another county, city, or village in this state.

(4) An owner of a dangerous dog may transport such dog or permit such dog to be transported to another county, city, or village in this state for the purpose of permanent relocation of the owner if the owner has obtained written permission prior to such relocation from the animal control authority of the county, city, or village in which the owner resides and from the county, city, or village in which the owner will reside. Each animal control authority may grant such permission based upon a reasonable evaluation of both the owner and the dog, including if the owner has complied with the laws of this state and of the county, city, or village in which he or she resides with regard to dangerous dogs after the dog was declared dangerous. An animal control authority shall not grant permission under this subsection if the county, city, or village has an ordinance or resolution prohibiting the relocation of dangerous dogs. After the permanent relocation, the animal control authority of the county, city, or village in which the owner resides shall monitor the owner and such dog for a period of at least thirty days but not to exceed ninety days to ensure the owner's compliance with the laws of this state and of such county, city, or village with regard to dangerous dogs. Nothing in this subsection shall permit the rescindment of the declaration of dangerous dog.

**Source:** Laws 1989, LB 208, § 2; Laws 2008, LB1055, § 17.

**54-619 Dangerous dogs; confinement required; warning signs.**

(1) No person, firm, partnership, limited liability company, or corporation shall own, keep, or harbor or allow to be in or on any premises occupied by him, her, or it or under his, her, or its charge or control any dangerous dog without such dog being confined so as to protect the public from injury.

(2) While unattended on the owner's property, a dangerous dog shall be securely confined, in a humane manner, indoors or in a securely enclosed and locked pen or structure suitably designed to prevent the entry of young children and to prevent the dog from escaping. The pen or structure shall have secure sides and a secure top. If the pen or structure has no bottom secured to the sides, the sides shall be embedded into the ground at a depth of at least one foot. The pen or structure shall also protect the dog from the elements. The pen or structure shall be at least ten feet from any property line of the owner. The owner of a dangerous dog shall post warning signs on the property where the dog is kept that are clearly visible from all areas of public access and that inform persons that a dangerous dog is on the property. Each warning sign shall be no less than ten inches by twelve inches and shall contain the words warning and dangerous animal in high-contrast lettering at least three inches high on a black background.

**Source:** Laws 1989, LB 208, § 3; Laws 2008, LB1055, § 18.

**54-620 Dangerous dogs; confiscation; when; costs.**

Any dangerous dog may be immediately confiscated by an animal control officer if the owner is in violation of sections 54-617 to 54-624. The owner shall be responsible for the reasonable costs incurred by the animal control authority for the care of a dangerous dog confiscated by an animal control officer or for the destruction of any dangerous dog if the action by the animal control

authority is pursuant to law and if the owner violated sections 54-617 to 54-624.

**Source:** Laws 1989, LB 208, § 4; Laws 2008, LB1055, § 19; Laws 2009, LB494, § 9.

**54-621 Dangerous dogs; disposal by court order.**

In addition to any other penalty, a court may order the animal control authority to dispose of a dangerous dog in an expeditious and humane manner.

**Source:** Laws 1989, LB 208, § 5.

**54-622 Dangerous dogs; violation; penalty.**

Except as provided in section 54-622.01, any owner who violates sections 54-617 to 54-621 shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1989, LB 208, § 6; Laws 2009, LB494, § 10.

**54-622.01 Dangerous dogs; serious bodily injury; penalty; defense.**

(1) Any owner whose dangerous dog inflicts on a human being a serious bodily injury as defined in section 28-109 is guilty of a Class I misdemeanor for the first offense and a Class IV felony for a second or subsequent offense, whether or not the same dangerous dog is involved.

(2) It is a defense to a violation of subsection (1) of this section that the dangerous dog was, at the time of the infliction of the serious bodily injury, in the custody of or under the direct control of a person other than the owner or the owner's immediate family.

**Source:** Laws 2009, LB494, § 13.

**54-623 Dangerous dogs; violation; conviction; effect.**

(1) Any owner convicted of a violation of sections 54-617 to 54-624 shall not own a dangerous dog within ten years after such conviction. Any owner violating this subsection shall be guilty of a Class IIIA misdemeanor, and the dog shall be treated as provided in subsection (2) of this section.

(2) Except as provided in section 54-622.01, if a dangerous dog of an owner with a prior conviction under sections 54-617 to 54-624 attacks or bites a human being or domestic animal, the owner shall be guilty of a Class IIIA misdemeanor. In addition, the dangerous dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

**Source:** Laws 1989, LB 208, § 7; Laws 2008, LB1055, § 20; Laws 2009, LB494, § 11.

**54-623.01 County; designate animal control authority.**

Each county shall designate an animal control authority that shall be responsible for enforcing sections 54-617 to 54-624 and the laws of such county regarding dangerous dogs.

**Source:** Laws 2008, LB1055, § 22; Laws 2009, LB494, § 12.

**54-624 Dangerous dogs; local laws or ordinances.**

Nothing in sections 54-617 to 54-623.01 shall be construed to restrict or prohibit any governing board of any county, city, or village from establishing and enforcing laws or ordinances at least as stringent as the provisions of sections 54-617 to 54-623.01.

**Source:** Laws 1989, LB 208, § 8; Laws 2008, LB1055, § 21; Laws 2009, LB494, § 14.

(c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT

**54-625 Act, how cited.**

Sections 54-625 to 54-643 shall be known and may be cited as the Commercial Dog and Cat Operator Inspection Act.

**Source:** Laws 2000, LB 825, § 1; Laws 2003, LB 274, § 1; Laws 2006, LB 856, § 13; Laws 2007, LB12, § 1; Laws 2009, LB241, § 1.

**54-626 Terms, defined.**

For purposes of the Commercial Dog and Cat Operator Inspection Act:

(1) Animal control facility means a facility operated by or under contract with the state or any political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals;

(2) Animal rescue means a person or group of persons who hold themselves out as an animal rescue, accept or solicit for dogs or cats with the intention of finding permanent adoptive homes or providing lifelong care for such dogs or cats, or who use foster homes as the primary means of housing dogs or cats;

(3) Animal shelter means a facility used to house or contain dogs or cats and owned, operated, or maintained by an incorporated humane society, an animal welfare society, a society for the prevention of cruelty to animals, or another nonprofit organization devoted to the welfare, protection, and humane treatment of such animals;

(4) Boarding kennel means a facility which is primarily used to house or contain dogs or cats owned by persons other than the operator of such facility. The primary function of a boarding kennel is to temporarily harbor dogs or cats when the owner of the dogs or cats is unable to do so or to provide training, grooming, or other nonveterinary service for consideration before returning the dogs or cats to the owner. A facility which provides such training, grooming, or other nonveterinary service is not a boarding kennel for the purposes of the act unless dogs or cats owned by persons other than the operator of such facility are housed at such facility overnight. Veterinary clinics, animal control facilities, animal rescues, and nonprofit animal shelters are not boarding kennels for the purposes of the act;

(5) Cat means any animal which is wholly or in part of the species *Felis domesticus*;

(6) Commercial breeder means a person engaged in the business of breeding dogs or cats:

(a) Who sells, exchanges, leases, or in any way transfers or offers to sell, exchange, lease, or transfer thirty-one or more dogs or cats in a twelve-month period beginning on April 1 of each year;

(b) Who owns or harbors four or more dogs or cats, intended for breeding, in a twelve-month period beginning on April 1 of each year;

(c) Whose dogs or cats produce a total of four or more litters within a twelve-month period beginning on April 1 of each year; or

(d) Who knowingly sells, exchanges, or leases dogs or cats for later retail sale or brokered trading;

(7) Dealer means any person who is not a commercial breeder or a pet shop but is engaged in the business of buying for resale or selling or exchanging dogs or cats as a principal or agent or who claims to be so engaged. A person who purchases, sells, exchanges, or leases thirty or fewer dogs or cats in a twelve-month period is not a dealer;

(8) Department means the Bureau of Animal Industry of the Department of Agriculture with the State Veterinarian in charge, subordinate only to the director;

(9) Director means the Director of Agriculture or his or her designated employee;

(10) Dog means any animal which is wholly or in part of the species *Canis familiaris*;

(11) Foster home means any person who provides temporary housing for twenty or fewer dogs or cats that are six months of age or older in any twelve-month period and is affiliated with a person operating as an animal rescue that uses foster homes as its primary housing of dogs or cats. To be considered a foster home, a person shall not participate in the acquisition of the dogs or cats for which temporary care is provided. Any foster home which houses more than twenty dogs or cats that are six months of age or older in any twelve-month period or who participates in the acquisition of dogs or cats shall be licensed as an animal rescue;

(12) Housing facility means any room, building, or areas used to contain a primary enclosure;

(13) Inspector means any person who is employed by the department and who is authorized to perform inspections pursuant to the act;

(14) Licensee means a person who has qualified for and received a license from the department pursuant to the act;

(15) Pet animal means an animal kept as a household pet for the purpose of companionship, which includes, but is not limited to, dogs, cats, birds, fish, rabbits, rodents, amphibians, and reptiles;

(16) Pet shop means a retail establishment which sells pet animals and related supplies;

(17) Premises means all public or private buildings, kennels, pens, and cages used by a facility and the public or private ground upon which a facility is located if such buildings, kennels, pens, cages, or ground are used by the owner or operator of such facility in the usual course of business;

(18) Primary enclosure means any structure used to immediately restrict a dog or cat to a limited amount of space, such as a room, pen, cage, or compartment;

(19) Secretary of Agriculture means the Secretary of Agriculture of the United States Department of Agriculture;

(20) Stop-movement order means a directive preventing the movement or removal of any dog or cat from the premises; and

(21) Unaltered means any male or female dog or cat which has not been neutered or spayed or otherwise rendered incapable of reproduction.

**Source:** Laws 2000, LB 825, § 2; Laws 2003, LB 233, § 1; Laws 2003, LB 274, § 2; Laws 2004, LB 1002, § 1; Laws 2009, LB241, § 2; Laws 2010, LB910, § 5.

**54-627 License requirements; fees; renewal; premises available for inspection.**

(1) A person shall not operate as a commercial breeder, a dealer, a boarding kennel, an animal control facility, an animal shelter, or, beginning October 1, 2010, an animal rescue unless the person obtains the appropriate license as a commercial breeder, a dealer, a boarding kennel, an animal control facility, an animal shelter, or, beginning October 1, 2010, an animal rescue. If a licensee is operating as an animal shelter as of July 15, 2010, he or she may apply for licensure as an animal rescue before October 1, 2010, and shall not be required to pay any licensing fee until October 1, 2010. A person shall not operate as a pet shop unless the person obtains a license as a pet shop. A pet shop shall only be subject to the Commercial Dog and Cat Operator Inspection Act and the rules and regulations adopted and promulgated pursuant thereto in any area or areas of the establishment used for the keeping and selling of pet animals. If a facility listed in this subsection is not located at the owner's residence, the name and address of the owner shall be posted on the premises.

(2) An applicant for a license shall submit an application for the appropriate license to the department, on a form prescribed by the department, together with the annual license fee. Such fee is nonreturnable. Upon receipt of the application and annual license fee and upon completion of a qualifying inspection if required pursuant to section 54-630 for an initial license applicant or if a qualifying inspection is deemed appropriate by the department before a license is issued for any other applicant, the appropriate license may be issued by the department. Such license shall not be transferable to another person or location.

(3)(a) Except as otherwise provided in this subsection, the annual license fee shall be determined according to the following fee schedule based upon the daily average number of dogs or cats housed by the licensee over the previous annual licensure period:

- (i) Ten or fewer dogs or cats, one hundred fifty dollars;
- (ii) Eleven to fifty dogs or cats, two hundred dollars;
- (iii) Fifty-one to one hundred dogs or cats, two hundred fifty dollars;
- (iv) One hundred one to one hundred fifty dogs or cats, three hundred dollars;
- (v) One hundred fifty-one to two hundred dogs or cats, three hundred fifty dollars;
- (vi) Two hundred one to two hundred fifty dogs or cats, four hundred dollars;
- (vii) Two hundred fifty-one to three hundred dogs or cats, four hundred fifty dollars;

(viii) Three hundred one to three hundred fifty dogs or cats, five hundred dollars;

(ix) Three hundred fifty-one to four hundred dogs or cats, five hundred fifty dollars;

(x) Four hundred one to four hundred fifty dogs or cats, six hundred dollars;

(xi) Four hundred fifty-one to five hundred dogs or cats, six hundred fifty dollars; and

(xii) More than five hundred dogs or cats, two thousand dollars.

(b) The initial license fee for any person required to be licensed pursuant to the act shall be one hundred twenty-five dollars.

(c) The annual license fee for a licensee that does not house dogs or cats shall be one hundred fifty dollars.

(d) The annual license fee for an animal rescue shall be one hundred fifty dollars.

(e) The fees charged under this subsection may be increased or decreased by the director after a public hearing is held outlining the reason for any proposed change in the fee. The maximum fee that may be charged shall not result in a fee for any license category that exceeds the license fee set forth in this subsection by more than one hundred dollars.

(4) A license to operate as a commercial breeder, a license to operate as a dealer, a license to operate as a boarding kennel, or a license to operate as a pet shop shall be renewed by filing with the department on or before April 1 of each year a renewal application and the annual license fee. A license to operate as an animal control facility, animal rescue, or animal shelter shall be renewed by filing with the department on or before October 1 of each year a renewal application and the annual license fee. Failure to renew a license prior to the expiration of the license shall result in a late renewal fee equal to twenty percent of the annual license fee due and payable each month, not to exceed one hundred percent of such fee, in addition to the license fee. The purpose of the late renewal fee is to pay for the administrative costs associated with the collection of fees under this section. The assessment of the late renewal fee shall not prohibit the director from taking any other action as provided in the act.

(5) A licensee under this section shall make its premises available for inspection pursuant to section 54-628 during normal business hours.

(6) The state or any political subdivision of the state which contracts out its animal control duties to a facility not operated by the state or any political subdivision of the state may be exempted from the licensing requirements of this section if such facility is licensed as an animal control facility, animal rescue, or animal shelter for the full term of the contract with the state or its political subdivision.

(7) Any fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund.

**Source:** Laws 2000, LB 825, § 3; Laws 2003, LB 233, § 2; Laws 2003, LB 274, § 3; Laws 2004, LB 1002, § 2; Laws 2006, LB 856, § 14; Laws 2007, LB12, § 2; Laws 2009, LB241, § 3; Laws 2010, LB910, § 6.

**54-627.01 Licensees; maintain written veterinary care plan or written emergency veterinary care plan.**

A dealer or pet shop licensed under section 54-627 shall maintain a written veterinary care plan developed in conjunction with the attending veterinarian for the dealer or pet shop. An animal control facility, an animal rescue, an animal shelter, or a boarding kennel licensed under section 54-627 shall maintain a written emergency veterinary care plan.

**Source:** Laws 2009, LB241, § 4; Laws 2010, LB910, § 7.

**54-628 Inspection program; department; powers.**

(1) The department shall inspect all licensees at least once in a twenty-four-month period to determine whether the licensee is in compliance with the Commercial Dog and Cat Operator Inspection Act. Any additional inspector or other field personnel employed by the department to carry out inspections pursuant to the act that are funded through General Fund appropriations to the Bureau of Animal Industry shall be assigned to the Bureau of Animal Industry and shall be available for temporary reassignment as needed to other activities and functions of the Bureau of Animal Industry in the event of a livestock disease emergency or any other threat to livestock or public health. When an inspection produces evidence of a violation of the act or the rules and regulations of the department, a copy of a written report of the inspection and violations shown thereon, prepared by the inspector, shall be given to the applicant or licensee, together with written notice to comply within the time limit established by the department and set out in such notice.

(2) If deemed necessary under the act or any rule or regulation adopted and promulgated pursuant to the act, the department may, for purposes of inspection, enter the premises of any applicant or licensee during normal business hours and in a reasonable manner, including all premises in or upon which dogs or cats are housed, sold, exchanged, or leased or are suspected of being housed, sold, exchanged, or leased. For purposes of this subsection, premises includes all buildings, vehicles, equipment, cages, kennels, containers, and pens and all records on such premises. The department shall not be subject to any action for trespass or damages resulting from compliance with this subsection. Pursuant to an inspection under this subsection, the department may:

(a) Enter the premises of any applicant for a license under the act to determine if the applicant meets the requirements for licensure under the act;

(b) Access all premises and examine and copy all records pertaining to compliance with the act and the rules or regulations adopted and promulgated under the act. The department shall have authority to gather evidence, including, but not limited to, photographs;

(c) Inspect or reinspect any vehicle or carrier transporting or holding dogs or cats that is in the state to determine compliance with the act or any rules or regulations adopted and promulgated under the act;

(d) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 if any person refuses to allow the department to conduct an inspection pursuant to this section; or

(e) Issue and enforce a written stop-movement order pursuant to section 54-628.01.

(3) For purposes of this section, the private residence of any applicant or licensee shall be available for purposes of inspection only if dogs or cats are housed in a primary enclosure as defined in 9 C.F.R. 1.1 within the residence, including a room in such residence, and only such portion of the residence that is used as a primary enclosure shall be open to an inspection pursuant to this section.

**Source:** Laws 2000, LB 825, § 4; Laws 2007, LB12, § 3; Laws 2009, LB241, § 5.

**54-628.01 Department; stop-movement order; issuance; contents; hearing; department; powers; costs; reinspection; hearing.**

(1) The department may issue a stop-movement order if the department has reasonable cause to believe that there exists noncompliance with the Commercial Dog and Cat Operator Inspection Act or any rule or regulation adopted and promulgated pursuant to the act, including, but not limited to, reasonable cause to believe unreasonable sanitation or housing conditions exist.

(2) Such stop-movement order may require the violator to maintain the dogs or cats subject to the order at the existing location or other department-approved premises until such time as the department has issued a written release from the stop-movement order. The stop-movement order shall clearly advise the violator that he or she may request in writing an immediate hearing before the director within two business days after receiving the order. The order issued pursuant to this section shall be final unless modified or rescinded by the director pursuant to section 54-632 at a hearing requested under this subsection.

(3) Pursuant to the stop-movement order, the department shall have the authority to enter the premises to inspect and determine if the dogs or cats subject to the order or the facilities used to house or transport such dogs or cats are kept and maintained in compliance with the requirements of the act and the rules and regulations adopted and promulgated pursuant to the act. The department shall not be liable for any costs incurred by the violator or any personnel of the violator due to such departmental action or in enforcing the stop-movement order. The department shall be reimbursed by the violator for the actual costs incurred by the department in issuing and enforcing any stop-movement order.

(4) A stop-movement order shall include:

- (a) A description of the nature of the violation;
- (b) The action necessary to bring the violator into compliance with the act and the rules and regulations adopted and promulgated pursuant to the act; and
- (c) The name, address, and telephone number of the violator who owns or houses the dogs or cats subject to the order.

(5) Before receipt of a written release, the person to whom the stop-movement order was issued shall:

- (a) Provide the department with an inventory of all dogs or cats on the premises at the time of the issuance of the order;
- (b) Provide the department with the identification tag number, the tattoo number, the microchip number, or any other approved method of identification for each individual dog or cat;

(c) Notify the department within forty-eight hours of the death or euthanasia of any dog or cat subject to the order. Such notification shall include the dog's or cat's individual identification tag number, tattoo number, microchip number, or other approved identification;

(d) Notify the department within forty-eight hours of any dog or cat giving birth after the issuance of the order, including the size of the litter; and

(e) Maintain on the premises any dog or cat subject to the order, except that a dog or cat under one year of age under contract to an individual prior to the issuance of the order may be delivered to the individual pursuant to the contractual obligation. The violator shall provide to the department information identifying the dog or cat and the name, address, and telephone number of the individual purchasing the dog or cat. The department may contact the purchaser to ascertain the date of the purchase agreement to ensure that the dog or cat was sold prior to the stop-movement order and to determine that he or she did purchase such dog or cat. No additional dogs or cats shall be transferred onto the premises without written approval of the department.

(6) The department shall reinspect the premises to determine compliance within ten business days after the initial inspection that resulted in the stop-movement order. At the time of reinspection pursuant to this subsection, if noncompliant conditions continue to exist, further reinspections shall be at the discretion of the department. The violator may request an immediate hearing with the director pursuant to any findings under this subsection.

**Source:** Laws 2009, LB241, § 6.

#### **54-629 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to carry out the Commercial Dog and Cat Operator Inspection Act. The rules and regulations may include, but are not limited to, factors to be considered when the department imposes an administrative fine, provisions governing record-keeping, veterinary care plans, emergency veterinary care plans, and other requirements for persons required to have a license, and any other matter deemed necessary by the department to carry out the act. The department shall use as a guideline for the humane handling, care, treatment, and transportation of dogs and cats the standards of the Animal and Plant Health Inspection Service of the United States Department of Agriculture as set out in 9 C.F.R. 3.1 to 3.19.

**Source:** Laws 2000, LB 825, § 5; Laws 2007, LB12, § 4; Laws 2009, LB241, § 7.

#### **54-630 Application; denial; appeal.**

Before the department approves an application for an initial license, an inspector of the department shall inspect the operation of the applicant to determine whether the applicant qualifies to hold a license pursuant to the Commercial Dog and Cat Operator Inspection Act. An applicant who qualifies shall be issued a license. An applicant who does not receive a license shall be afforded the opportunity for a hearing before the director or the director's designee to present evidence that the applicant is qualified to hold a license

should a license be issued. All such hearings shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 2000, LB 825, § 6; Laws 2007, LB12, § 5.

**Cross References**

Administrative Procedure Act, see section 84-920.

**54-631 Licensee; duties; disciplinary actions.**

(1) A licensee under the Commercial Dog and Cat Operator Inspection Act shall comply with the act, the rules and regulations, and any order of the director issued pursuant thereto. The licensee shall not interfere with the department in the performance of its duties.

(2) A licensee may be put on probation requiring such licensee to comply with the conditions set out in an order of probation issued by the director, may be ordered to cease and desist due to a failure to comply, or may be ordered to pay an administrative fine pursuant to section 54-633 after:

(a) The director determines the licensee has not complied with subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why an order should not be issued; and

(c) The director finds that issuing an order is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(3) A license may be suspended after:

(a) The director determines the licensee has not complied with subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be suspended; and

(c) The director finds that issuing an order suspending the license is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(4) A license may be immediately suspended and the director may order the operation of the licensee closed prior to hearing when:

(a) The director determines that there is a significant threat to the health or safety of the dogs or cats harbored or owned by the licensee; and

(b) The licensee receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the licensee may request in writing a date for a hearing, and the director shall consider the interests of the licensee when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a licensee does not request a hearing date within the fifteen-day period, the director shall establish a hearing date and notify the licensee of the date and time of such hearing.

(5) A license may be revoked after:

(a) The director determines the licensee has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be revoked; and

(c) The director finds that issuing an order revoking the license is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(6) The operation of any licensee which has been suspended shall close and remain closed until the license is reinstated. Any operation for which the license has been revoked shall close and remain closed until a new license is issued.

(7) The director may terminate proceedings undertaken pursuant to this section at any time if the reasons for such proceedings no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a licensee may no longer be subject to an order of probation if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(8) Proceedings undertaken pursuant to this section shall not preclude the department from seeking other civil or criminal actions.

**Source:** Laws 2000, LB 825, § 7; Laws 2007, LB12, § 6.

**54-632 Notice or order; service requirements; hearing; appeal.**

(1) Any notice or order provided for in the Commercial Dog and Cat Operator Inspection Act shall be properly served when it is personally served on the licensee or violator or on the person authorized by the licensee to receive notices and orders of the department or when it is sent by certified or registered mail, return receipt requested, to the last-known address of the licensee or violator or the person authorized by the licensee to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) A notice to comply with the conditions set out in the order of the director provided in section 54-631 shall set forth the acts or omissions with which the licensee is charged.

(3) A notice of the licensee's right to a hearing provided for in sections 54-630 and 54-631 shall set forth the time and place of the hearing except as otherwise provided in section 54-631. A notice of the licensee's right to such hearing shall include notice that such right to a hearing may be waived pursuant to subsection (6) of this section. A notice of the licensee's right to a hearing shall include notice to the licensee that the license may be subject to sanctions as provided in section 54-631.

(4) A request for a hearing under subsection (2) of section 54-628.01 shall request that the director set forth the time and place of the hearing. The director shall consider the interests of the violator in establishing the time and place of the hearing. Within three business days after receipt by the director of the hearing request, the director shall set forth the time and place of the hearing on the stop-movement order. A notice of the violator's right to such hearing shall include notice that such right to a hearing may be waived pursuant to subsection (6) of this section.

(5) The hearings provided for in the act shall be conducted by the director at the time and place he or she designates. The director shall make a final finding based on the complete hearing record and issue an order. If the director has

suspended a license pursuant to subsection (4) of section 54-631, the director shall sustain, modify, or rescind the order after the hearing. If the department has issued a stop-movement order under section 54-628.01, the director may sustain, modify, or rescind the order after the hearing. All hearings shall be in accordance with the Administrative Procedure Act.

(6) A licensee or violator waives the right to a hearing if such licensee or violator does not attend the hearing at the time and place set forth in the notice described in subsection (3) or (4) of this section, without requesting that the director, at least two days before the designated time, change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the licensee or violator shows the director that the licensee or violator had a justifiable reason for not attending the hearing and not timely requesting a change of the time and place for such hearing. If the licensee or violator waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (4) of section 54-631, the director may sustain, modify, or rescind the order after the hearing. If the department has issued a stop-movement order under section 54-628.01, the director may sustain, modify, or rescind the order after the hearing.

(7) Any person aggrieved by the finding of the director has ten days after the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director becomes final upon the expiration of ten days after its entry if no request for a new hearing is made.

**Source:** Laws 2000, LB 825, § 8; Laws 2007, LB12, § 7; Laws 2009, LB241, § 8.

#### Cross References

Administrative Procedure Act, see section 84-920.

#### **54-633 Enforcement powers; administrative fine.**

(1) In order to ensure compliance with the Commercial Dog and Cat Operator Inspection Act, the department may apply for a restraining order, temporary or permanent injunction, or mandatory injunction against any person violating or threatening to violate the act, the rules and regulations, or any order of the director issued pursuant thereto. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

The county attorney of the county in which such violations are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under this section to be instituted and pursued without delay.

(2) If alleged violations of the Commercial Dog and Cat Operator Inspection Act, the rules and regulations, or an order of the director or an offense against animals observed by an inspector in the course of performing an inspection under the act poses a significant threat to the health or safety of the dogs or cats harbored or owned by an applicant or licensee, the department may direct an inspector to impound the dogs or cats pursuant to sections 28-1011 and

28-1012 or may request any other law enforcement officer as defined in section 28-1008 to impound the dogs or cats pursuant to sections 28-1011 and 28-1012. The department shall cooperate and coordinate with law enforcement agencies, political subdivisions, animal shelters, humane societies, and other appropriate entities, public or private, to provide for the care, shelter, and disposition of animals impounded by the department pursuant to this section.

(3) The department may impose an administrative fine of not more than five thousand dollars for any violation of the act or the rules and regulations adopted and promulgated under the act. Each violation of the act or such rules and regulations shall constitute a separate offense for purposes of this subsection.

**Source:** Laws 2000, LB 825, § 9; Laws 2006, LB 856, § 15; Laws 2007, LB12, § 8.

#### **54-634 Violation; penalty.**

(1) It is unlawful for a person to operate without a valid license or operate while a license is revoked or suspended if a license is required by the Commercial Dog and Cat Operator Inspection Act. A licensee shall not operate in any manner which is not in conformity with the act or the rules and regulations adopted and promulgated pursuant thereto or interfere with the duties of the department or any final order of the director pursuant to the act.

(2) Any person who violates any provision of the act is guilty of a Class I misdemeanor.

**Source:** Laws 2000, LB 825, § 10.

#### **54-634.01 Prohibited acts.**

It shall be a violation of the Commercial Dog and Cat Operator Inspection Act for any person to (1) deny access to any officer, agent, employee, or appointee of the department or offer any resistance to, thwart, or hinder such persons by misrepresentation or concealment, (2) violate a stop-movement order issued under section 54-628.01, (3) fail to disclose all locations housing dogs or cats owned or controlled by such person, or (4) fail to pay any administrative fine levied pursuant to section 54-633.

**Source:** Laws 2009, LB241, § 9.

#### **54-635 Commercial Dog and Cat Operator Inspection Program Cash Fund; created; use; investment.**

The Commercial Dog and Cat Operator Inspection Program Cash Fund is created and shall consist of money appropriated by the Legislature, gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The money shall be used to carry out the Commercial Dog and Cat Operator Inspection Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2000, LB 825, § 11.

#### **Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-636 Department; enforcement powers.**

The department may cooperate with the Secretary of Agriculture in carrying out applicable federal law and the regulations issued by the Secretary of Agriculture under such law. The department may enter into contracts with any person to implement any or all of the provisions of the Commercial Dog and Cat Operator Inspection Act.

**Source:** Laws 2000, LB 825, § 12.

**54-637 Information on spaying and neutering; requirements.**

(1) Every dealer, commercial breeder, animal shelter, animal rescue, animal control facility, or pet shop or any other retailer, who transfers ownership of a dog or cat to an ultimate consumer, shall deliver to the ultimate consumer of each dog or cat at the time of sale, written material, in a form determined by such seller, containing information on the benefits of spaying and neutering. The written material shall include recommendations on establishing a relationship with a veterinarian, information on early-age spaying and neutering, the health benefits associated with spaying and neutering pets, the importance of minimizing the risk of homeless or unwanted animals, and the need to comply with applicable license laws.

(2) The delivering of any model materials prepared by the Pet Industry Joint Advisory Council or the Nebraska Humane Society shall satisfy the requirements of subsection (1) of this section.

**Source:** Laws 2003, LB 274, § 4; Laws 2010, LB910, § 8.

**54-638 Provision for spaying or neutering; when.**

Provision shall be made for spaying or neutering all dogs and cats released for adoption or purchase from any public or private animal shelter, animal rescue, or animal control facility operated by a humane society, a county, a city, or another political subdivision. Such provision may be made by:

(1) Causing the dog or cat to be spayed or neutered by a licensed veterinarian before releasing the dog or cat for adoption or purchase; or

(2) Entering into a written agreement with the adopter or purchaser of the dog or cat, guaranteeing that spaying or neutering will be performed by a licensed veterinarian in compliance with an agreement which shall contain the following information:

(a) The date of the agreement;

(b) The name, address, and signature of the releasing entity and the adopter or purchaser;

(c) A description of the dog or cat to be adopted or purchased;

(d) A statement, in conspicuous bold print, that spaying or neutering of the dog or cat is required pursuant to this section; and

(e) The date by which the spaying or neutering will be completed, which date shall be (i) in the case of an adult dog or cat, the thirtieth day after the date of adoption or purchase or (ii) in the case of a pup or kitten, either (A) the thirtieth day after a specified date estimated to be the date the pup or kitten will reach six months of age or (B) if the releasing entity has a written policy

recommending spaying or neutering of certain pups or kittens at an earlier date, the thirtieth day after such date.

**Source:** Laws 2003, LB 274, § 5; Laws 2010, LB910, § 9.

**54-639 Adopter or purchaser; agreement; requirements.**

An adopter or purchaser who signs an agreement under section 54-638 shall cause the adopted or purchased dog or cat to be spayed or neutered on or before the date stated in the agreement. If such date falls on a Saturday, Sunday, or legal holiday, the date may be extended to the first business day following such date. The releasing entity may extend the date for thirty days upon presentation of a letter or telephone report from a licensed veterinarian, stating that the life or health of the adopted or purchased dog or cat would be jeopardized by spaying or neutering, and such extensions may continue to be granted until such veterinarian determines that spaying or neutering would no longer jeopardize the life or health of the adopted or purchased dog or cat.

**Source:** Laws 2003, LB 274, § 6.

**54-640 Commercial breeder; duties.**

A commercial breeder shall:

- (1) Maintain housing facilities and primary enclosures in a sanitary condition;
- (2) Enable all dogs and cats to remain dry and clean;
- (3) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs and cats;
- (4) Provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;
- (5) Provide dogs and cats with easy and convenient access to adequate amounts of clean food and water;
- (6) Provide adequate space appropriate to the age, size, weight, and breed of dog or cat. For purposes of this subdivision, adequate space means sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner without the head of such animal touching the top of the cage which shall be at least six inches above the head of the tallest animal when the animal is standing;
- (7) Provide dogs with adequate socialization and exercise. For the purpose of this subdivision, adequate socialization means physical contact with other dogs and with human beings, other than being fed, and adequate exercise means providing the opportunity for exercise at least two times per day outside of a cage or similar small enclosure except during inclement weather that may be hazardous to dogs;
- (8) Assure that a handler's hands are washed before and after handling each infectious or contagious dog or cat;
- (9) Maintain a written veterinary care plan developed in conjunction with an attending veterinarian; and
- (10) Provide veterinary care without delay when necessary.

**Source:** Laws 2003, LB 274, § 7; Laws 2009, LB241, § 10.

**54-641 Licensees; primary enclosures; requirements.**

The primary enclosures of all licensees shall meet the following requirements:

- (1) A primary enclosure shall have floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor;
- (2) If a primary enclosure has a suspended floor constructed of metal strands, the strands shall either be greater than one-eighth of an inch in diameter (nine gauge) or coated with a material such as plastic or fiberglass; and
- (3) The suspended floor of any primary enclosure shall be strong enough so that the floor does not sag or bend between the structural supports.

**Source:** Laws 2003, LB 274, § 8.

**54-642 Department; submit report of costs and revenue.**

On or before November 1 of each year, the department shall submit a report to the Legislature in sufficient detail to document all costs incurred in the previous fiscal year in carrying out the Commercial Dog and Cat Operator Inspection Act. The report shall identify costs incurred by the department to administer the act and shall detail costs incurred by primary activity. The department shall also provide a breakdown by category of all revenue credited to the Commercial Dog and Cat Operator Inspection Program Cash Fund in the previous fiscal year. The Agriculture Committee and Appropriations Committee of the Legislature shall review the report to ascertain program activity levels and to determine funding requirements of the program.

**Source:** Laws 2006, LB 856, § 16.

**54-643 Administrative fines; disposition; lien; collection.**

(1) All money collected by the department pursuant to section 54-633 shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any administrative fine levied pursuant to section 54-633 which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property.

**Source:** Laws 2007, LB12, § 9.

(d) DOG AND CAT PURCHASE PROTECTION ACT

**54-644 Act, how cited.**

Sections 54-644 to 54-650 shall be known and may be cited as the Dog and Cat Purchase Protection Act.

**Source:** Laws 2009, LB241, § 11.

**54-645 Terms, defined.**

For purposes of the Dog and Cat Purchase Protection Act:

(1) Casual breeder means any person, other than a commercial breeder as defined in section 54-626, who offers for sale, sells, trades, or receives consider-

ation for one or more pet animals from a litter produced by a female dog or cat owned by such casual breeder;

(2) Clinical symptom means indication of an illness or dysfunction that is apparent to a veterinarian based on the veterinarian's observation, examination, or testing of an animal or on a review of the animal's medical records;

(3) Health certificate means the official small animal certificate of veterinary inspection of the Bureau of Animal Industry of the Department of Agriculture;

(4) Pet animal means a dog, wholly or in part of the species *Canis familiaris*, or a cat, wholly or in part of the species *Felis domesticus*, that is under fifteen months of age;

(5) Purchaser means the final owner of a pet animal purchased from a seller. Purchaser does not include a person who purchases a pet animal for resale;

(6) Seller means a casual breeder or any commercial establishment, including a commercial breeder, dealer, or pet shop as such terms are defined in section 54-626, that engages in a business of selling pet animals to a purchaser. A seller does not include an animal control facility, animal rescue, or animal shelter as defined in section 54-626 or any animal adoption activity that an animal control facility, animal rescue, or animal shelter conducts offsite at any pet store or other commercial establishment; and

(7)(a) Serious health problem means a congenital or hereditary defect or contagious disease that causes severe illness or death of the pet animal.

(b) Serious health problem does not include (i) parvovirus if the diagnosis of parvovirus is made after the seven-business-day requirement in subsection (1) of section 54-647 or (ii) any other contagious disease that causes severe illness or death after ten calendar days after delivery of the pet animal to the purchaser.

**Source:** Laws 2009, LB241, § 12; Laws 2010, LB910, § 10.

**54-646 Seller; written disclosure statement; contents; receipt; notice of purchaser's rights and responsibilities; health certificate; retention of records.**

(1) A seller shall deliver to the purchaser at the time of sale of a pet animal a written disclosure statement containing the following information regarding the pet animal:

(a) The name, address, and license number of any commercial breeder or dealer as such terms are defined in section 54-626 or, if applicable, the United States Department of Agriculture license number of the breeder or any broker who has had possession of the animal prior to the seller's possession;

(b) The date of the pet animal's birth, if known, the state in which the pet animal was born, if known, and the date the seller received the pet animal;

(c) The sex and color of the pet animal, any other identifying marks apparent upon the pet animal, and the breed of the pet animal, if known, or a statement that the breed of the pet animal is unknown or the pet animal is of mixed breed;

(d) The pet animal's individual identifying tag, tattoo, microchip number, or collar number;

(e) The names and registration numbers of the sire and dam and the litter number, if applicable and if known;

(f) A record of any vaccination, worming treatment, or medication administered to the pet animal while in the possession of the seller and, if known, any such vaccination, treatment, or medication administered to the pet animal prior to the date the seller received the pet animal; and

(g) The date or dates of any examination of the pet animal by a licensed veterinarian while in the possession of the seller.

(2) The seller may include any of the following with the written disclosure statement required by subsection (1) of this section:

(a) A statement that a veterinarian examined the pet animal and, at the time of the examination, the pet animal had no apparent or clinical symptoms of a serious health problem that would adversely affect the health of the pet animal at the time of sale or that is likely to adversely affect the health of the pet animal in the future; and

(b) A record of any serious health problem that adversely affects the pet animal at the time of sale or that is likely to adversely affect the health of the pet animal in the future.

(3) The written disclosure statement made pursuant to this section shall be signed by the seller certifying the accuracy of the written disclosure statement and by the purchaser acknowledging receipt of the written disclosure statement. In addition to information required to be given to a purchaser under this section, at the time of sale the seller shall provide the purchaser with written notice of the existence of the purchaser's rights and responsibilities under the Dog and Cat Purchase Protection Act or a legible copy of the act.

(4) If the pet animal is sold to a purchaser who resides outside of the state or intends that the pet animal will be relocated or permanently domiciled outside of the state, the seller shall provide the purchaser with a health certificate signed by a licensed veterinarian who has examined the pet animal and is authorized to certify such certificate.

(5) The seller shall maintain a copy of any written disclosure statements made and any other records on the health, status, or disposition of each pet animal for at least one year after the date of sale to a purchaser.

**Source:** Laws 2009, LB241, § 13.

**54-647 Recourse to remedies; purchaser; duties; notice to seller; remedies.**

(1) In order to have recourse to the remedies available to purchasers under this section, a purchaser shall have the pet animal examined by a licensed veterinarian within seven business days after delivery of the pet animal to the purchaser. The pet animal shall be declared unfit for sale and the purchaser may obtain one of the remedies listed in subsection (2) or (3) of this section if (a) during such examination, the veterinarian diagnoses the pet animal with a serious health problem that the veterinarian believes existed at the time of delivery of the pet animal to the purchaser or (b) within fifteen months after the date of birth of the pet animal, a veterinarian diagnoses the pet animal with a serious health problem or states in writing that the pet animal has died from a serious health problem that the veterinarian believes existed at the time of delivery of the pet animal to the purchaser.

(2) If a pet animal is diagnosed with a serious health problem under subsection (1) of this section, the purchaser shall notify the seller within two business days after the diagnosis and provide the seller with the name and

telephone number of the veterinarian or a copy of the veterinarian's report. After such notification, the purchaser may obtain one of the following remedies from the seller:

- (a) A refund of the full purchase price of the pet animal upon return of such pet animal to the seller;
- (b) An exchange for a pet animal of the purchaser's choice of equivalent value, if such pet animal is available, upon return of the pet animal, if alive, to the seller; or
- (c) Reimbursement for reasonable veterinary fees, not to exceed the full purchase price of the pet animal.

(3) If a pet animal dies from a serious health problem as determined under subsection (1) of this section, the purchaser shall notify the seller within two business days after receipt of the written statement of the veterinarian by the purchaser and shall provide the seller with a copy of such written statement. After receipt of the written statement by the seller, the purchaser may obtain one of the following remedies from the seller:

- (a) A refund of the full purchase price of the pet animal; or
- (b) A pet animal of the purchaser's choice of equivalent value, if such pet animal is available, and reimbursement for reasonable veterinary fees not to exceed one-half of the full purchase price of the pet animal.

(4) For purposes of this section, veterinary fees shall be deemed reasonable if the service is appropriate for the diagnosis and treatment of the serious health problem and the cost of the service is comparable to similar services provided by licensed veterinarians in close proximity to the treating veterinarian.

**Source:** Laws 2009, LB241, § 14.

**54-648 Denial of refund, reimbursement of fees, or replacement; conditions.**

No refund or reimbursement of fees or replacement of a pet animal under section 54-647 shall be required if one or more of the following conditions exist:

- (1) The serious health problem or death of the pet animal resulted from maltreatment, neglect, or injury occurring after delivery of the pet animal to the purchaser;
- (2) Any written disclosure statements provided by a seller pursuant to subsection (2) of section 54-646 disclosed the serious health problem for which the purchaser is seeking a remedy; or
- (3) The purchaser failed to follow through with preventative care, including, but not limited to, vaccinations, deworming treatment, or medication, recommended by a licensed veterinarian examining the pet animal.

**Source:** Laws 2009, LB241, § 15.

**54-649 Purchaser; file action; seller's rights; limit of recovery.**

(1) If a seller does not comply with a demand for remedy by a purchaser under section 54-647, the purchaser may file an action in a court of competent jurisdiction.

(2) If a seller contests a demand for remedy by a purchaser under section 54-647, the seller may require the purchaser to produce the pet animal for examination or autopsy by a licensed veterinarian designated by the seller. The

seller shall pay for all costs associated with such examination or autopsy. The seller shall have a right of recovery against the purchaser if the seller is not obligated to provide the remedy sought.

(3) The prevailing party in a proceeding under this section shall be limited to a recovery of actual costs and no more than five hundred dollars in reasonable attorney's fees.

**Source:** Laws 2009, LB241, § 16.

**54-650 Other rights and remedies not limited; act; how construed.**

Nothing in the Dog and Cat Purchase Protection Act shall limit any rights and remedies otherwise available under the laws of this state. Any agreement or contract entered into by a seller and a purchaser waiving any rights under the act is void. Nothing in the Dog and Cat Purchase Protection Act shall be construed to limit a seller to offering only those warranties, express or implied, required by the act.

**Source:** Laws 2009, LB241, § 17.

**ARTICLE 7**

**PROTECTION OF HEALTH**

(a) GENERAL POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

Section

- 54-701. Prevention of diseases; power of Department of Agriculture; Bureau of Animal Industry.
- 54-701.01. Domestic animals; prevention of diseases; purchase of test animals.
- 54-701.02. Animal disease control; legislative findings; department; duties.
- 54-701.03. Terms, defined.
- 54-702. Voluntary national uniform system of animal identification; department; powers.
- 54-702.01. Uniform system of animal identification; information; restrictions on disclosure; violations; penalty.
- 54-702.02. Repealed. Laws 1965, c. 8, § 58.
- 54-702.03. Repealed. Laws 1965, c. 8, § 58.
- 54-703. Prevention of diseases; enforcement of sections; inspections; rules and regulations.
- 54-704. Prevention of diseases; federal agents; powers.
- 54-705. Prevention of diseases; orders of department; enforcement.

(b) BOVINE TUBERCULOSIS ACT

- 54-706. Repealed. Laws 2007, LB 110, § 20.
- 54-706.01. Act, how cited.
- 54-706.02. Purpose of act.
- 54-706.03. Definitions.
- 54-706.04. Federal regulations adopted; inconsistency; how treated; filing required.
- 54-706.05. Act; administration and enforcement; department; powers and duties; prohibited acts; penalty.
- 54-706.06. Animal exhibiting signs of bovine tuberculosis; report required; submit animal for testing.
- 54-706.07. Department; rules and regulations; tests; reports.
- 54-706.08. Quarantine; epidemiologic investigation; prohibited acts; penalty.
- 54-706.09. Cleaning and disinfection of affected premises.
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- 54-706.11. Department; assessment and collection of payments for services.
- 54-706.12. Bovine Tuberculosis Cash Fund; created; use; investment.
- 54-706.13. Implementation of act; funding; limitations on payments.
- 54-706.14. Tuberculin; injection or application; limitations.

## PROTECTION OF HEALTH

### Section

- 54-706.15. Department; enforcement powers; Attorney General or county attorney; powers and duties.
- 54-706.16. Violations; department powers; hearing; order or other action; appeal.
- 54-706.17. Violations of act; penalty.
- 54-707. Repealed. Laws 2007, LB 110, § 20.
- 54-708. Repealed. Laws 2007, LB 110, § 20.
- 54-709. Repealed. Laws 2007, LB 110, § 20.
- 54-710. Repealed. Laws 2007, LB 110, § 20.
- 54-711. Repealed. Laws 2007, LB 110, § 20.
- 54-712. Repealed. Laws 2007, LB 110, § 20.
- 54-713. Repealed. Laws 2007, LB 110, § 20.
- 54-714. Repealed. Laws 2007, LB 110, § 20.
- 54-715. Repealed. Laws 2007, LB 110, § 20.
- 54-716. Repealed. Laws 2007, LB 110, § 20.
- 54-717. Repealed. Laws 2007, LB 110, § 20.
- 54-718. Repealed. Laws 2007, LB 110, § 20.
- 54-719. Repealed. Laws 2007, LB 110, § 20.
- 54-720. Repealed. Laws 2007, LB 110, § 20.
- 54-721. Repealed. Laws 2007, LB 110, § 20.
- 54-722. Repealed. Laws 2007, LB 110, § 20.

### (c) SCABIES

- 54-723. Transferred to section 54-1412.
- 54-724. Transferred to section 54-1413.
- 54-724.01. Domestic animals; scabies; quarantine; duties of owner.
- 54-724.02. Domestic animals; scabies; dipping; enforcement; costs.

### (d) GENERAL PROVISIONS

- 54-725. Transferred to section 28-1304.01.
- 54-726. Repealed. Laws 1983, LB 264, § 3.
- 54-726.01. Repealed. Laws 1985, LB 23, § 1.
- 54-726.02. Repealed. Laws 1983, LB 264, § 3.
- 54-726.03. Repealed. Laws 1985, LB 23, § 1.
- 54-726.04. Diseased swine; unlawful importation; penalties; costs; disposition.
- 54-727. Repealed. Laws 1969, c. 446, § 10.
- 54-727.01. Repealed. Laws 1969, c. 446, § 10.
- 54-727.02. Repealed. Laws 1969, c. 446, § 10.
- 54-727.03. Repealed. Laws 1969, c. 446, § 10.
- 54-727.04. Repealed. Laws 1969, c. 446, § 10.
- 54-727.05. Repealed. Laws 1969, c. 446, § 10.
- 54-728. Repealed. Laws 1969, c. 446, § 10.
- 54-728.01. Repealed. Laws 1969, c. 446, § 10.
- 54-729. Repealed. Laws 1969, c. 446, § 10.
- 54-729.01. Repealed. Laws 1969, c. 446, § 10.
- 54-730. Repealed. Laws 1969, c. 446, § 10.
- 54-731. Repealed. Laws 1969, c. 446, § 10.
- 54-732. Repealed. Laws 1969, c. 446, § 10.
- 54-733. Repealed. Laws 1969, c. 446, § 10.
- 54-734. Repealed. Laws 1969, c. 446, § 10.
- 54-735. Repealed. Laws 1953, c. 184, § 9.
- 54-736. Repealed. Laws 1969, c. 449, § 17.
- 54-737. Repealed. Laws 1969, c. 449, § 17.
- 54-738. Repealed. Laws 1969, c. 449, § 17.
- 54-739. Repealed. Laws 1969, c. 449, § 17.
- 54-740. Repealed. Laws 1969, c. 449, § 17.
- 54-740.01. Repealed. Laws 1969, c. 449, § 17.
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- 54-742. Diseased animals; duty to report; livestock disease reporting system.
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- 54-744. Dead animals; carcasses; manner of disposition.

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### Section

- 54-744.01. Dead animals; carcasses; disposal facilities; registration; when.
- 54-745. Unburied carcasses; disposition by sheriff; expenses; owner liable.
- 54-746. Diseased animals; removal from county; permit required; when.
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- 54-748. Repealed. Laws 1987, LB 20, § 9.
- 54-749. Repealed. Laws 1983, LB 264, § 3.
- 54-750. Diseased animals; harboring or sale prohibited; penalties.
- 54-751. Rules and regulations; violations; penalties.
- 54-752. Violations; penalties.
- 54-753. Prevention of disease; writ of injunction available.
- 54-753.01. Feeding of garbage; definition.
- 54-753.02. Repealed. Laws 1980, LB 631, § 6.
- 54-753.03. Repealed. Laws 1980, LB 631, § 6.
- 54-753.04. Feeding of garbage; violations; penalty.
- 54-753.05. Importation of livestock; embargo; violation; penalty.
- 54-753.06. Compliance with exotic animal auction and swap meet laws; compliance with game laws required.
- 54-753.07. Repealed. Laws 1980, LB 631, § 6.
- 54-753.08. Repealed. Laws 1980, LB 631, § 6.
- 54-753.09. Repealed. Laws 1980, LB 631, § 6.
- 54-753.10. Repealed. Laws 1980, LB 631, § 6.

### (e) ANTHRAX

- 54-754. Repealed. Laws 2009, LB 99, § 21.
- 54-755. Repealed. Laws 2009, LB 99, § 21.
- 54-756. Repealed. Laws 2009, LB 99, § 21.
- 54-757. Repealed. Laws 2009, LB 99, § 21.
- 54-758. Repealed. Laws 2009, LB 99, § 21.
- 54-759. Repealed. Laws 2009, LB 99, § 21.
- 54-760. Repealed. Laws 2009, LB 99, § 21.
- 54-761. Repealed. Laws 2009, LB 99, § 21.
- 54-762. Repealed. Laws 2009, LB 99, § 21.
- 54-763. Repealed. Laws 2009, LB 99, § 21.
- 54-764. Act, how cited.
- 54-764.01. Repealed. Laws 1965, c. 326, § 31.
- 54-764.02. Repealed. Laws 1965, c. 326, § 31.
- 54-765. Purpose of act.
- 54-766. Terms, defined.
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- 54-768. Anthrax; report of cases required.
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- 54-777. Confirmation of anthrax; approved laboratory.
- 54-777.01. Repealed. Laws 1969, c. 449, § 17.
- 54-777.02. Repealed. Laws 1969, c. 449, § 17.
- 54-777.03. Repealed. Laws 1969, c. 449, § 17.
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- 54-779. Enforcement powers; Attorney General or county attorney; duties.
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- 54-781. Violations; penalty.
- 54-782. Repealed. Laws 1969, c. 449, § 17.
- 54-783. Repealed. Laws 1969, c. 449, § 17.
- 54-784. Repealed. Laws 1969, c. 449, § 17.

Section

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- 54-784.01. Act, how cited.
- 54-785. Purpose of act.
- 54-786. Terms, defined.
- 54-787. Unlawful acts; transmissible disease.
- 54-788. Certificate of veterinary inspection; requirements; exceptions.
- 54-789. Repealed. Laws 1993, LB 267, § 37.
- 54-790. Certificate of veterinary inspection; required.
- 54-791. Diverting animal from destination; unlawful; exception.
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- 54-797. Livestock certification program; department; duties; registry.
- 54-798. Livestock certification program; application; costs.
- 54-799. Livestock certification program; livestock producer; powers.
- 54-7,100. Livestock certification program; removal from registry; procedure.
- 54-7,101. Livestock certification program; department; immunity.
- 54-7,102. Livestock certification program; information; disclosure; when.
- 54-7,103. Livestock certification program; department; powers.

(h) TRANSPORTATION

- 54-7,104. Livestock; care.

(i) EXOTIC ANIMAL AUCTIONS AND SWAP MEETS

- 54-7,105. Purpose of sections.
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- 54-7,108. Prohibited transfers.

(a) GENERAL POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

**54-701 Prevention of diseases; power of Department of Agriculture; Bureau of Animal Industry.**

(1) The Department of Agriculture shall be vested with the power and charged with the duties of protecting the health of livestock in Nebraska and determining and employing the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, infectious, contagious, or otherwise transmissible diseases among livestock and such diseases transmissible from other animals to livestock. To that end, the department may place in quarantine any county or part of any county, any private premises, or any private or public stockyards and may quarantine any animal infected with such disease or which has been or is suspected of having been exposed to infection therefrom, may kill any animal so infected, and may regulate or prohibit the arrival into and departure from and movement within the state of any animal infected with such disease or exposed or suspected of having been exposed to the cause, infection, or contagion therefrom. At the cost of the owner, the department may detain any animal found in violation of any departmental or statutory regulation or prohibition.

(2) The department may adopt, promulgate, and enforce such rules and regulations as may be necessary for the supervision and control of manufac-

tured and refined food for animals to prevent deleterious substances being present in human foods of animal origin and the manufacture, importation, sale, and storage of any biological material including semen, remedy, or curative agent for use on or in any animal that may be capable of causing or spreading disease, and as far as practicable such rules and regulations approved by the United States Department of Agriculture shall be adopted. All of the powers and duties of the department with reference to the protection of the health of livestock shall be exercised by and through the Bureau of Animal Industry.

**Source:** Laws 1927, c. 12, art. I, § 1, p. 80; C.S.1929, § 54-901; R.S.1943, § 54-701; Laws 1965, c. 334, § 3, p. 955; Laws 1967, c. 345, § 1, p. 921; Laws 1993, LB 267, § 3; Laws 2001, LB 438, § 1.

Under certain conditions and circumstances, cattle imported in violation of statute and departmental regulations may be quarantined. *Peterson v. George*, 168 Neb. 571, 96 N.W.2d 627 (1959).

A statute is not special or local merely because it prohibits doing a thing in a certain locality such as permitting Department of Agriculture and Inspection to quarantine a single county or part thereof. *Bauer v. State Game, Forestation & Parks Commission*, 138 Neb. 436, 293 N.W. 282 (1940).

Tuberculin testing act sustained as constitutional against claim that it contains more than one subject not expressed in

title, and against claim that it delegated legislative power. *State ex rel. Sorensen v. Knudtsen*, 121 Neb. 270, 236 N.W. 696 (1931).

Legislature may require owners of breeding cattle to submit animals to tuberculin test and adopt reasonable measure to carry out requirements, and may make distinction between breeding cattle and feeding cattle. *State ex rel. Spillman v. Splittgerber*, 119 Neb. 436, 229 N.W. 332 (1930).

Defendant was properly enjoined from obstructing state agents in applying tuberculin test to his cattle. *State ex rel. Sorensen v. Kistler*, 119 Neb. 89, 227 N.W. 319 (1929).

#### **54-701.01 Domestic animals; prevention of diseases; purchase of test animals.**

The Department of Agriculture is authorized to purchase test animals for use of the department in connection with the treatment, suppression, and eradication of any livestock disease.

**Source:** Laws 1952, Sixty-fourth Spec. Sess., c. 2, § 1, p. 57.

#### **54-701.02 Animal disease control; legislative findings; department; duties.**

The Legislature finds and declares that animal disease control is essential to the livestock industry and the health of the economy of this state. In carrying out its powers and duties, the department shall evaluate activities resulting from the following subdivisions to determine their relevance to protecting the health of livestock and review its available resources. When department funds and personnel are available and such activities are determined by the department to be relevant, feasible, and consistent with the purpose of Chapter 54, article 7, the department:

(1) Shall develop a statewide 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;

(2) Shall conduct surveillance to monitor program disease control and eradication programs;

(3) Shall conduct surveillance to detect and monitor nonprogram diseases which are, or have the potential of, causing a serious health threat to livestock. The department shall determine and employ the most efficient and practical means to conduct surveillance for livestock diseases at such places as in livestock herds, at slaughter establishments, at livestock concentration points,

and at other places where livestock are assembled. When the diseases are nonprogram diseases, surveillance shall be done when in concurrence with the owner of the premises where the surveillance is to be conducted, except that if the State Veterinarian determines, in consultation and agreement with the respective livestock health committee described in subdivision (4) of this section, that the diseases may pose a serious threat to the livestock industry, the State Veterinarian may order surveillance to be conducted at any place where livestock are assembled. If an agreement between the State Veterinarian and the respective livestock health committee cannot be reached, the final decision shall be made by the director;

(4) Shall encourage involvement from livestock producers by forming livestock health committees to provide ways for producers to assist the department in developing policy regarding livestock disease issues. Membership of such committees shall be selected by the respective livestock groups. Additional appointments may be made by the director. The purpose of the committees is to advise and recommend, to the department, when a disease or diseases should be monitored by surveillance and what diseases should be considered for proposed legislation for a disease control eradication program;

(5) Shall provide voluntary livestock certification programs as provided in sections 54-797 to 54-7,103;

(6) Shall assist public health agencies, diagnostic laboratories, and researchers in conducting epidemiological studies of diseases known to be, or suspected of being, transmitted from livestock to humans;

(7) Shall cooperate and contract with persons or local, state, and national organizations, public or private, and enter into agreements with other state or federal agencies to allow such agencies' personnel to work in Nebraska and to allow the department's personnel to work in other states or with federal agencies under a cooperative work program; and

(8) Shall encourage the use of private accredited veterinarians whenever feasible in carrying out the provisions of sections 54-701 to 54-753.05 and 54-797 to 54-7,103.

**Source:** Laws 1989, LB 574, § 3; Laws 1990, LB 1004, § 1; Laws 2001, LB 438, § 2.

**54-701.03 Terms, defined.**

For purposes of sections 54-701 to 54-753.05, 54-797 to 54-7,103, and 54-7,105 to 54-7,108:

(1) Accredited veterinarian means a veterinarian approved by the deputy administrator of the United States Department of Agriculture in accordance with 9 C.F.R. part 161, as such regulation existed on January 1, 2006;

(2) Animal means all vertebrate members of the animal kingdom except humans or wild animals at large;

(3) Bureau of Animal Industry means the Bureau of Animal Industry of the Department of Agriculture of the State of Nebraska and includes the State Veterinarian, deputy state veterinarian, veterinary field officers, livestock inspectors, investigators, and other employees of the bureau;

(4) Dangerous disease means a disease transmissible to and among livestock which has the potential for rapid spread, serious economic impact or serious

threat to livestock health, and is of major importance in the trade of livestock and livestock products;

(5) Department means the Department of Agriculture of the State of Nebraska;

(6) Director means the Director of Agriculture of the State of Nebraska or his or her designee;

(7) Domesticated cervine animal means any elk, deer, or other member of the family cervidae legally obtained from a facility which has a license, permit, or registration authorizing domesticated cervine animals which has been issued by the state where the facility is located and such animal is raised in a confined area;

(8) Exotic animal means any animal which is not commonly sold through licensed livestock auction markets pursuant to the Livestock Auction Market Act. Such animals shall include, but not be limited to, miniature cattle, miniature horses, miniature donkeys, Barbary sheep, Dall's sheep, alpacas, llamas, pot-bellied pigs, and small mammals, with the exception of cats of the *Felis domesticus* species and dogs of the *Canis familiaris* species. The term also includes birds and poultry. The term does not include beef and dairy cattle, calves, swine, bison, sheep sold for wool or food, goats sold for dairy, food, or fiber, and domesticated cervine animals;

(9) Exotic animal auction or swap meet means any event or location as defined in rules and regulations of the department, other than a livestock auction market as defined in section 54-1158, where (a) an exotic animal is purchased, sold, traded, bartered, given away, or otherwise transferred, (b) an offer to purchase an exotic animal is made, or (c) an exotic animal is offered to be sold, traded, bartered, given away, or otherwise transferred;

(10) Exotic animal auction or swap meet organizer means a person in charge, as identified by rule and regulation of the department, of organizing an exotic animal auction or swap meet event, and may include any person who: (a) Arranges events for third parties to have private sales or trades of exotic animals; (b) organizes or coordinates exotic animal auctions or swap meets; (c) leases out areas for exotic animal auctions or swap meets; or (d) provides or coordinates other similar arrangements involving exotic animals;

(11) Exposed means being part of a herd which contains or has contained an animal infected with a disease agent which affects livestock or having had a reasonable opportunity to come in contact with an infective disease agent which affects livestock;

(12) Herd means any group of livestock maintained on common ground for any purpose or two or more groups of livestock under common ownership or supervision geographically separated but which have an interchange of livestock without regard to health status;

(13) Livestock means cattle, swine, sheep, horses, mules, goats, domesticated cervine animals, ratite birds, and poultry;

(14) Poultry means domesticated birds that serve as a source of eggs or meat and includes, but is not limited to, chickens, turkeys, ducks, and geese;

(15) Program disease means a livestock disease for which specific legislation exists for disease control or eradication;

(16) Quarantine means restriction of (a) movement imposed by the department on an animal, group of animals, or herd of animals because of infection

with, or exposure to, a disease agent which affects livestock and (b) use of equipment, facilities, land, buildings, and enclosures which are used or have been used by animals infected with, or suspected of being infected with, a disease agent which affects livestock;

(17) Ratite bird means any ostrich, emu, rhea, kiwi, or cassowary;

(18) Sale means a sale, lease, loan, trade, barter, or gift;

(19) Surveillance means the collection and testing of livestock blood, tissue, hair, body fluids, discharges, excrements, or other samples done in a herd or randomly selected livestock to determine the presence or incidence of disease in the state or area of the state; and

(20) Veterinarian means an individual who is a graduate of an accredited college of veterinary medicine.

**Source:** Laws 1993, LB 267, § 2; Laws 1995, LB 718, § 6; Laws 1999, LB 404, § 25; Laws 1999, LB 870, § 2; Laws 2001, LB 438, § 3; Laws 2006, LB 856, § 17.

#### Cross References

Livestock Auction Market Act, see section 54-1156.

### **54-702 Voluntary national uniform system of animal identification; department; powers.**

The Department of Agriculture may, within the framework and consistent with standards of the National Animal Identification System, cooperate and coordinate with the Animal and Plant Health Inspection Service of the United States Department of Agriculture and other local, state, and national agencies and organizations, public or private, to define premises where livestock are located, to develop a voluntary premises registration system for Nebraska, and to implement other state components of a voluntary national uniform system of animal identification. If the department implements such a system, the department shall also develop and facilitate a process of withdrawal of registration that would remove premises identifiers from its data base. Written confirmation shall be sent upon withdrawal of registration from the department's data base. The department shall cooperate with the United States Department of Agriculture in the process to withdraw registrations.

**Source:** Laws 2006, LB 856, § 28; Laws 2008, LB632, § 1.

### **54-702.01 Uniform system of animal identification; information; restrictions on disclosure; violations; penalty.**

(1) Any information that a person provides to the Department of Agriculture for purposes of premises registration or otherwise for voluntary participation in or compliance with a uniform system of animal identification shall not be subject to public inspection pursuant to sections 84-712 to 84-712.09. The department and its employees or agents shall not disclose such information to any other person or agency except when such disclosure:

(a) Is authorized by the person who provides the information; or

(b) Is necessary for purposes of disease surveillance or to carry out epidemiological investigations related to incidences of animal disease.

(2) The department may disclose information as authorized by this section subject to any confidentiality requirements that the department determines are appropriate under the circumstances.

(3) Any person who violates this section shall be subject to prosecution and penalty for official misconduct pursuant to section 28-924.

(4) Nothing in this section shall be construed to prohibit the department from discussing, reporting, or otherwise disclosing the progress or results of disease surveillance activities or epidemiological investigations related to incidences of animal disease.

**Source:** Laws 2006, LB 856, § 29.

**54-702.02 Repealed. Laws 1965, c. 8, § 58.**

**54-702.03 Repealed. Laws 1965, c. 8, § 58.**

**54-703 Prevention of diseases; enforcement of sections; inspections; rules and regulations.**

(1) The Department of Agriculture and all inspectors and persons appointed and authorized to assist in the work of the department shall enforce sections 54-701 to 54-753.05, 54-797 to 54-7,103, and 54-7,105 to 54-7,108 as designated.

(2) The department and any officer, agent, employee, or appointee of the department shall have the right to enter upon the premises of any person who has, or is suspected of having, any animal thereon, including any premises where the carcass or carcasses of dead livestock may be found or where a facility for the disposal or storage of dead livestock is located, for the purpose of making any and all inspections, examinations, tests, and treatments of such animal, to inspect livestock carcass disposal practices, and to declare, carry out, and enforce any and all quarantines.

(3) The department, in consultation with the Department of Environmental Quality and the Department of Health and Human Services, may adopt and promulgate rules and regulations reflecting best management practices for the burial of carcasses of dead livestock.

(4) The Department of Agriculture shall further adopt and promulgate such rules and regulations as are necessary to promptly and efficiently enforce and effectuate the general purpose and provisions of such sections.

**Source:** Laws 1927, c. 12, art. I, § 3, p. 81; C.S.1929, § 54-903; R.S.1943, § 54-703; Laws 1993, LB 267, § 4; Laws 2001, LB 438, § 4; Laws 2006, LB 856, § 18; Laws 2007, LB296, § 224.

**54-704 Prevention of diseases; federal agents; powers.**

Any veterinary inspector or agent of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, who has been officially assigned by the United States Department of Agriculture for service in Nebraska may be officially authorized by the Department of Agriculture to perform and exercise such powers and duties as may be prescribed by the department and when so authorized shall have and exercise all rights and powers vested by sections 54-701 to 54-753.05, 54-797 to 54-7,103, and

54-7,105 to 54-7,108 in agents and representatives in the regular employ of the department.

**Source:** Laws 1927, c. 12, art. I, § 4, p. 81; C.S.1929, § 54-904; R.S.1943, § 54-704; Laws 1993, LB 267, § 5; Laws 2001, LB 438, § 5; Laws 2006, LB 856, § 19.

**54-705 Prevention of diseases; orders of department; enforcement.**

The Department of Agriculture or any officer, agent, employee, or appointee thereof may call upon any sheriff, deputy sheriff, or other police officer to execute the orders of the department, and the officer shall obey the orders of the department. The officers performing such duties shall receive compensation therefor as is prescribed by law for like services and shall be paid therefor by the county. Any officer may arrest and take before the county judge of the county any person found violating any of the provisions of sections 54-701 to 54-753.05 and 54-7,105 to 54-7,108, and such officer shall immediately notify the county attorney of such arrest. The county attorney shall prosecute the person so offending according to law.

**Source:** Laws 1927, c. 12, art. I, § 5, p. 82; C.S.1929, § 54-905; R.S.1943, § 54-705; Laws 1972, LB 1032, § 261; Laws 1988, LB 1030, § 45; Laws 1993, LB 267, § 6; Laws 2001, LB 438, § 6; Laws 2006, LB 856, § 20.

(b) BOVINE TUBERCULOSIS ACT

**54-706 Repealed. Laws 2007, LB 110, § 20.**

**54-706.01 Act, how cited.**

Sections 54-706.01 to 54-706.17 and the provisions of the Code of Federal Regulations and Bovine Tuberculosis Eradication Uniform Methods and Rules adopted by reference in section 54-706.04 shall be known and may be cited as the Bovine Tuberculosis Act.

**Source:** Laws 2007, LB110, § 1.

**54-706.02 Purpose of act.**

The purpose of the Bovine Tuberculosis Act is to maintain Nebraska's status as a tuberculosis accredited free state through the use of monitoring and surveillance to maintain tuberculosis-free conditions within the state.

**Source:** Laws 2007, LB110, § 2.

**54-706.03 Definitions.**

For purposes of the Bovine Tuberculosis Act, the definitions found in the federal regulations and rules adopted by reference in section 54-706.04 shall be used and:

(1) Accredited veterinarian means a veterinarian approved by the Administrator of APHIS to perform functions required by cooperative state-federal animal disease control and eradication programs;

(2) Animal means all vertebrate members of the animal kingdom except humans or wild animals at large;

(3) APHIS means the Animal and Plant Health Inspection Service of the United States Department of Agriculture;

(4) Bovine means cattle and bison;

(5) Department means the Department of Agriculture or its authorized designee;

(6) Designated accredited veterinarian means an accredited veterinarian trained and approved to conduct specific bovine tuberculosis tests such as the bovine interferon gamma assay, other bovine tuberculosis program activities, or both; and

(7) State Veterinarian means the veterinarian in charge of the Bureau of Animal Industry within the department or his or her designee, subordinate to the Director of Agriculture.

**Source:** Laws 2007, LB110, § 3.

**54-706.04 Federal regulations adopted; inconsistency; how treated; filing required.**

(1) The Legislature hereby adopts by reference 9 C.F.R. part 77, except requirements relating to captive cervids, and the Bovine Tuberculosis Eradication Uniform Methods and Rules published by APHIS in effect on February 15, 2007, as part of the Bovine Tuberculosis Act. If there is an inconsistency between such federal regulations and the Bovine Tuberculosis Act or between such Uniform Methods and Rules and the Bovine Tuberculosis Act, the requirements of the Bovine Tuberculosis Act shall control. If there is an inconsistency between such federal regulations and the Uniform Methods and Rules, the requirements of the federal regulations shall control, except in the definition of livestock where the definition in the Uniform Methods and Rules shall control.

(2) Certified copies of the portion of the federal regulations and the rules adopted by reference pursuant to this section shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and department.

**Source:** Laws 2007, LB110, § 4.

**54-706.05 Act; administration and enforcement; department; powers and duties; prohibited acts; penalty.**

(1) The Bovine Tuberculosis Act shall be administered and enforced by the Bureau of Animal Industry of the department.

(2) In administering the act, the department may cooperate and contract with persons or appropriate local, state, or national organizations, public or private, for the performance of activities required or authorized pursuant to the act. The department may also cooperate with the APHIS in (a) the control and eradication of bovine tuberculosis in this state and (b) recommending where and how any available federal funds and state personnel and materials are allocated for the purpose of bovine tuberculosis control and eradication.

(3) In administering the act, the department shall have access to all livestock dealer and livestock auction market records to facilitate the traceback of affected, exposed, suspect, or reactor animals to the herd of origin or other point of original infection. Such records shall be maintained for a minimum of five years and shall be made available to the State Veterinarian upon request during normal business hours.

(4) For purposes of making inspections, conducting tests, or both, agents and employees of the department shall have access to any premises where animals may be located. Any person who interferes or obstructs any agent or employee of the department in such work or attempts to obstruct or prevent by force the carrying on of such inspection, testing, or both is guilty of a Class II misdemeanor.

**Source:** Laws 2007, LB110, § 5.

**54-706.06 Animal exhibiting signs of bovine tuberculosis; report required; submit animal for testing.**

Any person who discovers, suspects, or has reason to believe that any animal belonging to him, her, or another person or which he or she has in his or her possession or custody is exhibiting signs consistent with bovine tuberculosis shall immediately report such fact, belief, or suspicion to the State Veterinarian.

An owner or custodian of an animal exhibiting signs consistent with bovine tuberculosis shall submit such designated animal to be tested when ordered to do so by the State Veterinarian.

**Source:** Laws 2007, LB110, § 6.

**54-706.07 Department; rules and regulations; tests; reports.**

(1) The department by rule and regulation may prescribe the manner, method, and system of testing livestock or any other animal suspected of being affected with or exposed to *M. bovis* under a cooperative program.

(2) The department may also adopt and promulgate any other rules and regulations necessary to carry out the Bovine Tuberculosis Act.

(3) Accredited veterinarians are authorized to apply only the caudal fold tuberculin test. Tuberculin tests shall be conducted by a veterinarian employed by the department or APHIS or by a designated accredited veterinarian. All tests are official tests and shall be reported to the State Veterinarian on an official bovine tuberculosis test chart. Such report shall include the official identification, age, sex, and breed of each animal and a record of all responses and test interpretations.

**Source:** Laws 2007, LB110, § 7.

**54-706.08 Quarantine; epidemiologic investigation; prohibited acts; penalty.**

(1) The State Veterinarian may immediately quarantine any animal and the premises on which such animal is located if bovine tuberculosis is suspected or has been diagnosed in an animal on such premises.

(2) Disclosure of bovine tuberculosis in any animal shall be followed by an epidemiologic investigation in accordance with the Bovine Tuberculosis Act.

(3) No person shall prevent the testing of or remove any animal which has been placed in quarantine pursuant to this section from the place of quarantine until such quarantine is released by the State Veterinarian, except authorized movement for slaughter or other movement as authorized by the State Veterinarian. Any person who violates this subsection is guilty of a Class II misdemeanor. Each animal moved, purchased, sold, traded, bartered, granted,

loaned, or otherwise transferred in violation of this subsection is a separate violation.

**Source:** Laws 2007, LB110, § 8.

**54-706.09 Cleaning and disinfection of affected premises.**

(1) All premises that are determined by the State Veterinarian to constitute a health hazard to animals because of bovine tuberculosis shall be properly cleaned and disinfected in accordance with the Bovine Tuberculosis Act.

(2) The State Veterinarian may require and supervise the prescribed cleaning and disinfection of affected premises.

**Source:** Laws 2007, LB110, § 9.

**54-706.10 Examination and testing of affected herd; prohibited acts; penalty.**

The owner or custodian of an affected herd shall assemble and submit such herd for bovine tuberculosis examination and testing and shall provide reasonable assistance in confining the animals and providing facilities for proper administration of the testing. Any person who interferes or obstructs anyone in such work or attempts to obstruct or prevent by force the carrying on of such examination and testing is guilty of a Class II misdemeanor.

**Source:** Laws 2007, LB110, § 10.

**54-706.11 Department; assessment and collection of payments for services.**

The department may assess and collect payment for services provided and expenses incurred pursuant to its responsibilities under the Bovine Tuberculosis Act and the rules and regulations adopted and promulgated pursuant thereto. All payments assessed and collected pursuant to this section shall be remitted to the State Treasurer for credit to the Bovine Tuberculosis Cash Fund.

**Source:** Laws 2007, LB110, § 11.

**54-706.12 Bovine Tuberculosis Cash Fund; created; use; investment.**

The Bovine Tuberculosis Cash Fund is created. The fund shall consist of money appropriated by the Legislature and gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The fund shall be used to carry out the Bovine Tuberculosis 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 2007, LB110, § 12.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-706.13 Implementation of act; funding; limitations on payments.**

(1) The department may provide state funds to or on behalf of herd owners for certain activities or any portion thereof in connection with the implementation of the Bovine Tuberculosis Act if funds for any activities or any portion have been appropriated. The department may develop statewide priorities for

the expenditure of state funds available for bovine tuberculosis control and eradication program activities.

(2) Part of such state funds may be used by the department to pay a portion of the cost of testing done by or for accredited veterinarians if such work is approved by the department.

(3) In administering the act and program activities pursuant to the act, the department shall not pay for (a) testing done for change of ownership at private treaty or at concentration points, (b) costs of gathering, confining, and restraining animals subjected to testing or costs of providing necessary facilities and assistance, (c) costs of testing to qualify or maintain herd accreditation, or (d) indemnity for any animal destroyed as a result of being affected with bovine tuberculosis.

(4) The department is not liable for actual or incidental costs incurred by any person due to departmental actions in enforcing the Bovine Tuberculosis Act.

**Source:** Laws 2007, LB110, § 13.

**54-706.14 Tuberculin; injection or application; limitations.**

(1) No person other than an accredited veterinarian shall inject or apply tuberculin into or on any animal.

(2) No person, including a veterinarian, shall inject or apply tuberculin into or on any animal for the purpose of plugging, for the purpose of fraudulently concealing the presence of bovine tuberculosis in such animal, or for the purpose of preventing future reactions to tuberculin.

**Source:** Laws 2007, LB110, § 14.

**54-706.15 Department; enforcement powers; Attorney General or county attorney; powers and duties.**

(1) In order to insure compliance with the Bovine Tuberculosis Act, the department may apply for a temporary restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated under the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which violations of the act are occurring or are about to occur, when notified of such violations or threatened violations by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in the district court without delay. It shall also be the duty of the Attorney General or county attorney of the county in which violation of the act occurred to prosecute violations without delay.

(3) This section does not require the department to report all acts for prosecution if in the opinion of the Director of Agriculture the public interest will best be served through other administrative, criminal, or civil actions.

**Source:** Laws 2007, LB110, § 15.

**54-706.16 Violations; department powers; hearing; order or other action; appeal.**

(1) Whenever the Director of Agriculture or the State Veterinarian has reason to believe that any person has violated any of the provisions of the Bovine Tuberculosis Act or any rules or regulations adopted and promulgated under the act, an order may be entered requiring such person to appear before the director and show cause why an order should not be entered requiring such person to cease and desist from the violations charged. Such order shall set forth the alleged violations, fix the time and place of the hearing, and provide for notice thereof which shall be given not less than twenty days before the date of such hearing. After a hearing, or if the person charged with such violation fails to appear at the time of such hearing, if the director finds such person to be in violation, the director shall enter an order requiring such person to cease and desist from the specific acts, practices, or omissions.

(2) Any person aggrieved by any order entered by the director or other action of the director under the Bovine Tuberculosis Act may appeal the order or action, and the appeal shall be in accordance with the Administrative Procedure Act.

(3) This section does not prevent the department from first pursuing any other administrative, civil, or criminal actions provided in the Bovine Tuberculosis Act when there is a violation of the act or rules and regulations adopted and promulgated under the act.

**Source:** Laws 2007, LB110, § 16.

**Cross References**

Administrative Procedure Act, see section 84-920.

**54-706.17 Violations of act; penalty.**

Any person violating the Bovine Tuberculosis Act or any rule or regulation adopted and promulgated under the act for which no penalty is otherwise provided is guilty of a Class II misdemeanor.

**Source:** Laws 2007, LB110, § 17.

**54-707 Repealed. Laws 2007, LB 110, § 20.**

**54-708 Repealed. Laws 2007, LB 110, § 20.**

**54-709 Repealed. Laws 2007, LB 110, § 20.**

**54-710 Repealed. Laws 2007, LB 110, § 20.**

**54-711 Repealed. Laws 2007, LB 110, § 20.**

**54-712 Repealed. Laws 2007, LB 110, § 20.**

**54-713 Repealed. Laws 2007, LB 110, § 20.**

**54-714 Repealed. Laws 2007, LB 110, § 20.**

**54-715 Repealed. Laws 2007, LB 110, § 20.**

**54-716 Repealed. Laws 2007, LB 110, § 20.**

**54-717 Repealed. Laws 2007, LB 110, § 20.**

**54-718 Repealed. Laws 2007, LB 110, § 20.**

**54-719 Repealed. Laws 2007, LB 110, § 20.**

**54-720 Repealed. Laws 2007, LB 110, § 20.**

**54-721 Repealed. Laws 2007, LB 110, § 20.**

**54-722 Repealed. Laws 2007, LB 110, § 20.**

(c) SCABIES

**54-723 Transferred to section 54-1412.**

**54-724 Transferred to section 54-1413.**

**54-724.01 Domestic animals; scabies; quarantine; duties of owner.**

Whenever any inspector or person employed or authorized by the Department of Agriculture to make inspections of domestic animals finds any domestic animal affected with scabies, or which has been or is suspected of having been exposed to scabies, he or she shall at once notify the owner or custodian and such owner or custodian having such affected or exposed animal in charge or in his or her possession shall treat or dip all such animals so affected or exposed as and when ordered by the rules and regulations of the department. Such domestic animals so affected or exposed shall be held in strict quarantine at a place to be prescribed by the department until treated or dipped, and the premises shall be cleaned and disinfected if cleaning and disinfecting is deemed necessary by the department.

**Source:** Laws 1927, c. 12, art. III, § 1, p. 87; C.S.1929, § 54-921; Laws 1937, c. 128, § 1, p. 449; C.S.Supp.,1941, § 54-921; R.S.1943, § 54-723; R.S.1943, (1988), § 54-723; R.S.1943, (1998), § 54-1412; Laws 2002, LB 858, § 1.

**54-724.02 Domestic animals; scabies; dipping; enforcement; costs.**

If an owner or custodian fails or refuses to dip or otherwise treat an animal or disinfect the premises as and when directed by the Department of Agriculture pursuant to section 54-724.01, the department shall have power to cause the animal to be dipped or otherwise treated in the manner and at the time directed by the department and shall keep the animal in the custody of the department until treated or dipped. The costs of dipping or otherwise treating such animals shall be borne by the owner, and if the department has caused such animals to be dipped or treated it shall keep such animals in its custody until the costs of such dipping and treatment, together with whatever costs the department has incurred in the matter, are paid.

**Source:** Laws 1927, c. 12, art. III, § 1, p. 87; C.S.1929, § 54-921; Laws 1937, c. 128, § 1, p. 450; C.S.Supp.,1941, § 54-921; R.S.1943, § 54-724; Laws 1981, LB 174, § 2; R.S.1943, (1988), § 54-724; R.S.1943, (1998), § 54-1413; Laws 2002, LB 858, § 2.

(d) GENERAL PROVISIONS

**54-725 Transferred to section 28-1304.01.**

**54-726 Repealed. Laws 1983, LB 264, § 3.**

**54-726.01 Repealed. Laws 1985, LB 23, § 1.**

**54-726.02 Repealed. Laws 1983, LB 264, § 3.**

**54-726.03 Repealed. Laws 1985, LB 23, § 1.**

**54-726.04 Diseased swine; unlawful importation; penalties; costs; disposition.**

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

**Source:** Laws 1952, Sixty-fourth Spec. Sess., c. 3, § 3, p. 58; Laws 1965, c. 8, § 14, p. 96; Laws 1977, LB 39, § 22; Laws 1994, LB 884, § 68.

**54-727 Repealed. Laws 1969, c. 446, § 10.**

**54-727.01 Repealed. Laws 1969, c. 446, § 10.**

**54-727.02 Repealed. Laws 1969, c. 446, § 10.**

**54-727.03 Repealed. Laws 1969, c. 446, § 10.**

**54-727.04 Repealed. Laws 1969, c. 446, § 10.**

**54-727.05 Repealed. Laws 1969, c. 446, § 10.**

**54-728 Repealed. Laws 1969, c. 446, § 10.**

**54-728.01 Repealed. Laws 1969, c. 446, § 10.**

**54-729 Repealed. Laws 1969, c. 446, § 10.**

**54-729.01 Repealed. Laws 1969, c. 446, § 10.**

**54-730 Repealed. Laws 1969, c. 446, § 10.**

**54-731 Repealed. Laws 1969, c. 446, § 10.**

**54-732 Repealed. Laws 1969, c. 446, § 10.**

**54-733 Repealed. Laws 1969, c. 446, § 10.**

**54-734 Repealed. Laws 1969, c. 446, § 10.**

**54-735 Repealed. Laws 1953, c. 184, § 9.**

**54-736 Repealed. Laws 1969, c. 449, § 17.**

**54-737 Repealed. Laws 1969, c. 449, § 17.**

**54-738 Repealed. Laws 1969, c. 449, § 17.**

**54-739 Repealed. Laws 1969, c. 449, § 17.**

**54-740 Repealed. Laws 1969, c. 449, § 17.**

**54-740.01 Repealed. Laws 1969, c. 449, § 17.**

**54-740.02 Repealed. Laws 1969, c. 449, § 17.**

**54-741 Repealed. Laws 1969, c. 449, § 17.**

**54-742 Diseased animals; duty to report; livestock disease reporting system.**

It is the duty of any person who discovers, suspects, or has reason to believe that any animal belonging to him or her or which he or she has in his or her possession or custody or which, belonging to another, may come under his or her observation is affected with any dangerous, infectious, contagious, or otherwise transmissible disease which affects livestock to immediately report such fact, belief, or suspicion to the department or to any agent, employee, or appointee thereof.

The department shall work together with livestock health committees, livestock groups, diagnostic laboratories, practicing veterinarians, producers, and others who may be affected, to adopt and promulgate rules and regulations to effectuate a workable livestock disease reporting system according to the provisions of this section. The rules and regulations shall establish who shall report diseases, what diseases shall be reported, how such diseases shall be reported, to whom diseases shall be reported, the method by which diseases shall be reported, and the frequency of reports required. For disease reporting purposes, the department shall categorize livestock diseases according to relative economic or health risk factors and may provide different reporting measures for the various categories.

**Source:** Laws 1927, c. 12, art. VIII, § 1, p. 92; C.S.1929, § 54-938; R.S.1943, § 54-742; Laws 1993, LB 267, § 7; Laws 2001, LB 438, § 7.

**Cross References**

Definitions for sections 54-742 to 54-753.05, see section 54-701.03.

**54-743 Diseased animals; destruction; duty to dispose of carcasses.**

It shall be the duty of the owner or the custodian of any animal killed by order of the Department of Agriculture to dispose of the carcass in the manner prescribed by the department, and whenever the owner or custodian of any such animal so killed is unknown or absent from the premises where such carcass may be, the carcass shall be disposed of in like manner at the expense of the county in which the carcass is located.

**Source:** Laws 1927, c. 12, art. VIII, § 2, p. 92; C.S.1929, § 54-939; R.S.1943, § 54-743; Laws 1993, LB 267, § 8.

**54-744 Dead animals; carcasses; manner of disposition.**

(1) Except as set out in subsections (2) and (3) of this section and section 54-776, it is the duty of the owner or custodian of any dead animal to cause

such animal, within thirty-six hours after receiving knowledge of the death of such animal, to be:

(a) Buried at least four feet below the surface of the ground or completely incinerated or composted on the premises where such animal dies or on an adjacent property under the ownership and control of the owner or custodian. Any vehicle used by the owner or custodian to transport such dead animal shall be constructed in such a manner that the contents are covered and will not fall, leak, or spill therefrom. Violation of this subdivision is a traffic infraction as defined in section 60-672; or

(b) Transported by a licensed rendering establishment to either a rendering establishment licensed under the Nebraska Meat and Poultry Inspection Law or to a facility with a permit to operate as a landfill under the Integrated Solid Waste Management Act. The operator of a landfill is not required by this subdivision to accept dead animals.

(2) The Department of Agriculture shall regulate the composting of livestock carcasses and shall adopt and promulgate rules and regulations governing the same. Any person incorporating livestock carcasses into a composting facility shall follow the operating procedures established by the Department of Agriculture in consultation with the University of Nebraska Institute of Agriculture and Natural Resources.

(3) An animal carcass or carcass part may be transported by the owner or the owner's agent to a veterinary clinic or veterinary diagnostic laboratory for purposes of performing diagnostic procedures.

(4) In addition to methods listed in subsections (1) and (2) of this section, animal carcasses or carcass parts may be disposed of by a veterinary clinic or veterinary diagnostic laboratory by alkaline hydrolysis tissue digestion. For purposes of this section, alkaline hydrolysis tissue digestion means a process that utilizes an alkaline agent and heat to catalyze the decomposition and reduction of biological tissues. This section shall not exempt the products of alkaline hydrolysis tissue digestion from any applicable law, rule, or regulation governing disposal of wastes.

(5) Carcasses disposed of in compliance with this section or section 54-744.01 are exempt from the requirements for disposal of solid waste under the Integrated Solid Waste Management Act.

**Source:** Laws 1927, c. 12, art. VIII, § 3, p. 92; C.S.1929, § 54-940; R.S.1943, § 54-744; Laws 1993, LB 267, § 9; Laws 1999, LB 870, § 4; Laws 2001, LB 438, § 8; Laws 2009, LB99, § 19; Laws 2010, LB882, § 1.

**Cross References**

**Integrated Solid Waste Management Act**, see section 13-2001.

**Nebraska Meat and Poultry Inspection Law**, see section 54-1901.

**54-744.01 Dead animals; carcasses; disposal facilities; registration; when.**

(1) Livestock carcasses may be disposed of in a research or demonstration facility for innovative livestock disposal methods registered with the Department of Agriculture, except that a research or demonstration facility of liquefaction shall not be registered under this section and liquefaction shall not be permitted as a method of livestock disposal. The registration of a facility under this section shall contain a description of the facility, the location and proposed

duration of the research or demonstration, and a description of the method of disposal to be utilized. The department may register up to five such research or demonstration facilities conducted in conjunction with private livestock operations which meet all of the following conditions:

(a) The project is designed and conducted by one or more research faculty of the University of Nebraska;

(b) The project does not duplicate other research or demonstration projects;

(c) The project sponsors submit annual reports on the project and a final report at the conclusion of the project;

(d) The project employs adequate safeguards against disease transmission or environmental contamination; and

(e) The project meets any other conditions deemed prudent by the director.

(2) It is the intent of the Legislature that the department register at least one research or demonstration facility for innovative livestock disposal methods which shall be located upon the premises of an animal feeding operation as defined in section 54-2417. Before registering such facility, the department shall first consult with the Department of Environmental Quality and the Department of Health and Human Services. The Department of Agriculture may revoke the registration of the facility at any time if the director has reason to believe that the facility no longer meets the conditions for registration.

(3) Only the carcasses of livestock that have died upon the animal feeding operation premises where a research or demonstration facility for innovative livestock disposal methods is located may be disposed of at such facility. Carcasses from other locations shall not be transported to such facility for disposal.

(4) A facility registered under this section is exempt from the requirements for disposal of solid waste under the Integrated Solid Waste Management Act.

**Source:** Laws 2001, LB 438, § 20; Laws 2004, LB 916, § 4; Laws 2007, LB296, § 225.

#### Cross References

Integrated Solid Waste Management Act, see section 13-2001.

#### **54-745 Unburied carcasses; disposition by sheriff; expenses; owner liable.**

It is hereby made the duty of the sheriff of each county to cause to be buried the carcasses of any animal remaining unburied or otherwise disposed of after notice that any such carcass has remained unburied in violation of the provisions of section 54-744. The sheriff may enter upon any premises where any such carcass is for the purpose of carrying out the provisions of this section and may cause such carcass to be buried on such premises, but no such carcass shall be buried within a distance of five hundred feet of any dwelling house or barn. The board of county 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, to be recovered in a civil action, unless the owner pays such expenses within thirty days after notice and demand therefor.

**Source:** Laws 1927, c. 12, art. VIII, § 4, p. 92; C.S.1929, § 54-941; R.S.1943, § 54-745; Laws 1993, LB 267, § 10.

**54-746 Diseased animals; removal from county; permit required; when.**

Except as otherwise provided in this section, no person shall ship, trail, drive, or otherwise move, permit to be moved, or permit to be driven from one county in the state to any other county in the state, from one part of a county to another, or to any other state any animal which is affected or suspected of being affected with any dangerous, infectious, contagious, or otherwise transmissible disease without first having obtained a permit from the Department of Agriculture therefor. An animal may be transported by the owner or the owner's agent to and from a veterinary clinic or veterinary diagnostic laboratory for purposes of performing diagnostic procedures, examinations, treatments, or tests without obtaining such permit.

**Source:** Laws 1927, c. 12, art. VIII, § 5, p. 93; C.S.1929, § 54-942; R.S.1943, § 54-746; Laws 1993, LB 267, § 11; Laws 2001, LB 438, § 9.

**54-747 Diseased animals; order for destruction; notice; protest; examination.**

Whenever any animal has been adjudged to be affected with any infectious, contagious, or otherwise transmissible disease, other than a disease for which specific legislation exists, and has been ordered killed, the owner or custodian thereof shall be notified of such finding and order. Within forty-eight hours thereafter, such owner or custodian may file a protest with the Department of Agriculture stating under oath that to the best of his or her knowledge and belief such animal is free from such infectious, contagious, or otherwise transmissible disease. Thereupon, an examination of the animal involved shall be made by three veterinarians, graduates of a college of veterinary medicine which has been approved by the Department of Health and Human Services as a preliminary qualification for admission to practice veterinary medicine in the state. One of such veterinarians shall be appointed by the department, one by the person making such protest, and the two thus appointed shall choose the third. In case all three veterinarians or any two of them find such animal to be free from such infectious, contagious, or otherwise transmissible disease, the expense of such examination shall be paid by the state. In case the three veterinarians or any two of them find such animal to be affected with such infectious, contagious, or otherwise transmissible disease, the expense of the examination shall be paid by the person making the protest. The department and the person making such protest shall be bound by the result of such examination.

**Source:** Laws 1927, c. 12, art. VIII, § 6, p. 93; C.S.1929, § 54-943; R.S.1943, § 54-747; Laws 1969, c. 451, § 2, p. 1537; Laws 1993, LB 267, § 12; Laws 1996, LB 1044, § 279; Laws 2007, LB296, § 226.

**54-748 Repealed. Laws 1987, LB 20, § 9.**

**54-749 Repealed. Laws 1983, LB 264, § 3.**

**54-750 Diseased animals; harboring or sale prohibited; penalties.**

It shall be unlawful for any person to knowingly harbor, sell, or otherwise dispose of any animal or any part thereof affected with an infectious, contagious, or otherwise transmissible disease except as provided by sections 54-701 to 54-753 and 54-7,105 to 54-7,108, and the rules and regulations prescribed by

the Department of Agriculture thereunder. Any person so offending shall be deemed guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

**Source:** Laws 1927, c. 12, art. VIII, § 9, p. 94; C.S.1929, § 54-946; R.S.1943, § 54-750; Laws 1977, LB 39, § 23; Laws 1993, LB 267, § 13; Laws 2006, LB 856, § 21.

Word knowingly must be interpolated into administrative regulations. R. D. Lowrance, Inc. v. Peterson, 185 Neb. 679, 178 N.W.2d 277 (1970).

not give rise to a cause of action against the packing company under this section. Russo v. Swift & Co., 136 Neb. 406, 286 N.W. 291 (1939).

The fact that an employee of a packing company contracted disease from germs carelessly allowed to remain on meat did

**54-751 Rules and regulations; violations; penalties.**

It shall be unlawful for any person to violate any rule or regulation prescribed and promulgated by the Department of Agriculture pursuant to authority granted by sections 54-701 to 54-753 and 54-7,105 to 54-7,108, and any person so offending shall be guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

**Source:** Laws 1927, c. 12, art. VIII, § 10, p. 94; C.S.1929, § 54-947; R.S.1943, § 54-751; Laws 1977, LB 39, § 24; Laws 2001, LB 438, § 17; Laws 2006, LB 856, § 22.

Word knowingly must be interpolated into administrative regulations. R. D. Lowrance, Inc. v. Peterson, 185 Neb. 679, 178 N.W.2d 277 (1970).

**54-752 Violations; penalties.**

Any person violating any of the provisions of sections 54-701 to 54-753 and 54-7,105 to 54-7,108 shall be guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

**Source:** Laws 1927, c. 12, art. VIII, § 13, p. 95; C.S.1929, § 54-950; R.S.1943, § 54-752; Laws 1953, c. 184, § 8, p. 581; Laws 1977, LB 39, § 25; Laws 2001, LB 438, § 18; Laws 2006, LB 856, § 23.

**54-753 Prevention of disease; writ of injunction available.**

The penal provisions of section 54-752 shall not be exclusive, but the district courts of this state, in the exercise of their equity jurisdiction, may, by injunction, compel the observance of, and by that remedy enforce, the provisions of sections 54-701 to 54-753 and 54-7,105 to 54-7,108 and the rules and regulations established and promulgated by the Department of Agriculture.

**Source:** Laws 1927, c. 12, art. VIII, § 14, p. 95; C.S.1929, § 54-951; R.S.1943, § 54-753; Laws 2001, LB 438, § 19; Laws 2006, LB 856, § 24.

**54-753.01 Feeding of garbage; definition.**

(1) Except as provided in subsection (2) of this section, it shall be unlawful for any person to feed garbage to animals.

(2) A person may feed garbage to his or her own animals so long as the garbage is obtained from the person's own household, and the animals so fed, if consumed, are consumed by no one other than the members of that household.

(3) As used in this section, garbage shall mean all waste material derived in whole or in part from fruits, vegetables, meats, or other plant or animal material, including poultry material, and any other refuse of any character whatsoever that has been associated with any such material, resulting from the handling, preparation, cooking, or consumption of food, except that such term shall not include material exempted by the Department of Agriculture in rules and regulations adopted pursuant to subsection (4) of this section.

(4) When deemed to be in the best interest of the livestock industry of the state, and not detrimental to the public health, safety, or general welfare, the department may adopt reasonable rules and regulations exempting specified materials from being deemed to be garbage under this section. Only materials of a nonmeat nature which are byproducts of commercial food processing operations may be so exempted.

**Source:** Laws 1952, Sixty-fourth Spec. Sess., c. 5, § 1, p. 61; Laws 1955, c. 210, § 2, p. 593; Laws 1980, LB 631, § 1.

**54-753.02 Repealed. Laws 1980, LB 631, § 6.**

**54-753.03 Repealed. Laws 1980, LB 631, § 6.**

**54-753.04 Feeding of garbage; violations; penalty.**

Any person violating the provisions of section 54-753.01 or any rule or regulation made pursuant thereto shall be guilty of a Class IV misdemeanor. Each day the provisions of section 54-753.01 or any rule or regulation made pursuant thereto is violated shall be a separate offense.

**Source:** Laws 1952, Sixty-fourth Spec. Sess., c. 5, § 3, p. 61; Laws 1955, c. 210, § 5, p. 594; Laws 1977, LB 39, § 26; Laws 1980, LB 631, § 2.

**54-753.05 Importation of livestock; embargo; violation; penalty.**

Any person who shall import livestock or cause livestock to be imported into the State of Nebraska in violation of an embargo issued by the State Veterinarian of Nebraska shall be guilty of a Class IV felony.

**Source:** Laws 1959, c. 255, § 1, p. 889; Laws 1977, LB 39, § 27.

Violation of this section held not to defeat registration of judgment obtained in Kansas. Miller v. Kingsley, 194 Neb. 123, 230 N.W.2d 472 (1975).

**54-753.06 Compliance with exotic animal auction and swap meet laws; compliance with game laws required.**

Compliance with sections 54-7,105 to 54-7,108 does not relieve a person of the requirement to comply with the provisions of sections 37-477 to 37-479.

**Source:** Laws 2006, LB 856, § 10.

**54-753.07 Repealed. Laws 1980, LB 631, § 6.**

**54-753.08 Repealed. Laws 1980, LB 631, § 6.**

**54-753.09 Repealed. Laws 1980, LB 631, § 6.**

**54-753.10 Repealed. Laws 1980, LB 631, § 6.**

## (e) ANTHRAX

**54-754 Repealed. Laws 2009, LB 99, § 21.**

**54-755 Repealed. Laws 2009, LB 99, § 21.**

**54-756 Repealed. Laws 2009, LB 99, § 21.**

**54-757 Repealed. Laws 2009, LB 99, § 21.**

**54-758 Repealed. Laws 2009, LB 99, § 21.**

**54-759 Repealed. Laws 2009, LB 99, § 21.**

**54-760 Repealed. Laws 2009, LB 99, § 21.**

**54-761 Repealed. Laws 2009, LB 99, § 21.**

**54-762 Repealed. Laws 2009, LB 99, § 21.**

**54-763 Repealed. Laws 2009, LB 99, § 21.**

**54-764 Act, how cited.**

Sections 54-764 to 54-781 shall be known and may be cited as the Anthrax Control Act.

**Source:** Laws 2009, LB99, § 1.

**54-764.01 Repealed. Laws 1965, c. 326, § 31.**

**54-764.02 Repealed. Laws 1965, c. 326, § 31.**

**54-765 Purpose of act.**

The purpose of the Anthrax Control Act is to prevent, suppress, and control anthrax to protect the health of livestock within Nebraska.

**Source:** Laws 2009, LB99, § 2.

**54-766 Terms, defined.**

For purposes of the Anthrax Control Act:

(1) Accredited veterinarian means a veterinarian approved by the Administrator of the Animal and Plant Health Inspection Service of the United States Department of Agriculture in accordance with the provisions of 9 C.F.R. part 161, as such regulation existed on January 1, 2009;

(2) Affected herd means a herd which contains an animal infected with or exposed to anthrax;

(3) Affected premises means the land on which is located an animal infected with or exposed to anthrax and includes the buildings, holding facilities, and equipment located on such land;

(4) Animal means all vertebrate members of the animal kingdom except humans, fish, amphibians, reptiles, and wild animals at large;

(5) Approved laboratory means a laboratory designated by the department in rules and regulations;

(6) Department means the Department of Agriculture;

(7) Exposed means an animal or herd having or suspected of having contact (a) with animals infected with anthrax spores or organisms or (b) with premises which contain anthrax spores or organisms;

(8) Herd means (a) any group of livestock maintained on common ground for any purpose or (b) two or more groups of livestock under common ownership or supervision geographically separated but which have an interchange of livestock without regard to whether the livestock are infected or exposed;

(9) Herd plan means a written disease management plan that is designed by the herd owner or custodian in conjunction with the State Veterinarian to control and eradicate anthrax from an infected herd;

(10) Livestock means cattle, bison, swine, sheep, goats, equines, and domesticated cervine animals;

(11) Quarantine means the restriction imposed by the department (a) on the movement of an affected herd, (b) on the movement of an animal or a group of animals infected with or exposed to anthrax, (c) on the use of an affected premises, or (d) on the use of land where anthrax spores have been found and includes restriction of the buildings, holding facilities, and equipment upon such land; and

(12) State Veterinarian means the veterinarian appointed pursuant to section 81-202.01 or his or her designee.

**Source:** Laws 2009, LB99, § 3.

**54-767 Act; administration and enforcement; department; powers and duties; prohibited acts; rules and regulations.**

The Anthrax Control Act shall be administered and enforced by the department. In administering and enforcing the act:

(1) The department may cooperate and may contract with any person, including any local, state, or national organizations, public or private, for the performance of activities required or authorized pursuant to the act;

(2) The department may employ all general powers provided in sections 54-701 to 54-705 and 54-742 to 54-753 in administering the act;

(3) For purposes of access for (a) inspections, (b) tests, including the taking of samples, (c) treatments, or (d) carrying out and enforcing quarantines, agents and employees of the department shall have the right to enter upon any premises where livestock that are infected with or are suspected to be infected with anthrax are located. It shall be unlawful for any person to interfere in any way with or obstruct an agent or employee of the department from entering upon such premises for the purposes stated in this subdivision or to interfere in any way with the department in such work;

(4) The department may delegate to appropriate personnel any of the responsibilities in this section for the proper administration of the act;

(5) The department may adopt and promulgate rules and regulations to aid in implementing the act. The rules and regulations may include, but are not limited to, establishing procedures for testing, vaccination, quarantine, cleaning and disinfection of affected premises, carcass disposal, designation of approved laboratories to confirm the presence of anthrax, submission of specimen samples, and diagnosis and confirmation of anthrax;

(6) The department may provide state funds to or on behalf of herd owners for certain activities or any portion thereof in connection with the implementation of the act if funds for any activities or any portion thereof have been appropriated and are available. The department may develop statewide priorities for the expenditure of state funds available for anthrax control activities; and

(7) Unless the Legislature appropriates funds to the department specifically for such purposes, the department shall not pay for (a) costs of gathering, confining, and restraining animals for vaccination or other anthrax control activities, (b) costs of providing necessary facilities and assistance, (c) indemnity for any animal destroyed as a result of being affected with anthrax, or (d) costs for carcass disposal and any disinfection or cleaning.

**Source:** Laws 2009, LB99, § 4.

**54-768 Anthrax; report of cases required.**

Any person who discovers, suspects, or has reason to believe that an animal belonging to him, her, or another person or which he or she has in his or her possession or custody is exhibiting signs consistent with anthrax shall immediately report such fact, belief, or suspicion to the State Veterinarian.

**Source:** Laws 2009, LB99, § 5.

**54-769 Harbor, sell, or dispose of animal; prohibited acts.**

It shall be unlawful for any person to knowingly harbor, sell, or otherwise dispose of any animal, or carcass part thereof, that has been or is exposed to or infected with anthrax, except as otherwise provided in the Anthrax Control Act and any rules and regulations adopted and promulgated thereunder.

**Source:** Laws 2009, LB99, § 6.

**54-770 State Veterinarian; quarantine; duties; prohibited acts.**

The State Veterinarian shall immediately quarantine, at the expense of the owner or custodian, any affected herd and the affected premises. An animal or animals under quarantine may be relocated as directed by the State Veterinarian to avoid or lessen exposure to pathogenic agents. Quarantine restrictions imposed by the State Veterinarian as applied to the movement and disposition of an individual animal or a group of animals within an affected herd may vary as appropriate according to risk of exposure to pathogenic agents. It shall be unlawful for any person to remove an animal which has been placed under quarantine pursuant to the Anthrax Control Act from the place of quarantine until such quarantine is released by the State Veterinarian. An affected premises or any portion thereof which has been placed under quarantine shall remain under quarantine until released by the State Veterinarian.

**Source:** Laws 2009, LB99, § 7.

**54-771 Herd plan; contents; prohibited acts; penalty.**

The herd owner or custodian, in cooperation with the department, shall develop a herd plan which may include (a) the vaccination, treatment, and testing of an infected herd, (b) cleaning and disinfection of premises of an infected herd, and (c) carcass disposal. A herd owner or custodian of an

infected herd who fails to develop a herd plan or who fails to follow the herd plan is guilty of a Class I misdemeanor.

**Source:** Laws 2009, LB99, § 8.

**54-772 Testing, vaccination, and treatment of affected herd; prohibited acts.**

It is unlawful for any person to prevent the testing, vaccination, and treatment of an affected herd. The owner or custodian of a herd ordered to be tested, vaccinated, or treated shall confine such herd in a suitable place determined by the department and shall furnish the necessary assistance and facilities for restraining the livestock as requested by the State Veterinarian.

**Source:** Laws 2009, LB99, § 9.

**54-773 Sale and use of anthrax vaccine; procedures.**

The sale and use of anthrax vaccine shall be in accordance with the following procedures:

- (1) The department may restrict the sale and use of anthrax vaccine;
- (2) Only anthrax vaccines which are licensed and approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services shall be used for the vaccination of livestock, and such vaccines shall be distributed by an accredited veterinarian licensed to practice in Nebraska;
- (3) Records of all anthrax vaccine sales and purchases shall be retained by the prescribing or administering veterinarian for a period of five years. Such records shall be available for examination by the Department of Agriculture or its authorized representative during normal business hours. If requested by the department, a report of sales and purchases of anthrax vaccine shall be submitted to the department;
- (4) An exposed herd may be vaccinated as deemed appropriate by the State Veterinarian;
- (5) Infected herds shall be vaccinated, and such vaccine shall only be administered by an accredited veterinarian licensed to practice in Nebraska or by a designee of the department; and
- (6) Herd owners or custodians of nonaffected herds may purchase anthrax vaccine from an accredited veterinarian.

**Source:** Laws 2009, LB99, § 10.

**54-774 Affected herd with death loss; owner or custodian; duties.**

For an affected herd that has experienced any death loss, the owner or custodian of the herd shall be responsible to have samples submitted to an approved laboratory for confirmation of anthrax.

**Source:** Laws 2009, LB99, § 11.

**54-775 Animal or animal carcass; transport and use; prohibited acts.**

If an animal has, or is suspected to have, died of anthrax, it is unlawful to:

- (1) Transport such animal or animal carcass, except as directed and approved by the department;

(2) Use the flesh or organs of such animal or animal carcass for food for livestock or human consumption; or

(3) Remove the skin or hide of such animal or animal carcass.

**Source:** Laws 2009, LB99, § 12.

**54-776 Disposition of infected animal carcass; limitations; department; powers.**

(1) The disposition of any 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 department. If such carcass is buried, no portion of the carcass shall be interred closer than six feet from the surface of the ground.

(2) 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 2009, LB99, § 13.

**54-777 Confirmation of anthrax; approved laboratory.**

A confirmation of anthrax shall only be made by an approved laboratory.

**Source:** Laws 2009, LB99, § 14.

**54-777.01 Repealed. Laws 1969, c. 449, § 17.**

**54-777.02 Repealed. Laws 1969, c. 449, § 17.**

**54-777.03 Repealed. Laws 1969, c. 449, § 17.**

**54-778 Responsibility for costs; department; powers and duties; prohibited acts; penalty; Anthrax Control Act Cash Fund; created; use; investment.**

(1) The owner or custodian of an affected herd or affected premises shall be responsible to pay for costs related to: (a) The quarantine, testing, or vaccination of an affected herd; (b) the disinfection or cleaning of the premises of an affected herd; and (c) any other costs associated with the control of anthrax in such herd.

(2) The department may assess and collect payment for services provided and expenses incurred pursuant to its responsibilities under the Anthrax Control Act.

(3) Any person failing to carry out the responsibilities set out in the act and any rules and regulations adopted and promulgated thereunder shall be guilty of a Class I misdemeanor. Whenever any person fails to carry out such responsibilities under the act, the department may perform such functions. Upon completion of any required anthrax control activities, the department shall determine its actual costs incurred in handling the affected herd and affected premises and conducting the testing and notify the herd owner or custodian in writing. The herd owner or custodian shall reimburse the department its actual costs within fifteen days following the date of the notice. Any person failing to reimburse the department shall be assessed a late fee of up to twenty-five percent of the amount due for each thirty days of nonpayment to reimburse the department for its costs of collecting the amount due.

(4) Any costs and fees assessed and collected pursuant to this section shall be remitted to the State Treasurer for credit to the Anthrax Control Act Cash Fund.

(5) The Anthrax Control Act Cash Fund is created. The fund shall consist of money appropriated by the Legislature and gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The fund shall be used to carry out the Anthrax Control 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 2009, LB99, § 15.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**54-779 Enforcement powers; Attorney General or county attorney; duties.**

(1) To obtain compliance with the Anthrax Control Act, the department may apply for a temporary restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or any rules or regulations adopted and promulgated thereunder. The district court of the county where the violation is occurring or is about to occur has jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) The Attorney General or the county attorney of the county where violations of the act or any rules or regulations adopted and promulgated thereunder are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under subsection (1) of this section to be instituted and pursued without delay and shall prosecute violations under sections 54-771, 54-778, and 54-781 without delay.

**Source:** Laws 2009, LB99, § 16.

**54-780 Department; liability for costs.**

The department is not liable for actual or incidental costs incurred by any person due to departmental actions in enforcing the Anthrax Control Act unless such costs are clearly unreasonable or result from the gross or willful negligence of the department or its employees or agents.

**Source:** Laws 2009, LB99, § 17.

**54-781 Violations; penalty.**

Any person violating the Anthrax Control Act or any rules or regulations adopted and promulgated thereunder for which no penalty is otherwise provided is guilty of a Class I misdemeanor.

**Source:** Laws 2009, LB99, § 18.

**54-782 Repealed. Laws 1969, c. 449, § 17.**

**54-783 Repealed. Laws 1969, c. 449, § 17.**

**54-784 Repealed. Laws 1969, c. 449, § 17.**

## (f) IMPORT CONTROL

**54-784.01 Act, how cited.**

Sections 54-784.01 to 54-796 shall be known and may be cited as the Animal Importation Act.

**Source:** Laws 1992, LB 366, § 13.

**54-785 Purpose of act.**

The purpose of the Animal Importation Act shall be to protect the health of animals in Nebraska by regulating or prohibiting certain activities relating to the importation of animals into Nebraska. Such regulations and prohibitions are controls which are essential to the prevention of the transference into this state of dangerous, infectious, contagious, or otherwise transmissible diseases among animals. The methods provided for in the act are in accordance with the purpose and intent of sections 54-701 to 54-705.

**Source:** Laws 1975, LB 321, § 5; Laws 1992, LB 366, § 7; Laws 2003, LB 160, § 1.

**54-786 Terms, defined.**

For purposes of the Animal Importation Act, unless the context otherwise requires:

- (1) Animal means all vertebrate members of the animal kingdom, except humans, fish, amphibians, and reptiles; and
- (2) Bureau means the Bureau of Animal Industry of the Department of Agriculture.

**Source:** Laws 1975, LB 321, § 6; Laws 1992, LB 366, § 8; Laws 2003, LB 160, § 2.

**54-787 Unlawful acts; transmissible disease.**

It shall be unlawful for any person to bring, cause to be brought, or aid in bringing into this state any animal which he or she knows to be infected with, exposed to, or suspected of having been exposed to any dangerous, infectious, contagious, or otherwise transmissible disease, or which he or she knows has originated in a quarantined area, herd, or flock, except by permit issued by the bureau.

**Source:** Laws 1975, LB 321, § 7; Laws 2003, LB 160, § 3.

**54-788 Certificate of veterinary inspection; requirements; exceptions.**

(1) Except as otherwise provided in this section, all animals brought into this state shall be accompanied by a certificate of veterinary inspection. The certificate of veterinary inspection shall state on its face the destination of the animal and shall meet the requirements for issuance, approval, content, and filing prescribed by the Department of Agriculture through rules and regulations. The following animals are not required to be accompanied by a certificate of veterinary inspection: (a) Animals brought directly to a federally recognized slaughter establishment; (b) cattle, swine, horses, sheep, and goats brought from the farm or ranch of origin directly to an establishment approved under 9 C.F.R. part 71, 75, 78, 79, or 85; (c) poultry under eight weeks of age accompanied by a VS Form 9-3, "Report of Sales of Hatching Eggs, Chicks,

and Poults”, and classified prior to movement into Nebraska as pullorum and typhoid clean or equivalent status pursuant to 9 C.F.R. 145, the National Poultry Improvement Plan; and (d) animals moving directly to a veterinary clinic for diagnosis, treatment, or health examination.

(2) The bureau may require through rules and regulations that a prior entry permit be obtained for animals if the bureau deems such a permit necessary for the protection of the health of domestic animals in the state. If the bureau determines that a prior entry permit is required, the person importing or transporting the animals into the state shall obtain such a permit from the bureau.

**Source:** Laws 1975, LB 321, § 8; Laws 1992, LB 366, § 9; Laws 2003, LB 160, § 4.

**54-789 Repealed. Laws 1993, LB 267, § 37.**

**54-790 Certificate of veterinary inspection; required.**

It shall be unlawful for any person to bring, cause to be brought, or aid in bringing into this state any animal which is not accompanied by a certificate of veterinary inspection as required by section 54-788.

**Source:** Laws 1975, LB 321, § 10; Laws 1993, LB 267, § 14; Laws 2003, LB 160, § 5.

**54-791 Diverting animal from destination; unlawful; exception.**

It shall be unlawful for any person to cause any animal to be diverted from the destination stated on the certificate of veterinary inspection as required by section 54-788 except by permit issued by the bureau.

**Source:** Laws 1975, LB 321, § 11; Laws 1993, LB 267, § 15; Laws 2003, LB 160, § 6.

**54-792 Bringing bovine calf into state; unlawful; when; exceptions.**

Notwithstanding any other provision of the Animal Importation Act, it shall be unlawful for any person to bring, cause to be brought, or aid in bringing into this state for the purpose of resale any bovine calf that is both under two hundred pounds in weight and not accompanied by its female parent, except that (1) a bovine calf under two hundred pounds in weight need not be accompanied by its female parent if such calf is brought from the farm or ranch where calved directly to any establishment approved under 9 C.F.R. part 78 or (2) a resident of Nebraska or agent for such resident may bring such calf into this state in accordance with procedures adopted by the Department of Agriculture through rules and regulations.

**Source:** Laws 1975, LB 321, § 12; Laws 1992, LB 366, § 10.

**54-793 Bureau; power to quarantine; rules and regulations.**

(1) The bureau shall have the authority to place in quarantine at the expense of the owner any animal which has been brought into this state in violation of the Animal Importation Act. Any quarantine so imposed shall remain in effect until released by the bureau.

(2) The Department of Agriculture may adopt and promulgate rules and regulations to aid in the administration and enforcement of the act.

**Source:** Laws 1975, LB 321, § 13; Laws 1992, LB 366, § 11.

**54-794 Removing animal placed in quarantine; unlawful.**

It shall be unlawful for any person to remove any animal which has been placed in quarantine pursuant to the provisions of either section 54-701 or 54-793 from the place of quarantine until such quarantine shall be released by the bureau.

**Source:** Laws 1975, LB 321, § 14.

**54-795 Quarantined area; additional animals; bureau notified.**

The bureau shall be notified whenever additional animals are placed within a quarantined area, and such quarantine may be amended accordingly by the bureau.

**Source:** Laws 1975, LB 321, § 15.

**54-796 Enforcement powers; county attorney; Attorney General; duties; violations; penalties.**

(1) The Department of Agriculture may apply for a restraining order or a temporary, permanent, or mandatory injunction against any person violating or threatening to violate the Animal Importation Act or the rules and regulations adopted and promulgated thereunder in order to insure compliance with the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which violations of the act are occurring or are about to occur, when notified of such violations or threatened violations by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in the district court without delay. It shall also be the duty of the Attorney General or county attorney of the county in which violation of the act occurred to prosecute violations under subsection (3) of this section without delay.

(3) Any person violating the provisions of the act or the rules and regulations adopted and promulgated pursuant to the act shall be guilty of a Class III misdemeanor for the first offense and a Class II misdemeanor for each subsequent offense.

**Source:** Laws 1975, LB 321, § 16; Laws 1977, LB 39, § 31; Laws 1992, LB 366, § 12; Laws 2003, LB 160, § 7.

(g) LIVESTOCK CERTIFICATION PROGRAM

**54-797 Livestock certification program; department; duties; registry.**

The Department of Agriculture shall provide voluntary livestock certification programs when requested by a livestock health committee and others when deemed by the department to be beneficial and appropriate for the livestock industry. The department shall work together with the appropriate livestock

producers or groups and the Department of Veterinary and Biomedical Sciences of the University of Nebraska to establish procedures for the certification of participating herds. The Department of Agriculture may maintain, through the Bureau of Animal Industry, a livestock certification registry for each livestock certification program that provides information regarding the voluntary certification program and may include the names of participating livestock producers who have a herd or flock enrolled in the voluntary livestock certification program.

**Source:** Laws 2001, LB 438, § 10.

**Cross References**

**Definitions,** see section 54-701.03.

**54-798 Livestock certification program; application; costs.**

A livestock producer may request certification by completing an application for herd certification on a form provided by the department. The livestock producers who choose to participate in a voluntary livestock certification program shall pay the primary costs of the program, including all on-farm testing costs. The department may use funds appropriated by the Legislature, when available, to offset the costs of disease research and laboratory testing when done in conjunction with a voluntary livestock certification program.

**Source:** Laws 2001, LB 438, § 11.

**Cross References**

**Definitions,** see section 54-701.03.

**54-799 Livestock certification program; livestock producer; powers.**

A livestock producer who is listed in a livestock certification registry may provide registry and certification information regarding the livestock herd when selling livestock from the herd.

**Source:** Laws 2001, LB 438, § 12.

**Cross References**

**Definitions,** see section 54-701.03.

**54-7,100 Livestock certification program; removal from registry; procedure.**

(1) The department shall remove the name of a livestock producer from a livestock certification registry if the livestock producer has issued false records or statements or has made misleading claims to the department with regard to livestock certification when such records, statements, or claims cause, or could cause, the department to incorrectly include the name of a livestock producer in the certification registry.

(2) Before removal, the department shall notify the livestock producer in writing of the department's intention and the reasons for the intended removal from the registry. The notice shall inform the applicant of his or her right to request an administrative hearing before the director regarding his or her removal from the registry. A request for hearing shall be in writing and shall be filed with the department within thirty days after the service of the notice is made. If a request for hearing is filed within the thirty-day period, at least twenty days before the hearing the director shall notify the livestock producer

of the time, date, and place of the hearing. Such proceeding may be appealed as a contested case under the Administrative Procedure Act.

(3) A livestock producer whose name is removed from a livestock certification registry for the first time shall not be eligible to reapply for twelve months from the date of removal. A livestock producer whose name is removed from a registry a subsequent time shall not be eligible to reapply for thirty-six months from the date of removal.

**Source:** Laws 2001, LB 438, § 13.

**Cross References**

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

**Definitions**, see section 54-701.03.

**54-7,101 Livestock certification program; department; immunity.**

The department and its representatives shall not be held liable for unintentional loss or damage which occurs during certification testing, surveillance and monitoring, disease reporting, or disease research and laboratory testing, or because of certification or lack thereof in a voluntary livestock certification program.

**Source:** Laws 2001, LB 438, § 14.

**Cross References**

**Definitions**, see section 54-701.03.

**54-7,102 Livestock certification program; information; disclosure; when.**

Information collected or published by the department pursuant to sections 54-797 to 54-7,103 shall not disclose the identity of individual livestock producers, except for:

- (1) Information published in a livestock certification registry; and
- (2) Information collected for the purpose of a voluntary livestock certification program that may be disclosed by the State Veterinarian when, in his or her judgment, failure to disclose the name of a livestock producer or producers could result in the spread of a dangerous, contagious, infectious, or otherwise transmissible disease to and among livestock.

**Source:** Laws 2001, LB 438, § 15.

**Cross References**

**Definitions**, see section 54-701.03.

**54-7,103 Livestock certification program; department; powers.**

The department may establish procedures to implement sections 54-797 to 54-7,103.

**Source:** Laws 2001, LB 438, § 16.

**Cross References**

**Definitions**, see section 54-701.03.

(h) TRANSPORTATION

**54-7,104 Livestock; care.**

(1) Each express company engaged in the business of receiving and transporting freight in this state shall, when livestock is entrusted to its care for

shipment or transportation, exercise due care and diligence in protecting such livestock from all inclement weather during the period of such shipment. All such express companies shall provide for the proper housing of any livestock, whether crated or uncrated, entrusted to its care at any point where such express company receives freight to be shipped to other points or at any point where such express company receives freight transported from other points.

(2) Any violation of this section is a Class V misdemeanor.

**Source:** Laws 1915, c. 177, § 1, p. 361; C.S.1922, § 7138; C.S.1929, § 86-507; R.S.1943, § 86-502; R.S.1943, (1999), § 86-502; Laws 2002, LB 1105, § 441.

**Cross References**

Livestock transportation permit, see section 54-1,115.

(i) EXOTIC ANIMAL AUCTIONS AND SWAP MEETS

**54-7,105 Purpose of sections.**

The purpose of sections 54-7,105 to 54-7,108 is to authorize the Bureau of Animal Industry to require exotic animal auction or swap meet organizers to notify the bureau of any scheduled exotic animal auction or swap meet and to maintain records for animal disease tracking purposes. Exotic animals sold at exotic animal auctions or swap meets are often foreign to the United States or to the State of Nebraska. These exotic animals may carry dangerous, infectious, contagious, or otherwise transmissible diseases, including foreign animal diseases, which could pose a threat to Nebraska's livestock health and the livestock industry.

**Source:** Laws 2006, LB 856, § 6.

**Cross References**

**Definitions,** see section 54-701.03.

**Department of Agriculture,** State Veterinarian, powers, see sections 54-703 to 54-705.

**Violations,** penalties, see section 54-752.

**54-7,106 Notification requirements.**

An exotic animal auction or swap meet organizer shall notify the Bureau of Animal Industry at least thirty days prior to the date on which the exotic animal auction or swap meet is to be held. Notification shall include the location, time, and dates of the exotic animal auction or swap meet and the name and address of the exotic animal auction or swap meet organizer. Notification shall be made in writing or by facsimile transmission.

**Source:** Laws 2006, LB 856, § 7.

**Cross References**

**Definitions,** see section 54-701.03.

**Department of Agriculture,** State Veterinarian, powers, see sections 54-703 to 54-705.

**Violations,** penalties, see section 54-752.

**54-7,107 Records; contents; access by department.**

(1) An exotic animal auction or swap meet organizer shall maintain records for each exotic animal auction or swap meet such organizer arranges, organizes, leases areas for, or otherwise coordinates at least five years after the date of the exotic animal auction or swap meet. The records shall include:

(a) The name, address, and telephone number of the exotic animal auction or swap meet organizer;

(b) The name and address of all persons who purchased, sold, traded, bartered, gave away, or otherwise transferred an exotic animal at the exotic animal auction or swap meet;

(c) The number of and species or type of each exotic animal purchased, sold, traded, bartered, given away, or otherwise transferred at the exotic animal auction or swap meet;

(d) The date of purchase, sale, trade, barter, or other transfer of an exotic animal at the exotic animal auction or swap meet; and

(e) A copy of the completed certificate of veterinary inspection, if required under the Animal Importation Act or any rules or regulations adopted and promulgated under the act or if the exotic animal is to be exported to another state, for each exotic animal purchased, sold, traded, bartered, given away, or otherwise transferred at the exotic animal auction or swap meet.

(2) An exotic animal auction or swap meet organizer shall, during all reasonable times, permit authorized employees and agents of the department to have access to and to copy any or all records relating to his or her exotic animal auction or swap meet business.

(3) When necessary for the enforcement of sections 54-7,105 to 54-7,108 or any rules and regulations adopted and promulgated pursuant to such sections, the authorized employees and agents of the department may access the records required by this section.

**Source:** Laws 2006, LB 856, § 8.

**Cross References**

**Animal Importation Act**, see section 54-784.01.

**Definitions**, see section 54-701.03.

**Department of Agriculture**, State Veterinarian, powers, see sections 54-703 to 54-705.

**Violations**, penalties, see section 54-752.

**54-7,108 Prohibited transfers.**

No beef or dairy cattle, calves, swine, bison, or sheep sold for wool or food, goats sold for dairy, food, or fiber, or domesticated cervine animals shall be purchased, sold, bartered, traded, given away, or otherwise transferred at an exotic animal auction or swap meet. An exotic animal auction or swap meet organizer shall contact the Bureau of Animal Industry if a particular animal cannot be readily identified as an animal that is prohibited from being purchased, sold, bartered, traded, given away, or otherwise transferred at an exotic animal auction or swap meet under this section.

**Source:** Laws 2006, LB 856, § 9.

**Cross References**

**Definitions**, see section 54-701.03.

**Department of Agriculture**, State Veterinarian, powers, see sections 54-703 to 54-705.

**Violations**, penalties, see section 54-752.

**ARTICLE 8  
COMMERCIAL FEED**

**Cross References**

**License Suspension Act**, see section 43-3301.

## LIVESTOCK

Section	
54-801.	Repealed. Laws 1951, c. 176, § 15.
54-802.	Repealed. Laws 1951, c. 176, § 15.
54-803.	Repealed. Laws 1951, c. 176, § 15.
54-804.	Repealed. Laws 1951, c. 176, § 15.
54-805.	Repealed. Laws 1951, c. 176, § 15.
54-806.	Repealed. Laws 1951, c. 176, § 15.
54-807.	Repealed. Laws 1951, c. 176, § 15.
54-808.	Repealed. Laws 1951, c. 176, § 15.
54-809.	Repealed. Laws 1951, c. 176, § 15.
54-810.	Repealed. Laws 1951, c. 176, § 15.
54-811.	Repealed. Laws 1951, c. 176, § 15.
54-812.	Repealed. Laws 1951, c. 176, § 15.
54-813.	Repealed. Laws 1951, c. 176, § 15.
54-814.	Repealed. Laws 1951, c. 176, § 15.
54-815.	Repealed. Laws 1951, c. 176, § 15.
54-816.	Repealed. Laws 1951, c. 176, § 15.
54-817.	Repealed. Laws 1951, c. 176, § 15.
54-818.	Repealed. Laws 1951, c. 176, § 15.
54-819.	Repealed. Laws 1986, LB 322, § 20.
54-820.	Repealed. Laws 1986, LB 322, § 20.
54-820.01.	Repealed. Laws 1986, LB 322, § 20.
54-821.	Repealed. Laws 1986, LB 322, § 20.
54-822.	Repealed. Laws 1986, LB 322, § 20.
54-823.	Repealed. Laws 1986, LB 322, § 20.
54-824.	Repealed. Laws 1986, LB 322, § 20.
54-825.	Repealed. Laws 1986, LB 322, § 20.
54-826.	Repealed. Laws 1986, LB 322, § 20.
54-826.01.	Repealed. Laws 1986, LB 322, § 20.
54-827.	Repealed. Laws 1986, LB 322, § 20.
54-828.	Repealed. Laws 1986, LB 322, § 20.
54-829.	Repealed. Laws 1975, LB 318, § 12.
54-830.	Repealed. Laws 1986, LB 322, § 20.
54-831.	Repealed. Laws 1986, LB 322, § 20.
54-832.	Repealed. Laws 1986, LB 322, § 20.
54-833.	Repealed. Laws 1986, LB 322, § 20.
54-834.	Repealed. Laws 1986, LB 322, § 20.
54-835.	Repealed. Laws 1986, LB 322, § 20.
54-836.	Repealed. Laws 1986, LB 322, § 20.
54-837.	Repealed. Laws 1986, LB 322, § 20.
54-838.	Repealed. Laws 1986, LB 322, § 20.
54-839.	Repealed. Laws 1986, LB 322, § 20.
54-840.	Repealed. Laws 1986, LB 322, § 20.
54-841.	Repealed. Laws 1986, LB 322, § 20.
54-842.	Repealed. Laws 1986, LB 322, § 20.
54-843.	Repealed. Laws 1986, LB 322, § 20.
54-844.	Repealed. Laws 1981, LB 545, § 52.
54-845.	Repealed. Laws 1986, LB 322, § 20.
54-846.	Repealed. Laws 1986, LB 322, § 20.
54-847.	Act, how cited.
54-848.	Act; administration.
54-849.	Terms, defined.
54-850.	Manufacturer or distributor; license required; application; fee; posting; exception; cancellation.
54-851.	Repealed. Laws 1992, LB 366, § 70.
54-852.	Commercial feed; label requirements; customer-formula feed; requirements.
54-853.	Misbranded commercial feed, defined.
54-854.	Adulterated commercial feed, defined.
54-855.	Prohibited acts.
54-856.	Inspection fees; statement and records required.
54-857.	Commercial Feed Administration Cash Fund; created; use; investment.

Section	
54-858.	Director; adopt rules and regulations; notice to current licensees.
54-859.	Enforcement of act; inspections; testing; methods of analysis; results; distribution.
54-860.	Violations; order of director or court; seizure of feed.
54-861.	Violations; penalty; county attorney; duties; injunction; appeal; trade secret disclosure; penalty.
54-862.	Director; cooperate with other entities.
54-863.	Annual report; contents.

**54-801 Repealed. Laws 1951, c. 176, § 15.**

**54-802 Repealed. Laws 1951, c. 176, § 15.**

**54-803 Repealed. Laws 1951, c. 176, § 15.**

**54-804 Repealed. Laws 1951, c. 176, § 15.**

**54-805 Repealed. Laws 1951, c. 176, § 15.**

**54-806 Repealed. Laws 1951, c. 176, § 15.**

**54-807 Repealed. Laws 1951, c. 176, § 15.**

**54-808 Repealed. Laws 1951, c. 176, § 15.**

**54-809 Repealed. Laws 1951, c. 176, § 15.**

**54-810 Repealed. Laws 1951, c. 176, § 15.**

**54-811 Repealed. Laws 1951, c. 176, § 15.**

**54-812 Repealed. Laws 1951, c. 176, § 15.**

**54-813 Repealed. Laws 1951, c. 176, § 15.**

**54-814 Repealed. Laws 1951, c. 176, § 15.**

**54-815 Repealed. Laws 1951, c. 176, § 15.**

**54-816 Repealed. Laws 1951, c. 176, § 15.**

**54-817 Repealed. Laws 1951, c. 176, § 15.**

**54-818 Repealed. Laws 1951, c. 176, § 15.**

**54-819 Repealed. Laws 1986, LB 322, § 20.**

**54-820 Repealed. Laws 1986, LB 322, § 20.**

**54-820.01 Repealed. Laws 1986, LB 322, § 20.**

**54-821 Repealed. Laws 1986, LB 322, § 20.**

**54-822 Repealed. Laws 1986, LB 322, § 20.**

**54-823 Repealed. Laws 1986, LB 322, § 20.**

**54-824 Repealed. Laws 1986, LB 322, § 20.**

**54-825 Repealed. Laws 1986, LB 322, § 20.**

**54-826 Repealed. Laws 1986, LB 322, § 20.**

**54-826.01 Repealed. Laws 1986, LB 322, § 20.**

**54-827 Repealed. Laws 1986, LB 322, § 20.**

**54-828 Repealed. Laws 1986, LB 322, § 20.**

**54-829 Repealed. Laws 1975, LB 318, § 12.**

**54-830 Repealed. Laws 1986, LB 322, § 20.**

**54-831 Repealed. Laws 1986, LB 322, § 20.**

**54-832 Repealed. Laws 1986, LB 322, § 20.**

**54-833 Repealed. Laws 1986, LB 322, § 20.**

**54-834 Repealed. Laws 1986, LB 322, § 20.**

**54-835 Repealed. Laws 1986, LB 322, § 20.**

**54-836 Repealed. Laws 1986, LB 322, § 20.**

**54-837 Repealed. Laws 1986, LB 322, § 20.**

**54-838 Repealed. Laws 1986, LB 322, § 20.**

**54-839 Repealed. Laws 1986, LB 322, § 20.**

**54-840 Repealed. Laws 1986, LB 322, § 20.**

**54-841 Repealed. Laws 1986, LB 322, § 20.**

**54-842 Repealed. Laws 1986, LB 322, § 20.**

**54-843 Repealed. Laws 1986, LB 322, § 20.**

**54-844 Repealed. Laws 1981, LB 545, § 52.**

**54-845 Repealed. Laws 1986, LB 322, § 20.**

**54-846 Repealed. Laws 1986, LB 322, § 20.**

**54-847 Act, how cited.**

Sections 54-847 to 54-863 shall be known and may be cited as the Commercial Feed Act.

**Source:** Laws 1986, LB 322, § 1.

**54-848 Act; administration.**

The Commercial Feed Act shall be administered by the Department of Agriculture.

**Source:** Laws 1986, LB 322, § 2.

**54-849 Terms, defined.**

For purposes of the Commercial Feed Act, unless the context otherwise requires:

(1) Brand name shall mean any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or person named on the label and distinguishing it from that of others;

(2) Commercial feed shall mean all materials or combinations of materials which are distributed or intended for distribution for use as feed or for mixing in feed unless such materials are specifically exempted. Unmixed whole seeds and physically altered entire unmixed seeds, when such seeds are not chemically changed or are not adulterated within the meaning of subdivision (1) of section 54-854, are exempt. The director may, by regulation, exempt from this definition or from specific provisions of the Commercial Feed Act commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of subdivision (1) of section 54-854;

(3) Customer-formula feed shall mean commercial feed which consists of a mixture of commercial feeds or feed ingredients manufactured according to the specific instructions of the final purchaser;

(4) Department shall mean the Department of Agriculture;

(5) Director shall mean the Director of Agriculture or his or her authorized agent;

(6) Distribute shall mean to offer for sale, sell, exchange, barter, or otherwise supply commercial feed;

(7) Distributor shall mean any person who distributes;

(8) Drug shall mean any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than humans and articles other than feed intended to affect the structure or any function of the animal body;

(9) Feed ingredient shall mean each of the constituent materials making up a commercial feed;

(10) Label shall mean a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed;

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

(12) Manufacture shall mean to grind, mix, blend, or further process a commercial feed for distribution;

(13) Mineral feed shall mean a commercial feed intended to supply primarily mineral elements or inorganic nutrients;

(14) Official sample shall mean a sample of feed taken by the director in accordance with section 54-859;

(15) Percent or percentages shall mean percentages by weight;

(16) Person shall mean any individual, partnership, limited liability company, cooperative, corporation, firm, trustee, or association;

(17) Pet shall mean any domesticated animal normally maintained in or near the household of the owner thereof;

(18) Pet food shall mean any commercial feed prepared and distributed for consumption by pets;

(19) Product name shall mean the name of the commercial feed which identifies it as to kind, class, or specific use;

(20) Specialty pet shall mean any domesticated animal pet normally maintained in a cage or tank including, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles;

(21) Specialty pet food shall mean any commercial feed prepared and distributed for consumption by specialty pets; and

(22) Ton shall mean a net weight of two thousand pounds avoirdupois.

**Source:** Laws 1986, LB 322, § 3; Laws 1992, LB 366, § 14; Laws 1993, LB 121, § 339.

**54-850 Manufacturer or distributor; license required; application; fee; posting; exception; cancellation.**

(1) No person shall manufacture or distribute commercial feed in this state unless such person holds a valid license for each manufacturing and distribution facility in this state. Any out-of-state manufacturer or distributor who has no distribution facility within this state shall obtain a license for his or her principal out-of-state office if he or she markets or distributes commercial feed in the State of Nebraska.

(2) Application for a license shall be made to the department on forms prescribed and furnished by the department. The application shall be accompanied by an annual license fee of fifteen dollars. If the applicant is an individual, the application shall include the applicant's social security number. Licenses shall be renewed on or before January 1 of each year.

(3) A copy of the valid license shall be posted in a conspicuous place in each manufacturing or distribution facility.

(4) This section shall not apply to any person who distributes less than a five-ton volume of commercial feed annually.

(5) The director may refuse to issue a license for any commercial feed facility not in compliance with the Commercial Feed Act and may cancel any license subsequently found not in compliance with such act. No license shall be refused or canceled unless the applicant has been given an opportunity to be heard before the director.

**Source:** Laws 1986, LB 322, § 4; Laws 1997, LB 752, § 133.

**54-851 Repealed. Laws 1992, LB 366, § 70.**

**54-852 Commercial feed; label requirements; customer-formula feed; requirements.**

A commercial feed shall be labeled as follows:

(1) In the case of a commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following:

(a) The net weight;

(b) The product name and the brand name, if any, under which the commercial feed is distributed;

(c) The guaranteed analysis stated in such terms as the director, by regulation, determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases, the substances or elements guaranteed shall be determinable by laboratory methods such as the methods published by the AOAC International or other generally recognized methods;

(d) The common or usual name of each feed ingredient used in the manufacture of the commercial feed, except that the director, by regulation, may permit the use of a collective term of a group of feed ingredients which perform a similar function or he or she may exempt such commercial feeds, or any group thereof, from this requirement of a feed ingredient statement if he or she finds that such statement is not required in the interest of consumers;

(e) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed;

(f) Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the director, by regulation, may deem necessary for their safe and effective use; and

(g) Such precautionary statements as the director, by regulation, determines are necessary for the safe and effective use of the commercial feed; and

(2) In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip, or other shipping document bearing the following information:

(a) Name and address of the manufacturer;

(b) Name and address of the purchaser;

(c) Date of manufacture;

(d) The product name and net weight of each commercial feed and each other feed ingredient used in the mixture;

(e) Adequate directions for use for all customer-formula feeds;

(f) The directions for use and precautionary statements as required by rules and regulations adopted and promulgated by the director; and

(g) If a drug-containing product is used:

(i) The purpose of the medication or a claim statement;

(ii) The established name and level of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with rules and regulations adopted and promulgated by the director; and

(iii) All appropriate precautions, warnings, and withdrawal statements as required by the director.

A duplicate copy of all the information required in subdivision (2) of this section shall be kept by the manufacturer for use by the department for sampling and inspection purposes.

**Source:** Laws 1986, LB 322, § 6; Laws 1992, LB 366, § 15.

**54-853 Misbranded commercial feed, defined.**

A commercial feed shall be deemed to be misbranded if:

(1) Its labeling is false or misleading in any particular;

(2) It is distributed under the name of another commercial feed;

(3) It is not labeled as required in section 54-852;

(4) It purports to be or is represented as a commercial feed, or it purports to contain or is represented as containing a feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the director; or

(5) Any word, statement, or other information required by or under authority of the Commercial Feed Act to appear on the label is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

**Source:** Laws 1986, LB 322, § 7.

**54-854 Adulterated commercial feed, defined.**

A commercial feed shall be deemed to be adulterated if:

(1)(a) It bears or contains any poisonous or deleterious substance which may render it injurious to health, except that if the substance is not an added substance, such commercial feed shall not be considered adulterated under this subdivision if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health;

(b) It bears or contains any added poisonous, deleterious, or nonnutritive substance which is unsafe within the meaning of section 406, as amended, of the Federal Food, Drug, and Cosmetic Act, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity or (ii) a food additive;

(c) It is or it bears or contains any food additive which is unsafe within the meaning of section 409, as amended, of the Federal Food, Drug, and Cosmetic Act;

(d) It is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a), as amended, of the Federal Food, Drug, and Cosmetic Act, except that when a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408, as amended, of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity, unless the feeding of such proposed feed will result or is likely to result in a pesticide residue in the edible product of the animal which is unsafe within the meaning of section 408(a), as amended, of the Federal Food, Drug, and Cosmetic Act; or

(e) It is or it bears or contains any color additive which is unsafe within the meaning of section 706, as amended, of the Federal Food, Drug, and Cosmetic Act;

(2) Any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;

(3) Its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling;

(4) It contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules and regulations adopted and promulgated by the director to assure that the drug meets the requirements of the Commercial Feed Act as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In adopting and promulgating such rules and regulations, the director shall adopt and promulgate the current federal Good Manufacturing Practice Regulations for medicated feed premixes and for medicated feeds established under authority of the Federal Food, Drug, and Cosmetic Act unless he or she determines that they are not appropriate to the conditions which exist in this state;

(5) It contains primary noxious weed seeds as defined in section 81-2,147.01;

(6) It contains prohibited noxious weed seeds as defined in section 81-2,147.01 in amounts exceeding the limits which the director shall establish by rule or regulation; or

(7) It has been manufactured, ground, mixed, bagged, or held under unsanitary conditions whereby it may have become contaminated with filth or been rendered injurious to animal health. An animal feed may be deemed to be contaminated with filth if not protected by all reasonable means and as far as necessary from dust, dirt, insect, or bird, rodent, or other animal excretion, and other foreign or injurious contamination.

**Source:** Laws 1986, LB 322, § 8; Laws 1992, LB 366, § 16; Laws 1997, LB 263, § 1.

#### **54-855 Prohibited acts.**

The following acts are prohibited:

(1) The manufacture or distribution of any commercial feed that is adulterated or misbranded;

(2) The adulteration or misbranding of any commercial feed;

(3) The distribution of agricultural commodities, such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of subdivision (1) of section 54-854;

(4) The removal or disposal of any commercial feed in violation of an order under section 54-860;

(5) The failure or refusal to comply with section 54-850;

(6) The violation of subsection (6) of section 54-861; and

(7) Failure to pay inspection fees and file reports as required by section 54-856.

**Source:** Laws 1986, LB 322, § 9; Laws 1992, LB 366, § 17.

#### **54-856 Inspection fees; statement and records required.**

(1) There shall be paid to the director an inspection fee of ten cents per ton on all commercial feed distributed in the State of Nebraska during the six-month period following January 1, 1987. After the first six months of operation, the fee may be raised or lowered by the director after a public hearing is held outlining the reason for any proposed change in the rate. The maximum rate fixed by the director shall not exceed fifteen cents per ton. The inspection fee

shall be paid on commercial feed distributed by the person whose name appears on the label as the manufacturer, guarantor, or distributor, except that a person other than the manufacturer, guarantor, or distributor may assume liability for the inspection fee, subject to the following:

(a) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor;

(b) No fee shall be paid on customer-formula feed if the inspection fee is paid on the commercial feed which is used as ingredients therein;

(c) No fee shall be paid on commercial feed used as ingredients for the manufacture of other commercial feed. If the fee has already been paid, credit shall be given for such payment;

(d) In the case of a commercial feed which is distributed in the state only in packages of ten pounds or less, an annual fee fixed by the director, not to exceed twenty-five dollars, shall be paid in lieu of the inspection fee. The annual fee shall be paid not later than the last day of January each year; and

(e) The minimum inspection fee shall be five dollars for any six-month reporting period.

(2) If the director determines that it is necessary to adjust the rate of the inspection fee being paid to the department, all persons holding a valid license issued pursuant to section 54-850 shall be so notified and shall be given an opportunity to offer comment at a public hearing which shall be required prior to any inspection fee rate change.

(3) Each person who is liable for the payment of such fee shall:

(a) File, not later than January 31 and July 31 of each year, a semiannual statement setting forth the number of tons of commercial feed distributed in this state during the preceding six-month period, which statement shall cover the periods from July 1 to December 31 and January 1 to June 30, and upon filing such statement, pay the inspection fee at the rate specified by this section. Any person who holds a valid license issued pursuant to section 54-850 and whose name appears on the label as the manufacturer, guarantor, or distributor shall file such statement regardless of whether any inspection fee is due. Inspection fees which are due and owing and have not been remitted to the director within fifteen days following the date due shall have a penalty of twenty-five percent of the fees due added to the amount due when payment is made, and an additional penalty of twenty-five percent of the fees due shall be added if such fees are not paid within thirty days of the due date. The assessment of this penalty fee shall not prevent the director from taking other actions as provided in the Commercial Feed Act; and

(b) Keep such records as may be necessary or required by the director to indicate accurately the tonnage of commercial feed distributed in this state. The director shall have the right to examine such records to verify statements of tonnage. Failure to make an accurate statement, to pay the inspection fee, or to comply as provided in this section shall constitute sufficient cause for the cancellation of all licenses on file.

**Source:** Laws 1986, LB 322, § 10; Laws 1992, LB 366, § 18.

**54-857 Commercial Feed Administration Cash Fund; created; use; investment.**

All money received pursuant to the Commercial Feed Act shall be remitted by the director to the State Treasurer for credit to the Commercial Feed Administration Cash Fund which is hereby created. Such fund shall be used by the department to aid in defraying the expenses of administering the act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Commercial Feed Administration Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1986, LB 322, § 11; Laws 1995, LB 7, § 57; Laws 2008, LB961, § 3; Laws 2009, First Spec. Sess., LB3, § 29.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-858 Director; adopt rules and regulations; notice to current licensees.**

(1) The director shall adopt and promulgate such rules and regulations for commercial feed and pet food as are specifically authorized in the Commercial Feed Act and such other reasonable rules and regulations as may be necessary for the efficient enforcement of the act. In the interest of uniformity, the director shall adopt and promulgate as rules and regulations, unless he or she determines that they are inconsistent with the act or are not appropriate to conditions which exist in this state, the following:

(a) The Official Definitions of Feed Ingredients and Official Feed Terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization; and

(b) Any regulation relating to commercial feed adopted and promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act.

(2) The Administrative Procedure Act shall apply to the Commercial Feed Act, except that it shall be the duty of the department to provide adequate notice to all persons holding a valid license issued pursuant to section 54-850 of any proposed rule or regulation, amendment to a rule or regulation, or intent to repeal an existing rule or regulation.

**Source:** Laws 1986, LB 322, § 12; Laws 1992, LB 366, § 19.

**Cross References**

Administrative Procedure Act, see section 84-920.

**54-859 Enforcement of act; inspections; testing; methods of analysis; results; distribution.**

(1) To enforce the Commercial Feed Act or the rules and regulations adopted pursuant to the act, the director may:

(a) For purposes of inspection, enter any location, vehicle, or both in which commercial feed is manufactured, processed, packed, transported, or held for distribution during normal business hours, except that in the event such locations and vehicles are not open to the public, the director shall present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained. Credentials shall not be required for each entry made during the period covered by the inspection. The person in charge of the location or vehicle shall be notified of the completion of the

inspection. If the owner of such location or vehicle or his or her agent refuses to admit the director to inspect pursuant to this section, the director may obtain a search warrant from a court of competent jurisdiction directing such owner or agent to submit the location, vehicle, or both as described in such search warrant to inspection;

(b) Inspect any location or vehicle described in this subsection, all pertinent equipment, finished and unfinished materials, containers and labeling, all records, books, papers, and documents relating to the distribution of commercial feed, production and control procedures to determine compliance with the federal Good Manufacturing Practice Regulations, and other information necessary for the enforcement of the act;

(c) Obtain samples of commercial feed. The owner, operator, or agent in charge shall be given a receipt describing the samples obtained; and

(d) Make analyses of and test samples obtained pursuant to subdivision (c) of this subsection to determine whether such commercial feed is in compliance with the act.

For purposes of this subsection, location shall include a factory, warehouse, or establishment.

(2) Sampling and analysis shall be conducted in accordance with methods published by the AOAC International or in accordance with other generally recognized methods.

(3) The results of all analyses of official samples shall be forwarded by the director to the person named on the label. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within ninety days of the analysis, the director shall furnish to the person named on the label a portion of the sample concerned. Following expiration of the ninety-day period, the director may dispose of such sample.

(4) The director, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample obtained and analyzed pursuant to this section.

**Source:** Laws 1986, LB 322, § 13; Laws 1992, LB 366, § 20; Laws 1993, LB 267, § 16.

#### **54-860 Violations; order of director or court; seizure of feed.**

(1) When the director has reasonable cause to believe any lot of commercial feed is being distributed in violation of the Commercial Feed Act or any rule or regulation adopted and promulgated pursuant thereto, he or she may issue and enforce a written or printed withdrawal-from-distribution order warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the director or a court of competent jurisdiction. The director shall release the lot of commercial feed so withdrawn when the provisions, rules, and regulations of the act have been complied with. If compliance is not obtained within thirty days, the director may begin, or upon request of the distributor or the person named on the label shall begin, proceedings for condemnation.

(2) Any lot of commercial feed not in compliance with the Commercial Feed Act and the rules and regulations adopted and promulgated pursuant thereto shall be subject to seizure on complaint of the director to a court of competent

jurisdiction in the area in which such commercial feed is located. If the court finds the commercial feed to be in violation of the act or such rules and regulations and orders the condemnation of the commercial feed, such feed shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. In no instance shall the disposition of the commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of such commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with the act.

**Source:** Laws 1986, LB 322, § 14; Laws 1992, LB 366, § 21.

**54-861 Violations; penalty; county attorney; duties; injunction; appeal; trade secret disclosure; penalty.**

(1) Except as otherwise provided in subsection (6) of this section, any person convicted of violating any of the provisions of the Commercial Feed Act or any rules and regulations adopted and promulgated pursuant thereto or who shall impede, hinder, or otherwise prevent or attempt to prevent the director in the performance of his or her duty shall be guilty of a Class IV misdemeanor for the first violation and guilty of a Class II misdemeanor for any subsequent violation.

(2) Nothing in the Commercial Feed Act shall be construed as requiring the director to (a) report for prosecution, (b) institute seizure proceedings, or (c) issue a withdrawal-from-distribution order, as a result of minor violations of the act or when he or she believes the public interest will best be served by suitable notice of warning in writing.

(3) It shall be the duty of the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, to pursue appropriate proceedings pursuant to subsection (1) or (4) of this section without delay. Before the director reports a violation, an opportunity shall be given the manufacturer or distributor to present his or her view to the director.

(4) In order to insure compliance with the Commercial Feed Act, the department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated pursuant to such act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(5) Any person adversely affected by an act, order, or ruling made by the department pursuant to the Commercial Feed Act may appeal the act, order, or ruling, and the appeal shall be in accordance with the Administrative Procedure Act.

(6) Any person who uses to his or her own advantage or reveals to other than the director, representatives of the department, the Attorney General, other legal representatives of the state, or the courts when relevant in any judicial proceeding any information acquired under the authority of the Commercial Feed Act concerning any method, record, formulation, or process which as a trade secret is entitled to protection shall be guilty of a Class IV misdemeanor. The director shall not be prohibited from exchanging information of a regulato-

ry nature with duly appointed officials of the federal government or other states who are similarly prohibited by law from revealing this information.

**Source:** Laws 1986, LB 322, § 15; Laws 1988, LB 352, § 94.

**Cross References**

Administrative Procedure Act, see section 84-920.

**54-862 Director; cooperate with other entities.**

The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the purpose of the Commercial Feed Act.

**Source:** Laws 1986, LB 322, § 16.

**54-863 Annual report; contents.**

The director shall publish at least annually, in such form as he or she may deem proper, information concerning the sales of commercial feed together with such data on their production and use as he or she may consider advisable and a report of the results of the analyses of official samples of commercial feed sold within the state as compared with the analyses guaranteed on the label, except that the information concerning production and use of commercial feed shall not disclose the operations of any person.

**Source:** Laws 1986, LB 322, § 17; Laws 1992, LB 366, § 22.

**ARTICLE 9**

**LIVESTOCK ANIMAL WELFARE ACT**

**Section**

- 54-901. Act, how cited.
- 54-902. Terms, defined.
- 54-903. Abandonment or cruel neglect; mistreatment; prohibited acts; violation; penalty.
- 54-904. Indecency with a livestock animal; penalty.
- 54-905. Court order for reimbursement of expenses; liability for expenses.
- 54-906. Law enforcement officer; warrant authorizing entry upon property; issue citation; seizure of animal and property; liability.
- 54-907. Act; applicability.
- 54-908. Employee of governmental livestock animal control or animal abuse agency; duty to report suspected criminal activity; immunity from liability; contents of report; form; failure to report; penalty.
- 54-909. Conviction; court order not to own or possess livestock animal; violation; penalty; seizure of livestock animal.
- 54-910. Livestock animal health care professional; duty to report suspected criminal activity; immunity from liability.
- 54-911. Prohibited acts relating to equine; violation; penalty.
- 54-912. Prohibited acts relating to bovine; violation; penalty.

**54-901 Act, how cited.**

Sections 54-901 to 54-912 shall be known and may be cited as the Livestock Animal Welfare Act.

**Source:** Laws 2010, LB865, § 1.

**54-902 Terms, defined.**

For purposes of the Livestock Animal Welfare Act:

(1) Abandon means to leave a livestock animal in one's care, whether as owner or custodian, for any length of time without making effective provision for the livestock animal's food, water, or other care as is reasonably necessary for the livestock animal's health;

(2) Animal welfare practice means veterinarian practices and animal husbandry practices common to the livestock animal industry, including transport of livestock animals from one location to another;

(3) Bovine means a cow, an ox, or a bison;

(4) Cruelly mistreat means to knowingly and intentionally kill or cause physical harm to a livestock animal in a manner that is not consistent with animal welfare practices;

(5) Cruelly neglect means to fail to provide a livestock animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the livestock animal's health;

(6) Equine means a horse, pony, donkey, mule, hinny, or llama;

(7) Euthanasia means the destruction of a livestock animal by commonly accepted veterinary practices;

(8) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local laws, rules, regulations, or ordinances. Law enforcement officer also includes any inspector under the Commercial Dog and Cat Operator Inspection Act to the extent that such inspector may exercise the authority of a law enforcement officer under section 28-1012 while in the course of performing inspection activities under the Commercial Dog and Cat Operator Inspection Act;

(9) Livestock animal means any bovine, equine, swine, sheep, goats, domesticated cervine animals, ratite birds, or poultry; and

(10) Serious injury or illness includes any injury or illness to any livestock animal which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

**Source:** Laws 2010, LB865, § 2.

**Cross References**

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

**54-903 Abandonment or cruel neglect; mistreatment; prohibited acts; violation; penalty.**

(1) A person who intentionally, knowingly, or recklessly abandons or cruelly neglects a livestock animal is guilty of a Class I misdemeanor unless the abandonment or cruel neglect results in serious injury or illness or death of the livestock animal, in which case it is a Class IV felony.

(2) A person who cruelly mistreats a livestock animal is guilty of a Class I misdemeanor for the first offense and a Class IV felony for any subsequent offense.

**Source:** Laws 2010, LB865, § 3.

**54-904 Indecency with a livestock animal; penalty.**

A person commits indecency with a livestock animal when such person subjects an animal to sexual penetration as defined in section 28-318. Indecency with a livestock animal is a Class III misdemeanor.

**Source:** Laws 2010, LB865, § 4.

**54-905 Court order for reimbursement of expenses; liability for expenses.**

(1) In addition to any other sentence given for a violation of section 54-903 or 54-904, the sentencing court may order the defendant to reimburse a public or private agency for expenses incurred in conjunction with the care, impoundment, or disposal of a livestock animal involved in the violation of such section. Whenever the court believes that such reimbursement is a proper sentence or at the prosecuting attorney's request, the court shall order that the presentence investigation report include documentation regarding the nature and amount of the expenses incurred. The court may order that reimbursement be made immediately, in specified installments, or within a specified period of time, not to exceed five years after the date of judgment.

(2) Even if reimbursement for expenses is not ordered under subsection (1) of this section, the defendant shall be liable for all expenses incurred by a public or private agency in conjunction with the care, impoundment, or disposal of a livestock animal. The expenses shall be a lien upon the livestock animal.

**Source:** Laws 2010, LB865, § 5.

**54-906 Law enforcement officer; warrant authorizing entry upon property; issue citation; seizure of animal and property; liability.**

(1) Any law enforcement officer who has reason to believe that a livestock animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the livestock animal or livestock animals.

(2) Any law enforcement officer who has reason to believe that a livestock animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner as prescribed in sections 29-422 to 29-429.

(3) Any livestock animal, equipment, device, or other property or things involved in a violation of section 54-903 or 54-904 shall be subject to seizure, and distribution or disposition may be made in such manner as the court may direct.

(4) Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.

**Source:** Laws 2010, LB865, § 6.

**54-907 Act; applicability.**

The Livestock Animal Welfare Act shall not apply to:

(1) Care or treatment of a livestock animal or other conduct by a veterinarian or veterinary technician licensed under the Veterinary Medicine and Surgery Practice Act that occurs within the scope of his or her employment, that occurs while acting in his or her professional capacity, or that conforms to commonly accepted veterinary practices;

(2) Euthanasia of a livestock animal or livestock animals as conducted by the owner or by his or her agent or a veterinarian upon the owner's request;

(3) Research activity carried on by any research facility currently meeting the standards of the federal Animal Welfare Act, 7 U.S.C. 2131 et seq., as such act existed on January 1, 2010;

(4) Commonly accepted animal welfare practices with respect to livestock animals and commercial livestock operations, including their transport from one location to another and nonnegligent actions taken by personnel or agents of the Department of Agriculture or the United States Department of Agriculture in the performance of duties prescribed by law;

(5) Commonly followed practices occurring in conjunction with the slaughter of animals for food or byproducts;

(6) Commonly accepted animal training practices; and

(7) Commonly accepted practices occurring in conjunction with sanctioned rodeos, animal racing, and pulling contests.

**Source:** Laws 2010, LB865, § 7.

**Cross References**

Veterinary Medicine and Surgery Practice Act, see section 38-3301.

**54-908 Employee of governmental livestock animal control or animal abuse agency; duty to report suspected criminal activity; immunity from liability; contents of report; form; failure to report; penalty.**

(1) For purposes of this section:

(a) Employee means any employee of a governmental agency dealing with livestock animal control or animal abuse; and

(b) Reasonably suspects means a basis for reporting knowledge or a set of facts that would lead a person of ordinary care and prudence to believe and conscientiously entertain a strong suspicion that criminal activity is at hand or that a crime has been committed.

(2) Any employee, while acting in his or her professional capacity or within the scope of his or her employment, who observes or is involved in an incident which leads the employee to reasonably suspect that a livestock animal has been abandoned, cruelly neglected, or cruelly mistreated shall report such to the entity or entities that investigate such reports in that jurisdiction.

(3) The report of an employee shall be made within two working days of acquiring the information concerning the livestock animal by facsimile transmission of a written report presented in the form described in subsection (5) of this section or by telephone. When an immediate response is necessary to protect the health and safety of the livestock animal or others, the report of an employee shall be made by telephone as soon as possible.

(4) Nothing in this section shall be construed to impose a duty to investigate observed or reasonably suspected livestock animal abandonment, cruel neglect, or cruel mistreatment. Any person making a report under this section is immune from liability except for false statements of fact made with malicious intent.

(5) A report made by an employee pursuant to this section shall include:

(a) The reporter's name and title, business address, and telephone number;

(b) The name, if known, of the livestock animal owner or custodian, whether a business or individual;

(c) A description of the livestock animal or livestock animals involved, person or persons involved, and location of the livestock animal or livestock animals and the premises; and

(d) The date, the time, and a description of the observation or incident which led the reporter to reasonably suspect livestock animal abandonment, cruel neglect, or cruel mistreatment and any other information the reporter believes may be relevant.

(6) A report made by an employee pursuant to this section may be made on preprinted forms prepared by the entity or entities that investigate reports of livestock animal abandonment, livestock animal cruel neglect, or livestock animal cruel mistreatment in that jurisdiction. The form shall include space for the information required under subsection (5) of this section.

(7) When two or more employees jointly have observed or reasonably suspected livestock animal abandonment, livestock animal cruel neglect, or livestock animal cruel mistreatment and there is agreement between or among them, a report may be made by one person by mutual agreement. Any such reporter who has knowledge that the person designated to report has failed to do so shall thereafter make the report.

(8) Any employee failing to report under this section shall be guilty of an infraction.

**Source:** Laws 2010, LB865, § 8.

**54-909 Conviction; court order not to own or possess livestock animal; violation; penalty; seizure of livestock animal.**

(1) If a person is convicted of a Class IV felony under section 54-903, the sentencing court shall order such person not to own or possess a livestock animal for at least five years after the date of conviction, but such time restriction shall not exceed fifteen years. Any person violating such court order shall be guilty of a Class I misdemeanor.

(2) If a person is convicted of a Class I misdemeanor under section 54-903 or a Class III misdemeanor under section 54-904, the sentencing court may order such person not to own or possess any livestock animal after the date of conviction, but such time restriction, if any, shall not exceed five years. Any person violating such court order shall be guilty of a Class IV misdemeanor.

(3) Any livestock animal involved in a violation of a court order under subsection (1) or (2) of this section shall be subject to seizure by law enforcement.

**Source:** Laws 2010, LB865, § 9.

**54-910 Livestock animal health care professional; duty to report suspected criminal activity; immunity from liability.**

(1) Any livestock animal health care professional, while acting in his or her professional capacity or within the scope of his or her employment, who observes or is involved in an incident which leads the livestock animal health care professional to reasonably suspect that a livestock animal has been abandoned, cruelly neglected, or cruelly mistreated shall report such treatment to an entity that investigates such reports in the appropriate jurisdiction.

(2) Nothing in this section shall be construed to impose a duty to investigate observed or reasonably suspected abandonment, cruel neglect, or cruel mistreatment of a livestock animal. Any person making a report under this section is immune from liability except for false statements of fact made with malicious intent.

(3) For purposes of this section, a livestock animal health care professional means a licensed veterinarian as defined in section 38-3310 or a licensed veterinary technician as defined in section 38-3311 whose practice involves care of livestock animals.

**Source:** Laws 2010, LB865, § 10.

**54-911 Prohibited acts relating to equine; violation; penalty.**

(1) No person shall intentionally trip or cause to fall, or lasso or rope the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest. The intentional tripping or causing to fall, or lassoing or roping the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

(2) Violation of this section is a Class I misdemeanor.

**Source:** Laws 2010, LB865, § 11.

**54-912 Prohibited acts relating to bovine; violation; penalty.**

(1) No person shall intentionally trip, cause to fall, or drag any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest. The intentional tripping, causing to fall, or dragging of any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

(2) Violation of this section is a Class I misdemeanor.

**Source:** Laws 2010, LB865, § 12.

**ARTICLE 10**

**REGISTRATION OF STALLIONS AND JACKS**

Section

54-1001. Repealed. Laws 1980, LB 631, § 6.  
 54-1002. Repealed. Laws 1980, LB 631, § 6.  
 54-1003. Repealed. Laws 1980, LB 631, § 6.  
 54-1004. Repealed. Laws 1980, LB 631, § 6.  
 54-1005. Repealed. Laws 1980, LB 631, § 6.  
 54-1006. Repealed. Laws 1980, LB 631, § 6.  
 54-1007. Repealed. Laws 1980, LB 631, § 6.  
 54-1008. Repealed. Laws 1980, LB 631, § 6.  
 54-1009. Repealed. Laws 1980, LB 631, § 6.  
 54-1010. Repealed. Laws 1980, LB 631, § 6.  
 54-1011. Repealed. Laws 1980, LB 631, § 6.

**54-1001 Repealed. Laws 1980, LB 631, § 6.**

**54-1002 Repealed. Laws 1980, LB 631, § 6.**

**54-1003 Repealed. Laws 1980, LB 631, § 6.**

**§ 54-1004**

**LIVESTOCK**

**54-1004 Repealed. Laws 1980, LB 631, § 6.**

**54-1005 Repealed. Laws 1980, LB 631, § 6.**

**54-1006 Repealed. Laws 1980, LB 631, § 6.**

**54-1007 Repealed. Laws 1980, LB 631, § 6.**

**54-1008 Repealed. Laws 1980, LB 631, § 6.**

**54-1009 Repealed. Laws 1980, LB 631, § 6.**

**54-1010 Repealed. Laws 1980, LB 631, § 6.**

**54-1011 Repealed. Laws 1980, LB 631, § 6.**

**ARTICLE 11**

**LIVESTOCK AUCTION MARKET ACT**

**Cross References**

**Agricultural Suppliers Lease Protection Act**, see section 2-5501.

**License Suspension Act**, see section 43-3301.

**Section**

54-1101. Repealed. Laws 1961, c. 271, § 33.  
54-1102. Repealed. Laws 1961, c. 271, § 33.  
54-1103. Repealed. Laws 1961, c. 271, § 33.  
54-1104. Repealed. Laws 1961, c. 271, § 33.  
54-1105. Repealed. Laws 1961, c. 271, § 33.  
54-1106. Repealed. Laws 1961, c. 271, § 33.  
54-1107. Repealed. Laws 1961, c. 271, § 33.  
54-1108. Repealed. Laws 1961, c. 271, § 33.  
54-1109. Repealed. Laws 1961, c. 271, § 33.  
54-1110. Repealed. Laws 1961, c. 271, § 33.  
54-1111. Repealed. Laws 1961, c. 271, § 33.  
54-1112. Repealed. Laws 1961, c. 271, § 33.  
54-1113. Repealed. Laws 1961, c. 271, § 33.  
54-1114. Repealed. Laws 1961, c. 271, § 33.  
54-1115. Repealed. Laws 1961, c. 271, § 33.  
54-1116. Repealed. Laws 1961, c. 271, § 33.  
54-1117. Repealed. Laws 1961, c. 271, § 33.  
54-1118. Repealed. Laws 1961, c. 271, § 33.  
54-1119. Repealed. Laws 1961, c. 271, § 33.  
54-1120. Repealed. Laws 1961, c. 271, § 33.  
54-1121. Repealed. Laws 1961, c. 271, § 33.  
54-1122. Repealed. Laws 1961, c. 271, § 33.  
54-1122.01. Repealed. Laws 1961, c. 271, § 33.  
54-1123. Repealed. Laws 1961, c. 271, § 33.  
54-1124. Repealed. Laws 1961, c. 271, § 33.  
54-1124.01. Repealed. Laws 1961, c. 271, § 33.  
54-1125. Repealed. Laws 1961, c. 271, § 33.  
54-1126. Repealed. Laws 1961, c. 271, § 33.  
54-1127. Repealed. Laws 1963, c. 319, § 34.  
54-1128. Repealed. Laws 1963, c. 319, § 34.  
54-1129. Repealed. Laws 1963, c. 319, § 34.  
54-1130. Repealed. Laws 1963, c. 319, § 34.  
54-1131. Repealed. Laws 1963, c. 319, § 34.  
54-1132. Repealed. Laws 1963, c. 319, § 34.  
54-1133. Repealed. Laws 1963, c. 319, § 34.  
54-1134. Repealed. Laws 1963, c. 319, § 34.  
54-1135. Repealed. Laws 1963, c. 319, § 34.

## LIVESTOCK AUCTION MARKET ACT

Section	
54-1136.	Repealed. Laws 1963, c. 319, § 34.
54-1137.	Repealed. Laws 1963, c. 319, § 34.
54-1138.	Repealed. Laws 1963, c. 319, § 34.
54-1139.	Repealed. Laws 1963, c. 319, § 34.
54-1140.	Repealed. Laws 1963, c. 319, § 34.
54-1141.	Repealed. Laws 1963, c. 319, § 34.
54-1142.	Repealed. Laws 1963, c. 319, § 34.
54-1143.	Repealed. Laws 1963, c. 319, § 34.
54-1144.	Repealed. Laws 1963, c. 319, § 34.
54-1145.	Repealed. Laws 1963, c. 319, § 34.
54-1146.	Repealed. Laws 1963, c. 319, § 34.
54-1147.	Repealed. Laws 1963, c. 319, § 34.
54-1148.	Repealed. Laws 1963, c. 319, § 34.
54-1149.	Repealed. Laws 1963, c. 319, § 34.
54-1150.	Repealed. Laws 1963, c. 319, § 34.
54-1151.	Repealed. Laws 1963, c. 319, § 34.
54-1152.	Repealed. Laws 1963, c. 319, § 34.
54-1153.	Repealed. Laws 1963, c. 319, § 34.
54-1154.	Repealed. Laws 1963, c. 319, § 34.
54-1155.	Repealed. Laws 1963, c. 319, § 34.
54-1156.	Act, how cited.
54-1157.	Declaration of policy.
54-1158.	Terms, defined.
54-1159.	Places exempt from act.
54-1160.	Livestock Auction Market Board; creation; appointment of members; term; compensation; meetings; general powers.
54-1161.	License required; application for license; contents.
54-1162.	Hearing; notice.
54-1163.	Hearing; determination; factors; issuance of license.
54-1164.	Repealed. Laws 2001, LB 197, § 26.
54-1165.	License fee; payments; disposition.
54-1166.	Livestock auction markets; license personal to holder; transfer; termination.
54-1167.	Repealed. Laws 1973, LB 133, § 1.
54-1168.	Records required; available for inspection.
54-1169.	Livestock Auction Market Board; complaint; notice of hearing; process; hearings; findings; suspension or revocation of license.
54-1170.	Board; transcripts; appeal; procedure.
54-1171.	Violations; penalties; injunction.
54-1172.	Livestock Auction Market Fund; creation; use; investment.
54-1173.	Livestock Auction Market Fund; license and permit fees; occupation tax; unexpended balance; disposition.
54-1174.	Certified copy of license and bond; use as evidence.
54-1175.	Repealed. Laws 2004, LB 837, § 3.
54-1176.	Repealed. Laws 2004, LB 837, § 3.
54-1177.	Certified copy of license; posting; fee.
54-1178.	Maintenance in sanitary condition; rules and regulations.
54-1179.	Repealed. Laws 2004, LB 837, § 3.
54-1180.	Inspection of livestock; duties; fees; use; disposition; notice of change.
54-1181.	Veterinarians; agreement for services; contents; compensation; liability for torts, when.
54-1181.01.	Violations; penalty.
54-1182.	Livestock sold; treatment by veterinarians; release; documentation; rules and regulations.
54-1183.	Livestock auction market or packing plant; brand inspection; election to provide.
54-1184.	Livestock auction market or packing plant; election; how made.
54-1185.	Livestock auction market or packing plant; brand inspection; how conducted; fees; guarantee.
54-1186.	Transferred to section 54-1156.

- 54-1101 Repealed. Laws 1961, c. 271, § 33.
- 54-1102 Repealed. Laws 1961, c. 271, § 33.
- 54-1103 Repealed. Laws 1961, c. 271, § 33.
- 54-1104 Repealed. Laws 1961, c. 271, § 33.
- 54-1105 Repealed. Laws 1961, c. 271, § 33.
- 54-1106 Repealed. Laws 1961, c. 271, § 33.
- 54-1107 Repealed. Laws 1961, c. 271, § 33.
- 54-1108 Repealed. Laws 1961, c. 271, § 33.
- 54-1109 Repealed. Laws 1961, c. 271, § 33.
- 54-1110 Repealed. Laws 1961, c. 271, § 33.
- 54-1111 Repealed. Laws 1961, c. 271, § 33.
- 54-1112 Repealed. Laws 1961, c. 271, § 33.
- 54-1113 Repealed. Laws 1961, c. 271, § 33.
- 54-1114 Repealed. Laws 1961, c. 271, § 33.
- 54-1115 Repealed. Laws 1961, c. 271, § 33.
- 54-1116 Repealed. Laws 1961, c. 271, § 33.
- 54-1117 Repealed. Laws 1961, c. 271, § 33.
- 54-1118 Repealed. Laws 1961, c. 271, § 33.
- 54-1119 Repealed. Laws 1961, c. 271, § 33.
- 54-1120 Repealed. Laws 1961, c. 271, § 33.
- 54-1121 Repealed. Laws 1961, c. 271, § 33.
- 54-1122 Repealed. Laws 1961, c. 271, § 33.
- 54-1122.01 Repealed. Laws 1961, c. 271, § 33.
- 54-1123 Repealed. Laws 1961, c. 271, § 33.
- 54-1124 Repealed. Laws 1961, c. 271, § 33.
- 54-1124.01 Repealed. Laws 1961, c. 271, § 33.
- 54-1125 Repealed. Laws 1961, c. 271, § 33.
- 54-1126 Repealed. Laws 1961, c. 271, § 33.
- 54-1127 Repealed. Laws 1963, c. 319, § 34.
- 54-1128 Repealed. Laws 1963, c. 319, § 34.
- 54-1129 Repealed. Laws 1963, c. 319, § 34.

54-1130 Repealed. Laws 1963, c. 319, § 34.

54-1131 Repealed. Laws 1963, c. 319, § 34.

54-1132 Repealed. Laws 1963, c. 319, § 34.

54-1133 Repealed. Laws 1963, c. 319, § 34.

54-1134 Repealed. Laws 1963, c. 319, § 34.

54-1135 Repealed. Laws 1963, c. 319, § 34.

54-1136 Repealed. Laws 1963, c. 319, § 34.

54-1137 Repealed. Laws 1963, c. 319, § 34.

54-1138 Repealed. Laws 1963, c. 319, § 34.

54-1139 Repealed. Laws 1963, c. 319, § 34.

54-1140 Repealed. Laws 1963, c. 319, § 34.

54-1141 Repealed. Laws 1963, c. 319, § 34.

54-1142 Repealed. Laws 1963, c. 319, § 34.

54-1143 Repealed. Laws 1963, c. 319, § 34.

54-1144 Repealed. Laws 1963, c. 319, § 34.

54-1145 Repealed. Laws 1963, c. 319, § 34.

54-1146 Repealed. Laws 1963, c. 319, § 34.

54-1147 Repealed. Laws 1963, c. 319, § 34.

54-1148 Repealed. Laws 1963, c. 319, § 34.

54-1149 Repealed. Laws 1963, c. 319, § 34.

54-1150 Repealed. Laws 1963, c. 319, § 34.

54-1151 Repealed. Laws 1963, c. 319, § 34.

54-1152 Repealed. Laws 1963, c. 319, § 34.

54-1153 Repealed. Laws 1963, c. 319, § 34.

54-1154 Repealed. Laws 1963, c. 319, § 34.

54-1155 Repealed. Laws 1963, c. 319, § 34.

**54-1156 Act, how cited.**

Sections 54-1156 to 54-1185 shall be known and may be cited as the Livestock Auction Market Act.

**Source:** Laws 1963, c. 319, § 32, p. 973; Laws 1985, LB 97, § 3; R.S.1943, (1998), § 54-1186; Laws 1999, LB 778, § 78; Laws 2001, LB 197, § 5.

**54-1157 Declaration of policy.**

It is hereby declared to be the policy of the State of Nebraska, and the purpose of the Livestock Auction Market Act, to encourage, stimulate, and stabilize the agricultural economy of the state in general, and the livestock economy in particular, by encouraging the construction, development, and productive operation of livestock auction markets as key industries of the state and those markets' particular trade areas, with all benefits of fully open, free, competitive factors, in respect to sales and purchases of livestock.

**Source:** Laws 1963, c. 319, § 1, p. 961; Laws 1999, LB 778, § 62; Laws 2001, LB 197, § 6.

A livestock auction market has sufficient public interest to be subject to public regulation under the police power. *Midwest L. C. Co. v. Tri-State L. C. Co.*, 182 Neb. 41, 151 N.W.2d 908 (1967).

#### **54-1158 Terms, defined.**

As used in the Livestock Auction Market Act, unless the context otherwise requires:

(1) Accredited veterinarian means a veterinarian duly licensed by the State of Nebraska and approved by the deputy administrator of the United States Department of Agriculture in accordance with 9 C.F.R. part 161 as the regulations existed on September 1, 2001;

(2) Board means the Livestock Auction Market Board;

(3) Department means the Department of Agriculture;

(4) Designated veterinarian means an accredited veterinarian who has been designated and authorized by the State Veterinarian to make inspections of livestock at livestock auction markets as may be required by law or regulation whether such livestock is moved in interstate or intrastate commerce;

(5) Director means the Director of Agriculture;

(6) Livestock means cattle, calves, swine, sheep, and goats;

(7) Livestock auction market means any place, establishment, or facility commonly known as a livestock auction market, sales ring, or the like, conducted or operated for compensation as an auction market for livestock, consisting of pens or other enclosures, and their appurtenances, in which livestock are received, held, sold, or kept for sale or shipment;

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

(9) Market license means the license for a livestock auction market authorized to be issued under the act;

(10) Person means any individual, firm, association, partnership, limited liability company, or corporation; and

(11) State Veterinarian means the veterinarian in charge of the Bureau of Animal Industry within the department or his or her designee, subordinate to the director.

**Source:** Laws 1963, c. 319, § 2, p. 962; Laws 1993, LB 121, § 340; Laws 1999, LB 778, § 63; Laws 2001, LB 197, § 7.

#### **54-1159 Places exempt from act.**

The Livestock Auction Market Act shall not be construed to include:

(1) Any place or operation where Future Farmers of America, 4-H groups, or private fairs conduct sales of livestock;

(2) Any place or operation conducted for a dispersal sale of the livestock of farmers, dairypersons, or livestock breeders or feeders, where no other livestock is sold or offered for sale; or

(3) Any place or operation where a breeder or an association of breeders of livestock assemble and offer for sale and sell under their own management any livestock, when such breeders assume all responsibility of such sale and the title of livestock sold. This shall apply to all purebred livestock association sales.

**Source:** Laws 1963, c. 319, § 3, p. 962; Laws 1999, LB 778, § 64; Laws 2001, LB 197, § 8.

**54-1160 Livestock Auction Market Board; creation; appointment of members; term; compensation; meetings; general powers.**

There is hereby created in the Department of Agriculture a Livestock Auction Market Board consisting of three members. The board shall consist of the Director of Agriculture, the State Veterinarian, and a livestock auction market operator to be appointed by the Governor. The Director of Agriculture shall be chairperson of the board. The term of office of the appointed member shall be four years. The appointed member shall receive as compensation for his or her services the sum of fifty dollars per day or twenty-five dollars per half day and actual expenses incurred while in the discharge of his or her duties. The board shall meet for the ordinary transaction of official business and at the call of the director. A majority affirmative vote of the board shall be necessary to constitute an official act.

The board shall have power and duty to:

(1) Administer the Livestock Auction Market Act in respect to recommending the issuance, suspensions, and revocations of market licenses;

(2) Prescribe and adopt the forms of application for market licenses, the forms of notice of hearings on market license applications, and such other forms as necessary to perform and carry out its functions;

(3) Adopt and promulgate rules subject to the approval of the director governing the conduct of hearings before it for applications for market licenses, transfers, suspensions, and revocations consistent with the Livestock Auction Market Act and not contrary to the general laws of Nebraska governing hearings before administrative boards; and

(4) Administer section 54-1166 relating to terminations of market licenses and hearings regarding such terminations.

**Source:** Laws 1963, c. 319, § 4, p. 963; Laws 1985, LB 97, § 1; Laws 1999, LB 778, § 65; Laws 2001, LB 197, § 9.

**54-1161 License required; application for license; contents.**

No person shall conduct or operate a livestock auction market unless he or she holds a market license therefor, upon which the current annual market license fee has been paid. Any person making application for a new market license shall do so to the board in writing, verified by the applicant, on a form prescribed by the board, showing the following:

(1) The name and address of the applicant and, if the applicant is an individual, his or her social security number, with statement of the names and addresses of all persons having any financial interest in the applicant and the amount of such interest;

(2) Financial responsibility of the applicant in the form of a statement of all assets and liabilities;

(3) A legal description of the property and its exact location with a complete description of the facilities proposed to be used in connection with such livestock auction market;

(4) The schedule of charges applicant proposes for all services proposed to be rendered; and

(5) A detailed statement of the facts upon which the applicant relies showing the general confines of the trade area proposed to be served by such livestock auction market, the benefits to be derived by the livestock industry, and the services proposed to be rendered.

Such application shall be accompanied by the annual fee as prescribed in section 54-1165.

**Source:** Laws 1963, c. 319, § 5, p. 964; Laws 1997, LB 752, § 134.

**54-1162 Hearing; notice.**

Upon the filing of the application as provided in section 54-1161, the director shall fix a reasonable time for the hearing at a place designated by him or her at which time a hearing shall be held on the proposed location of the livestock auction market. The director forthwith shall cause a copy of such application, together with notice of the time and place of hearing, to be served by mail not less than fifteen days prior to such hearing, upon the following:

(1) All duly organized statewide livestock associations in the state who have filed written requests with the board to receive notice of such hearings and such other livestock associations as in the opinion of the director would be interested in such application; and

(2) All livestock auction market operators in the state.

The director shall give further notice of such hearing by publication of the notice thereof once in a daily or weekly newspaper circulated in the city or village where such hearing is to be held, as in the opinion of the director will give reasonable public notice of such time and place of hearing to persons interested therein.

**Source:** Laws 1963, c. 319, § 6, p. 964; Laws 2001, LB 197, § 10.

**54-1163 Hearing; determination; factors; issuance of license.**

The hearing required by section 54-1162 shall be heard by two or more members of the board. If the board determines, after such hearing, that the proposed livestock auction market would beneficially serve the livestock economy, it shall issue a market license to the applicant. In determining whether or not the application should be granted or denied, the board shall give reasonable consideration to:

(1) The ability of the applicant to comply with the federal Packers and Stockyards Act, 1921, 7 U.S.C. 181 et seq., as amended;

(2) The financial stability, business integrity, and fiduciary responsibility of the applicant;

(3) The adequacy of the facilities described to permit the performance of market services proposed in the application;

(4) The present needs for market services or additional services as expressed by livestock growers and feeders in the community; and

(5) Whether the proposed livestock auction market would be permanent and continuous.

**Source:** Laws 1963, c. 319, § 7, p. 965; Laws 1999, LB 778, § 66.

Determination of Livestock Auction Board that license should be issued will not be disturbed if there is any evidence to support it. Midwest L. C. Co. v. Tri-State L. C. Co., 182 Neb. 41, 151 N.W.2d 908 (1967).

**54-1164 Repealed. Laws 2001, LB 197, § 26.**

**54-1165 License fee; payments; disposition.**

Every livestock auction market operator shall pay annually, on or before August 1, a market license fee of one hundred fifty dollars to the board for each livestock auction market operated by him or her, which payment shall constitute a renewal for one year. Fees so paid shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund for the use of the board in paying the expenses of administration of the Livestock Auction Market Act.

**Source:** Laws 1963, c. 319, § 9, p. 966; Laws 1983, LB 617, § 9; Laws 1999, LB 778, § 67; Laws 2001, LB 197, § 11.

**54-1166 Livestock auction markets; license personal to holder; transfer; termination.**

Except as otherwise provided in this section, each market license shall be personal to the holder and the facilities covered thereby and transferable without a hearing. The market license covering any livestock auction market which does not hold a sale for a period of one year shall terminate automatically one year from the date of the last sale conducted by the livestock auction market and the license holder whose license is so terminated may request a hearing by filing a written request for such hearing within twenty days after the termination of the license.

**Source:** Laws 1963, c. 319, § 10, p. 966; Laws 1985, LB 97, § 2.

**54-1167 Repealed. Laws 1973, LB 133, § 1.**

**54-1168 Records required; available for inspection.**

Every market license holder under the Livestock Auction Market Act shall keep an accurate record of all transactions conducted in the ordinary course of his or her business. Such records shall be available for examination of the board, or its duly authorized representative, in respect to a market license issued under such act.

**Source:** Laws 1963, c. 319, § 12, p. 966; Laws 1999, LB 778, § 68; Laws 2001, LB 197, § 12.

**54-1169 Livestock Auction Market Board; complaint; notice of hearing; process; hearings; findings; suspension or revocation of license.**

The board may, upon its own motion, whenever it has reason to believe the provisions of the Livestock Auction Market Act have been violated, or upon verified complaint of any person in writing, investigate the actions of any market license holder, and if it finds probable cause to do so, shall file a complaint against the market license holder which shall be set down for hearing before the board upon fifteen days' notice served upon such market license holder either by personal service upon him or her or by registered or certified mail or telegram prior to such hearing.

The director shall have the power to administer oaths, certify to all official acts, and subpoena and bring before the board any person in this state as a witness, to compel the producing of books and papers, and to take the testimony of any person on deposition in the same manner as is prescribed by law in the procedure before the courts of this state in civil cases. Processes issued by the director shall extend to all parts of the state and may be served by any person authorized to serve processes. Each witness who shall appear by the order of the director at any hearing before the board shall receive for such attendance the same fees allowed by law to witnesses in civil cases appearing in the district court and mileage at the same rate provided in section 81-1176, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness has not been required to attend at the request of any party, but has been subpoenaed by the director, his or her fees and mileage shall be paid by the director in the same manner as other expenses of the board are paid.

All powers of the director as provided in this section shall likewise be applicable to hearings held on applications for the issuance of a market license.

Formal finding by the board after due hearing that any market license holder: (1) Has ceased to conduct a livestock auction market business; (2) has been guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock; (3) has violated any of the provisions of the Livestock Auction Market Act; or (4) has violated any of the rules or regulations adopted and published by the board, shall be sufficient cause for the suspension or revocation of the market license of the offending livestock auction market operator.

**Source:** Laws 1963, c. 319, § 13, p. 966; Laws 1981, LB 204, § 95; Laws 1999, LB 778, § 69; Laws 2001, LB 197, § 13.

#### **54-1170 Board; transcripts; appeal; procedure.**

The board shall keep a complete transcript of all proceedings and evidence presented in any hearing before it. The applicant for a market license, any protestant formally appearing in the hearing before the board for such market license, the holder of any market license suspended or revoked, or any party to a transfer application may appeal the order of the board, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1963, c. 319, § 14, p. 968; Laws 1988, LB 352, § 95.

#### **Cross References**

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

#### **54-1171 Violations; penalties; injunction.**

Any person who violates any provision or requirements of the Livestock Auction Market Act is guilty of a Class II misdemeanor. Each day any person operates or conducts a livestock auction market in this state without a license as prescribed in such act is considered a separate offense. The director may institute proceedings to enjoin the operation of a livestock auction market if the person sought to be enjoined is operating a livestock auction market without a market license in good standing as provided in such act.

**Source:** Laws 1963, c. 319, § 15, p. 969; Laws 1977, LB 39, § 35; Laws 1999, LB 778, § 70; Laws 2001, LB 197, § 14.

**54-1172 Livestock Auction Market Fund; creation; use; investment.**

Salaries and expenses of employees, costs of hearings, and all other costs of the board in the administration of the Livestock Auction Market Act shall be paid from the Livestock Auction Market Fund which is hereby created. Any money in the Livestock Auction Market Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1963, c. 319, § 16, p. 969; Laws 1999, LB 778, § 71; Laws 2001, LB 197, § 15.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-1173 Livestock Auction Market Fund; license and permit fees; occupation tax; unexpended balance; disposition.**

The license and permit fees collected as provided by the Livestock Auction Market Act are an occupation tax and shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund. All money so collected shall be appropriated to the uses of the Department of Agriculture for the purpose of administering such act and shall be paid out only on vouchers approved by the director and upon the warrant or warrants issued by the Director of Administrative Services. Any unexpended balance in such fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding biennium; otherwise it shall lapse into the General Fund.

**Source:** Laws 1963, c. 319, § 17, p. 969; Laws 1969, c. 584, § 54, p. 2379; Laws 1995, LB 7, § 58; Laws 1999, LB 778, § 72; Laws 2001, LB 197, § 16.

**54-1174 Certified copy of license and bond; use as evidence.**

A copy of any license and bond provided for in the Livestock Auction Market Act and certified by the director may be procured upon payment of a fee of one dollar for each copy and shall be received as competent evidence in any court in the State of Nebraska without further proof.

**Source:** Laws 1963, c. 319, § 18, p. 970; Laws 1999, LB 778, § 73; Laws 2001, LB 197, § 17.

**54-1175 Repealed. Laws 2004, LB 837, § 3.**

**54-1176 Repealed. Laws 2004, LB 837, § 3.****54-1177 Certified copy of license; posting; fee.**

A certified copy of an issued license may be procured by the holder of the original upon payment of a fee of one dollar therefor. The original or certified copy of such license shall be posted during sale periods in a conspicuous place on the premises where the livestock auction market is conducted.

**Source:** Laws 1963, c. 319, § 21, p. 970.

**54-1178 Maintenance in sanitary condition; rules and regulations.**

Every livestock auction market shall be maintained in a sanitary condition under the rules and regulations as prescribed by the director.

**Source:** Laws 1963, c. 319, § 22, p. 970.

**54-1179 Repealed. Laws 2004, LB 837, § 3.****54-1180 Inspection of livestock; duties; fees; use; disposition; notice of change.**

All cattle, calves, swine, sheep, and goats, upon entering a livestock auction market, shall be inspected for health before being offered for sale. Such inspection shall be made by a designated veterinarian. The fees for such inspection shall be established by rules and regulations of the State Veterinarian and shall be collected by the operator of the livestock auction market. Such fees shall be used to pay the fees of necessary inspections and for no other purpose and shall be remitted as may be provided by regulation. The fees shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund and shall be expended exclusively to pay the fees of providing necessary inspections at the livestock auction market which has remitted such fees. Each designated veterinarian making market inspections shall be paid twenty-five dollars for each regularly scheduled sale day in each calendar month as a guaranteed minimum salary for providing adequate inspection services. If the fees collected each calendar month by the market operator do not equal such amount, the market operator shall make up the difference in his or her remittance to the state. The rules and regulations establishing fees for such inspection shall not be adopted, amended, or repealed until after notice by mail to each market licensee and designated veterinarian of the time and place of hearing on the question of adoption, amendment, or repeal of such rules and regulations; such notice shall be mailed at least ten days prior to the date of hearing and shall be sufficient if addressed to the last-known address of each market licensee and designated veterinarian shown on the records of the department.

**Source:** Laws 1963, c. 319, § 24, p. 971; Laws 1965, c. 334, § 5, p. 956; Laws 1969, c. 454, § 1, p. 1543; Laws 2001, LB 197, § 20.

**54-1181 Veterinarians; agreement for services; contents; compensation; liability for torts, when.**

The State Veterinarian shall make the designation of the veterinarians required by sections 54-1180 and 54-1182 by entering into an agreement with any accredited veterinarian for his or her professional services in performing necessary inspections. Such agreement shall provide that the State Veterinarian

may terminate it at any time for what he or she deems to be just cause and shall further provide that the state pay such veterinarian a fee as established by section 54-1180, which amount shall be paid monthly from the Livestock Auction Market Fund. Such agreement shall make the designated veterinarian an agent for the Department of Agriculture to perform the duties assigned by sections 54-1180 and 54-1182, and the rules and regulations prescribed by the State Veterinarian, but shall not be deemed to make the designated veterinarian an officer or employee of the state. The orders of such designated veterinarian, issued in the performance of the duties assigned under sections 54-1180 and 54-1182 and the rules and regulations prescribed by the State Veterinarian, shall have the same force and effect as though such order had been made by the State Veterinarian. Designated veterinarians shall not be liable for reasonable acts performed to carry out the duties as set forth in sections 54-1180 and 54-1182 and the rules and regulations prescribed by the State Veterinarian pursuant to such sections.

**Source:** Laws 1963, c. 319, § 25, p. 971; Laws 1965, c. 334, § 6, p. 957; Laws 1969, c. 454, § 2, p. 1544; Laws 2001, LB 197, § 21.

#### **54-1181.01 Violations; penalty.**

Any person engaging in livestock commerce at a licensed livestock auction market who violates any provision of sections 54-1180 and 54-1181, or any rules or regulations duly promulgated thereunder, shall be guilty of a Class II misdemeanor.

**Source:** Laws 1969, c. 454, § 3, p. 1545; Laws 1977, LB 39, § 36.

#### **54-1182 Livestock sold; treatment by veterinarians; release; documentation; rules and regulations.**

Any livestock sold or disposed of at a livestock auction market, before removal therefrom, shall be released by the designated veterinarian and treated to conform with the health requirements of the rules and regulations prescribed by the State Veterinarian for the movement of livestock. When required, the designated veterinarian shall furnish each owner with documentation showing such inspection, treatment, or quarantine. No such livestock for interstate or intrastate shipment shall be released until all the requirements of the state of its destination have been complied with. Any diseased or exposed livestock shall be handled in accordance with the rules and regulations as prescribed by the State Veterinarian.

**Source:** Laws 1963, c. 319, § 26, p. 972; Laws 1965, c. 334, § 7, p. 957; Laws 1999, LB 778, § 75; Laws 2001, LB 197, § 22; Laws 2003, LB 160, § 8.

#### **54-1183 Livestock auction market or packing plant; brand inspection; election to provide.**

The owner or operator of any livestock auction market or packing plant located in any county outside the brand inspection area created in section 54-1,109 may voluntarily elect to provide brand inspection for all cattle brought to such livestock auction market or packing plant from within the brand inspection area upon compliance with sections 54-1183 to 54-1185.

**Source:** Laws 1963, c. 319, § 28, p. 972; Laws 1987, LB 450, § 9; Laws 1999, LB 778, § 76.

**54-1184 Livestock auction market or packing plant; election; how made.**

The election provided for by section 54-1183 shall be made by (1) filing with the Secretary of State, in form to be prescribed by the secretary, a written notice of such election and agreement to be bound by section 54-1185 and (2) posting conspicuously on the premises a notice of the fact that brand inspection is provided at such livestock auction market or packing plant.

**Source:** Laws 1963, c. 319, § 29, p. 973; Laws 1987, LB 450, § 10.

**54-1185 Livestock auction market or packing plant; brand inspection; how conducted; fees; guarantee.**

Inspection provided for in sections 54-1183 to 54-1185 shall be conducted in the manner established by the Livestock Brand Act. The owner or operator making such election may be required to guarantee to the Nebraska Brand Committee that inspection fees derived from such livestock auction market or packing plant will be sufficient, in each twelve-month period, to pay the per diem and mileage of the inspectors required and that he or she will reimburse the committee for any deficit incurred in any such twelve-month period. Such guarantee shall be secured by a corporate surety bond, to be approved by the Secretary of State, in a penal sum to be established by the Nebraska Brand Committee.

**Source:** Laws 1963, c. 319, § 30, p. 973; Laws 1987, LB 450, § 11; Laws 1999, LB 778, § 77; Laws 2000, LB 213, § 11.

## Cross References

Livestock Brand Act, see section 54-710.

**54-1186 Transferred to section 54-1156.****ARTICLE 12****GRAZING CATTLE OF ANOTHER STATE**

## Section

- 54-1201. Repealed. Laws 1999, LB 533, § 1.  
 54-1202. Repealed. Laws 1999, LB 533, § 1.  
 54-1203. Repealed. Laws 1999, LB 533, § 1.

**54-1201 Repealed. Laws 1999, LB 533, § 1.**

**54-1202 Repealed. Laws 1999, LB 533, § 1.**

**54-1203 Repealed. Laws 1999, LB 533, § 1.**

**ARTICLE 13****BRUCELLOSIS**

## (a) GENERAL PROVISIONS

## Section

- 54-1301. Repealed. Laws 1967, c. 339, § 18.  
 54-1302. Repealed. Laws 1967, c. 339, § 18.  
 54-1303. Repealed. Laws 1967, c. 339, § 18.  
 54-1304. Repealed. Laws 1967, c. 339, § 18.  
 54-1305. Repealed. Laws 1967, c. 339, § 18.  
 54-1306. Repealed. Laws 1967, c. 339, § 18.

## BRUCELLOSIS

### Section

- 54-1307. Repealed. Laws 1967, c. 339, § 18.  
54-1308. Repealed. Laws 1967, c. 339, § 18.  
54-1309. Repealed. Laws 1967, c. 339, § 18.  
54-1310. Repealed. Laws 1967, c. 339, § 18.  
54-1311. Repealed. Laws 1967, c. 339, § 18.  
54-1312. Repealed. Laws 1967, c. 339, § 18.  
54-1313. Repealed. Laws 1967, c. 339, § 18.  
54-1314. Repealed. Laws 1967, c. 339, § 18.  
54-1315. Repealed. Laws 1967, c. 339, § 18.  
54-1316. Repealed. Laws 1967, c. 339, § 18.  
54-1317. Repealed. Laws 1967, c. 339, § 18.  
54-1318. Repealed. Laws 1967, c. 339, § 18.  
54-1319. Repealed. Laws 1967, c. 339, § 18.  
54-1320. Repealed. Laws 1967, c. 339, § 18.  
54-1321. Repealed. Laws 1967, c. 339, § 18.  
54-1322. Repealed. Laws 1967, c. 339, § 18.  
54-1323. Repealed. Laws 1967, c. 339, § 18.  
54-1324. Repealed. Laws 1967, c. 339, § 18.  
54-1325. Repealed. Laws 1967, c. 339, § 18.  
54-1326. Repealed. Laws 1967, c. 339, § 18.  
54-1327. Repealed. Laws 1967, c. 339, § 18.  
54-1328. Repealed. Laws 1967, c. 339, § 18.  
54-1329. Repealed. Laws 1967, c. 339, § 18.  
54-1330. Repealed. Laws 1967, c. 339, § 18.  
54-1331. Repealed. Laws 1983, LB 573, § 20.  
54-1332. Repealed. Laws 1983, LB 573, § 20.  
54-1333. Repealed. Laws 1983, LB 573, § 20.  
54-1334. Repealed. Laws 1983, LB 573, § 20.  
54-1335. Repealed. Laws 1983, LB 573, § 20.  
54-1336. Repealed. Laws 1983, LB 573, § 20.  
54-1337. Repealed. Laws 1983, LB 573, § 20.  
54-1338. Repealed. Laws 1983, LB 573, § 20.  
54-1339. Repealed. Laws 1983, LB 573, § 20.  
54-1339.01. Repealed. Laws 1983, LB 573, § 20.  
54-1340. Repealed. Laws 1983, LB 573, § 20.  
54-1341. Repealed. Laws 1983, LB 573, § 20.  
54-1342. Repealed. Laws 1983, LB 573, § 20.  
54-1343. Repealed. Laws 1983, LB 573, § 20.  
54-1344. Repealed. Laws 1983, LB 573, § 20.  
54-1345. Repealed. Laws 1983, LB 573, § 20.  
54-1346. Repealed. Laws 1983, LB 573, § 20.  
54-1347. Repealed. Laws 1983, LB 573, § 20.
- (b) NEBRASKA SWINE BRUCELLOSIS ACT
- 54-1348. Terms, defined.  
54-1349. Swine herd; validated; requirements.  
54-1350. Lease, loan, trade, or sell female swine or boars; prohibited; exceptions.  
54-1351. Blood samples; State Veterinarian determine when samples taken; manner of taking.  
54-1352. Exposed herd; quarantined; exception.  
54-1353. Swine from infected herd; quarantined.  
54-1354. Owners of reactor swine; present for identification.  
54-1355. Owners of reactor swine; sale after identification.  
54-1356. Premises; reactors discovered; cleaned and disinfected.  
54-1357. Diverting from slaughter; removal of identification; unlawful.  
54-1358. Slaughter sows and boars; identification; reports.  
54-1359. Swine tested for brucellosis; identification.  
54-1360. Activities connected with swine brucellosis; tests; identification of animals; report to bureau.  
54-1361. Brucellosis control; available to owners of infected herds without expense.  
54-1362. Sections; administration.

§ 54-1301

LIVESTOCK

Section

- 54-1363. State Veterinarian; rules and regulations.
- 54-1364. Failure to comply with sections; injunction.
- 54-1365. Violations; penalty.
- 54-1366. Act, how cited.

(c) NEBRASKA BOVINE BRUCELLOSIS ACT

- 54-1367. Act, how cited.
- 54-1368. Terms, defined.
- 54-1369. Department; conduct market livestock brucellosis testing program.
- 54-1370. Department; conduct brucellosis eradication program.
- 54-1371. Brucellosis testing; owner responsibilities; violation; penalty; Brucellosis Control Cash Fund; created; use; investment.
- 54-1372. Reactor animals; owner responsibility.
- 54-1373. Exposed animals; owner responsibility.
- 54-1374. Removal of infected or exposed animals; owner; responsibilities.
- 54-1375. Official brucellosis vaccination program; department develop and administer; brucellosis vaccine; department; duties.
- 54-1376. Livestock subject to sections; investigation and record-keeping requirements.
- 54-1377. Diverting designated livestock; removing or altering identification; violations; penalty.
- 54-1378. Department; power to require permits and records.
- 54-1379. Department; cooperate with U.S. Department of Agriculture.
- 54-1380. Costs; by whom paid.
- 54-1381. Department; access to premises.
- 54-1382. Department; adopt rules and regulations.
- 54-1383. Department; judicial remedies available; county attorney; duties.
- 54-1384. Violation; penalty.

(a) GENERAL PROVISIONS

- 54-1301 Repealed. Laws 1967, c. 339, § 18.**
- 54-1302 Repealed. Laws 1967, c. 339, § 18.**
- 54-1303 Repealed. Laws 1967, c. 339, § 18.**
- 54-1304 Repealed. Laws 1967, c. 339, § 18.**
- 54-1305 Repealed. Laws 1967, c. 339, § 18.**
- 54-1306 Repealed. Laws 1967, c. 339, § 18.**
- 54-1307 Repealed. Laws 1967, c. 339, § 18.**
- 54-1308 Repealed. Laws 1967, c. 339, § 18.**
- 54-1309 Repealed. Laws 1967, c. 339, § 18.**
- 54-1310 Repealed. Laws 1967, c. 339, § 18.**
- 54-1311 Repealed. Laws 1967, c. 339, § 18.**
- 54-1312 Repealed. Laws 1967, c. 339, § 18.**
- 54-1313 Repealed. Laws 1967, c. 339, § 18.**
- 54-1314 Repealed. Laws 1967, c. 339, § 18.**
- 54-1315 Repealed. Laws 1967, c. 339, § 18.**

- 54-1316 Repealed. Laws 1967, c. 339, § 18.
- 54-1317 Repealed. Laws 1967, c. 339, § 18.
- 54-1318 Repealed. Laws 1967, c. 339, § 18.
- 54-1319 Repealed. Laws 1967, c. 339, § 18.
- 54-1320 Repealed. Laws 1967, c. 339, § 18.
- 54-1321 Repealed. Laws 1967, c. 339, § 18.
- 54-1322 Repealed. Laws 1967, c. 339, § 18.
- 54-1323 Repealed. Laws 1967, c. 339, § 18.
- 54-1324 Repealed. Laws 1967, c. 339, § 18.
- 54-1325 Repealed. Laws 1967, c. 339, § 18.
- 54-1326 Repealed. Laws 1967, c. 339, § 18.
- 54-1327 Repealed. Laws 1967, c. 339, § 18.
- 54-1328 Repealed. Laws 1967, c. 339, § 18.
- 54-1329 Repealed. Laws 1967, c. 339, § 18.
- 54-1330 Repealed. Laws 1967, c. 339, § 18.
- 54-1331 Repealed. Laws 1983, LB 573, § 20.
- 54-1332 Repealed. Laws 1983, LB 573, § 20.
- 54-1333 Repealed. Laws 1983, LB 573, § 20.
- 54-1334 Repealed. Laws 1983, LB 573, § 20.
- 54-1335 Repealed. Laws 1983, LB 573, § 20.
- 54-1336 Repealed. Laws 1983, LB 573, § 20.
- 54-1337 Repealed. Laws 1983, LB 573, § 20.
- 54-1338 Repealed. Laws 1983, LB 573, § 20.
- 54-1339 Repealed. Laws 1983, LB 573, § 20.
- 54-1339.01 Repealed. Laws 1983, LB 573, § 20.
- 54-1340 Repealed. Laws 1983, LB 573, § 20.
- 54-1341 Repealed. Laws 1983, LB 573, § 20.
- 54-1342 Repealed. Laws 1983, LB 573, § 20.
- 54-1343 Repealed. Laws 1983, LB 573, § 20.
- 54-1344 Repealed. Laws 1983, LB 573, § 20.
- 54-1345 Repealed. Laws 1983, LB 573, § 20.

**54-1346 Repealed. Laws 1983, LB 573, § 20.**

**54-1347 Repealed. Laws 1983, LB 573, § 20.**

(b) NEBRASKA SWINE BRUCELLOSIS ACT

**54-1348 Terms, defined.**

As used in sections 54-1348 to 54-1366, unless the context otherwise requires:

(1) Brucellosis shall mean the disease wherein an animal of the porcine species is infected with brucella microorganisms, irrespective of the occurrence or absence of clinical symptoms of infectious abortion;

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

(3) Exposed herd shall mean a herd that has been exposed to a brucellosis-infected or exposed animal or herd under quarantine or that has been in direct contact with reactor animals in commerce for at least twenty-four hours. Exposed herd shall also include a herd that has had direct contact with a reactor that has recently aborted or farrowed, or has a vaginal or uterine discharge;

(4) Entire herd test shall mean a brucellosis test of all breeding swine six months of age and over within a herd;

(5) Immediate slaughter shall mean delivered directly to an officially inspected slaughter establishment within seven days of removal from the farm of origin or following the date of sale through any market;

(6) Infected herd shall mean a herd in which reactors have been disclosed by an official test;

(7) Market swine testing program shall mean an official test of swine moving in trade through auction markets, stockyards, and livestock dealer concentration points, to slaughtering establishments, or officially tested on the farm of origin immediately prior to movement;

(8) Negative shall mean any swine disclosing a negative reaction to an official brucellosis test;

(9) Official test shall mean an agglutination test of blood samples taken in a manner acceptable to the State Veterinarian with an approved antigen in a manner approved by the State Veterinarian and made by an authorized representative of the bureau. Official test shall also include other tests which may in the future be designated and approved by the State Veterinarian;

(10) Reactor shall mean any swine disclosing a positive reaction to an official brucellosis test;

(11) State Veterinarian shall mean the chief of the Bureau of Animal Industry of the Department of Agriculture; and

(12) Validated herd shall mean a swine herd that has met the requirements for validation as set forth in section 54-1349.

**Source:** Laws 1973, LB 182, § 1; Laws 1975, LB 321, § 3.

**54-1349 Swine herd; validated; requirements.**

A swine herd may become a validated herd when such herd has had one negative brucellosis test of all breeding swine six months of age and over within

the herd. The validation period shall be one year. In order for a herd to maintain its status as a validated herd, either a negative herd test may be conducted annually or a minimum of twenty percent of all breeding swine six months of age and over within the herd may be brucellosis tested under a market swine testing program during the validation period. Not less than one-half of such tests shall be conducted during the final six months of the validation period.

**Source:** Laws 1973, LB 182, § 2; Laws 1975, LB 321, § 4.

**54-1350 Lease, loan, trade, or sell female swine or boars; prohibited; exceptions.**

No person shall lease, loan, trade, or sell female swine or boars six months of age and over, except swine consigned for immediate slaughter, or offer or receive the services of any male swine for breeding purposes, unless (1) such swine have been given an official brucellosis test by an authorized representative of the bureau within thirty days prior to the date of such transaction and found free of brucellosis, (2) such swine originated from a validated herd, or (3) Nebraska is a validated brucellosis-free state for swine in accordance with the terms of 9 C.F.R. 78.1 in effect on January 1, 1990.

**Source:** Laws 1973, LB 182, § 3; Laws 1991, LB 358, § 4.

**54-1351 Blood samples; State Veterinarian determine when samples taken; manner of taking.**

Blood samples may be collected from sows, boars, or stags slaughtered at federal establishments, state establishments, or state-federal establishments. The State Veterinarian shall determine when such samples are to be collected and the manner in which such samples are to be taken.

**Source:** Laws 1973, LB 182, § 4.

**54-1352 Exposed herd; quarantined; exception.**

All swine from an exposed herd may be quarantined to the premises and the movement of all such swine may be prohibited until the herd has passed a negative herd test at least thirty days following the last date on which exposure occurred, except that all swine consigned for immediate slaughter shall be allowed to move under permit approved by the bureau.

**Source:** Laws 1973, LB 182, § 5.

**54-1353 Swine from infected herd; quarantined.**

All swine from an infected herd shall be quarantined to the premises and the movement of all such swine may be prohibited until the herd has passed a negative entire herd test at least sixty days following the removal of reactors, except that all swine consigned for immediate slaughter shall be allowed to move under permit approved by the bureau. Infected herds may be retested at thirty-day intervals, with reactors being removed for slaughter until the entire herd is negative.

**Source:** Laws 1973, LB 182, § 6.

**54-1354 Owners of reactor swine; present for identification.**

It shall be the responsibility of the owner or owners of reactor swine, whether privately or officially tested, to present such swine for identification within fifteen days following the date the infection is disclosed and to have the swine confined in a suitable place or yard for such identification and provide the necessary assistance and facilities for restraining the animals to be identified.

**Source:** Laws 1973, LB 182, § 7.

**54-1355 Owners of reactor swine; sale after identification.**

All reactor swine shall be sold directly to slaughter or consigned to a livestock auction market or stockyards approved by the bureau for sale to immediate slaughter within fifteen days after having been identified as prescribed in section 54-1354.

**Source:** Laws 1973, LB 182, § 8.

**54-1356 Premises; reactors discovered; cleaned and disinfected.**

All premises upon which reactors have been discovered shall be cleaned and disinfected under supervision of the bureau within fifteen days following removal of the reactors. An extension of such time may be granted by the bureau under extenuating circumstances.

**Source:** Laws 1973, LB 182, § 9.

**54-1357 Diverting from slaughter; removal of identification; unlawful.**

It shall be unlawful for any person to divert from immediate slaughter swine which are designated for immediate slaughter or to remove from any animal any official identification.

**Source:** Laws 1973, LB 182, § 10.

**54-1358 Slaughter sows and boars; identification; reports.**

All slaughter sows and boars received at the first point of sale by livestock dealers, assembly points, livestock auction markets, or stockyards, or which are sold direct to slaughter shall be identified by the farm of origin in a uniform manner acceptable to the bureau. At the time of taking possession or control of such sows and boars, it shall be the duty of every livestock dealer, livestock auction market operator, commission firm, or stockyard or slaughtering establishment livestock dealer to identify each such animal in a manner acceptable to the bureau. Every person required to identify animals in accordance with this section shall maintain reports of such identification on forms prescribed by the bureau for a period of time designated by the bureau and make such reports available to the bureau upon request.

**Source:** Laws 1973, LB 182, § 11.

**54-1359 Swine tested for brucellosis; identification.**

All swine tested for brucellosis shall be identified by an ear notch, tattoo, or ear tag in a uniform manner as specified by the bureau.

**Source:** Laws 1973, LB 182, § 12.

**54-1360 Activities connected with swine brucellosis; tests; identification of animals; report to bureau.**

All activities connected with swine brucellosis control, conducted either privately or as part of an official swine brucellosis eradication program such as results of agglutination tests and identification of animals, shall be promptly reported to the bureau.

**Source:** Laws 1973, LB 182, § 13.

**54-1361 Brucellosis control; available to owners of infected herds without expense.**

All services in connection with swine brucellosis control shall be available to the owner or owners of infected herds without expense, except for the expense for the handling of his swine, as long as funds for such purposes are available. When state or federal funds are not available, each owner shall continue his program at his own expense with his private veterinarian and under the supervision of state and federal veterinarians and such swine owner in an area shall not be released from compulsory participation in the swine brucellosis control program.

**Source:** Laws 1973, LB 182, § 14.

**54-1362 Sections; administration.**

The provisions of sections 54-1348 to 54-1366 shall be administered by the bureau with whatever assistance the bureau may request of and receive from the United States Department of Agriculture, Agricultural Research Service, Animal and Plant Health Inspection Service on a cooperative basis.

**Source:** Laws 1973, LB 182, § 15.

**54-1363 State Veterinarian; rules and regulations.**

The State Veterinarian shall, subject to the approval of the Director of Agriculture, adopt and promulgate rules and regulations for the purpose of carrying out the Nebraska Swine Brucellosis Act. Such rules and regulations shall be reasonable, shall be based on the latest available scientific information to further the control and eradication of swine brucellosis, and shall be adaptable to and serve the best interest of the swine industry in Nebraska.

**Source:** Laws 1973, LB 182, § 16; Laws 1989, LB 38, § 6.

**54-1364 Failure to comply with sections; injunction.**

Upon application of the bureau, any district court may issue a mandatory injunction against any person, firm, or corporation who fails to comply with the provisions of sections 54-1348 to 54-1366.

**Source:** Laws 1973, LB 182, § 17.

**54-1365 Violations; penalty.**

Any person violating any of the provisions of sections 54-1348 to 54-1366 for which a specific penalty is not otherwise provided shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprison-

ment in the county jail for not to exceed thirty days, or by both such fine and imprisonment.

**Source:** Laws 1973, LB 182, § 18.

**54-1366 Act, how cited.**

Sections 54-1348 to 54-1366 may be cited as the Nebraska Swine Brucellosis Act.

**Source:** Laws 1973, LB 182, § 19.

(c) NEBRASKA BOVINE BRUCELLOSIS ACT

**54-1367 Act, how cited.**

Sections 54-1367 to 54-1384 shall be known and may be cited as the Nebraska Bovine Brucellosis Act.

**Source:** Laws 1983, LB 573, § 1.

**54-1368 Terms, defined.**

As used in sections 54-1367 to 54-1384, unless the context otherwise requires:

(1) Brucellosis, also known as Bang's disease, shall mean the disease wherein an animal is infected with *Brucella Abortus* or contagious abortion, *Brucella Suis*, or *Brucella Melitensis*;

(2) Animal shall mean cattle and bison;

(3) Livestock shall mean cattle and bison;

(4) Department shall mean the Department of Agriculture;

(5) Market livestock shall mean animals of an age, sex, and status set out in regulations promulgated under sections 54-1367 to 54-1384, which animals shall be subject to testing under the market livestock brucellosis testing program;

(6) Eligible animals shall mean animals of an age, sex, and status set out in regulations promulgated under sections 54-1367 to 54-1384, which animals shall be subject to testing under the brucellosis eradication program;

(7) Testing shall mean the taking of an official test for the presence of brucellosis designated in the regulations promulgated under sections 54-1367 to 54-1384;

(8) Negative shall mean an animal that has been tested for brucellosis and determined not to have the disease;

(9) Reactor or infected animal shall mean an animal that has been tested for brucellosis and determined to be infected with the disease;

(10) Suspect shall mean an animal that has been tested for brucellosis and, based upon the test results, cannot be clearly classified as either negative or a reactor without further testing or other epidemiological evaluation;

(11) Exposed animals shall mean animals that either are part of a herd in which a reactor has been present, or animals that have had a reasonable opportunity to come in contact with an infected herd or a reactor. Exposed animals shall include animals in a herd adjacent to an infected herd;

(12) Infected herd shall mean a herd that contains or has contained an infected animal and has not yet been released from quarantine;

(13) Exposed herd shall mean a herd containing an exposed animal; and

(14) Herd shall mean a group of animals of like species maintained on common ground, or two or more groups of animals under common ownership or control on separate premises with an interchange of animals.

**Source:** Laws 1983, LB 573, § 2.

**54-1369 Department; conduct market livestock brucellosis testing program.**

The department shall continually conduct a market livestock brucellosis testing program. Under the program, the department may require the brucellosis testing of market livestock whenever such animals are moving in commerce through markets, concentration points, or slaughter establishments, or whenever market livestock are sold at private treaty. The provisions of the market livestock brucellosis testing program shall be set out in adopted and promulgated rules and regulations.

**Source:** Laws 1983, LB 573, § 3.

**54-1370 Department; conduct brucellosis eradication program.**

The department shall continually conduct a brucellosis eradication program. Under the program, the department shall quarantine and require the brucellosis testing of eligible animals that are known to have been exposed to animals infected with or exposed to brucellosis, and animals reasonably suspected of having been so exposed. Under the brucellosis eradication program, the department shall also quarantine and require the brucellosis testing of eligible animals imported into Nebraska in violation of brucellosis-related importation requirements. In addition, the department may prohibit the addition of animals into known infected or exposed herds. The provisions of the brucellosis eradication program shall be set out in duly adopted and promulgated rules and regulations.

**Source:** Laws 1983, LB 573, § 4.

**54-1371 Brucellosis testing; owner responsibilities; violation; penalty; Brucellosis Control Cash Fund; created; use; investment.**

(1) Whenever brucellosis testing is performed under section 54-1369 with respect to a sale at private treaty or under section 54-1370, the owner of the animals shall be responsible for gathering, confining, and restraining the animals to be tested and shall provide the necessary facilities and assistance. With respect to tests conducted at markets, concentration points, or slaughter establishments, the responsibility shall be borne by the owner of the establishment.

(2) Any person failing to carry out the responsibilities set out under subsection (1) of this section shall be guilty of a Class IV misdemeanor.

(3) Whenever any person fails to carry out the responsibilities set out under subsection (1) of this section, the department shall perform such functions. Upon completion of the testing, the department shall determine its actual costs incurred in handling the livestock and conducting the testing and notify the responsible person in writing. The responsible person shall reimburse the department its actual costs within fifteen days following the date of the notice. Any person failing to reimburse the department as required shall be assessed a

penalty of up to twenty-five percent of the amount due for each thirty days of delinquency.

(4) All money received by the department under subsection (3) of this section shall be remitted to the State Treasurer for credit to the Brucellosis Control Cash Fund, which fund is hereby created. Expenditures from the fund may be made to conduct brucellosis testing under the Nebraska Bovine Brucellosis Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1983, LB 573, § 5; Laws 1995, LB 7, § 59.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-1372 Reactor animals; owner responsibility.**

Whenever reactors are disclosed on a brucellosis test, it shall be the responsibility of the owner to see that such animals are properly branded and promptly moved to slaughter. The requirements of the department governing the handling of reactor animals shall be set out in duly adopted and promulgated rules and regulations.

**Source:** Laws 1983, LB 573, § 6.

**54-1373 Exposed animals; owner responsibility.**

Whenever exposed animals are moving in commerce, it shall be the responsibility of the owner to see that such animals are properly branded, if so required by the department, and to move such animals in accordance with any restrictions imposed by the department. The requirements of the department governing the handling of exposed animals shall be set out in duly adopted and promulgated rules and regulations.

**Source:** Laws 1983, LB 573, § 7.

**54-1374 Removal of infected or exposed animals; owner; responsibilities.**

Following the removal of infected or exposed animals, the premises shall be cleaned and disinfected by the owner under the supervision of the department, in accordance with the rules and regulations duly adopted and promulgated by the department.

**Source:** Laws 1983, LB 573, § 8.

**54-1375 Official brucellosis vaccination program; department develop and administer; brucellosis vaccine; department; duties.**

(1) The department shall develop and administer an official brucellosis vaccination program. The provisions of the program shall be consistent with good animal health practice in the control and eradication of brucellosis, and shall be set out in duly adopted and promulgated rules and regulations.

(2) For the protection of the livestock industry and to aid in achieving the purposes of sections 54-1367 to 54-1384, the department shall regulate the sale and use of brucellosis vaccine. The department may restrict the sale and use of brucellosis vaccine to qualified persons and shall require detailed record keeping and reporting by persons involved in the sale or use of vaccine. The

regulation of brucellosis vaccine shall be set out in duly promulgated regulations.

**Source:** Laws 1983, LB 573, § 9.

**54-1376 Livestock subject to sections; investigation and record-keeping requirements.**

The department shall require specific forms of identification to be applied to livestock subject to the provisions of sections 54-1367 to 54-1384, and to require appropriate record keeping and reporting regarding such identification by persons owning or handling such livestock. The requirements of the department governing the identification of livestock subject to the provisions of sections 54-1367 to 54-1384 shall be set out in duly promulgated regulations.

**Source:** Laws 1983, LB 573, § 10.

**54-1377 Diverting designated livestock; removing or altering identification; violations; penalty.**

Whenever, in accordance with the provisions of sections 54-1367 to 54-1384, livestock are required or designated to move to a particular destination, it shall be unlawful to divert the livestock from such destination without having first obtained permission from the department. Any person unlawfully diverting livestock or directly or indirectly removing or altering the identification of livestock to be so moved shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1983, LB 573, § 11.

**54-1378 Department; power to require permits and records.**

In adopting and promulgating rules and regulations governing the handling of brucellosis infected or exposed animals, or animals reasonably suspected of being infected or exposed, the department may require persons to obtain permits from the department prior to engaging in designated activities. Such persons may also be required to maintain necessary records in conjunction with such activities or to file reports with the department.

**Source:** Laws 1983, LB 573, § 12.

**54-1379 Department; cooperate with U.S. Department of Agriculture.**

In administering sections 54-1367 to 54-1384 and conducting the programs authorized under such sections, the department shall cooperate with the United States Department of Agriculture and, insofar as reasonably practical, conform its activities to the provisions of that department's guidelines known as the Uniform Methods and Rules for Brucellosis Eradication.

**Source:** Laws 1983, LB 573, § 13.

**54-1380 Costs; by whom paid.**

All activities in connection with the implementation of sections 54-1367 to 54-1384 shall be available to livestock owners without expense as long as funds for such activities have been appropriated and are available, except for the cost of handling livestock and the cost of brucellosis vaccine. When funds are not

available, the owner shall nevertheless continue the program at his or her own expense.

**Source:** Laws 1983, LB 573, § 14.

**54-1381 Department; access to premises.**

In administering sections 54-1367 to 54-1384, the agents and employees of the department shall have access to any premises where livestock may be, when such persons have reasonable cause to believe that such livestock may be infected with or may have been exposed to brucellosis.

**Source:** Laws 1983, LB 573, § 15.

**54-1382 Department; adopt rules and regulations.**

The department shall adopt and promulgate rules and regulations to aid in implementing the Nebraska Bovine Brucellosis Act. The rules and regulations may include, but need not be limited to, provisions governing:

(1) The conduct of the market livestock testing program, including provisions governing when, where, how, and by whom testing is to be done; what animals are to be tested; and how test results are to be recorded and reported;

(2) The conduct of the brucellosis eradication program, including when, where, how, by whom, and how often testing is to be done; what animals are to be tested; and how test results are to be recorded and reported. The rules and regulations may also include provisions designed to maintain or enhance the federal designation of brucellosis areas within the state and provisions for certifying herds for brucellosis status;

(3) The issuance and release of brucellosis quarantines and the requirements regarding the handling, movement, and disposition of livestock under quarantine;

(4) The testing of livestock to detect brucellosis, including which tests are to be deemed official, by whom the tests are to be administered, how the tests are to be conducted, the reaction tolerances to be recognized, and the classification of results as to negative, suspect, or reactor animals. The rules and regulations shall be consistent with the best available scientific information relative to the control and eradication of brucellosis;

(5) The assessment of penalties under subsection (3) of section 54-1371;

(6) The branding and disposition of reactors, including the brand to be used and how it is to be placed, and when and how branding and shipment to slaughter are to be performed;

(7) The branding and handling of exposed animals, including the brand to be used and how it is to be placed, and when and how branding and movement are to be performed;

(8) The cleaning and disinfecting of premises, including the materials to be used, the procedures to be used, and when such procedures are to be performed;

(9) The official brucellosis vaccination program, including the vaccines allowed to be used, the permitted concentrations, the age of the animals to be vaccinated, the effect of vaccination on the interpretation of test results, and the sale and use of vaccine;

(10) The identification of animals subject to the act, including exposed and infected animals, vaccinated animals, and animals tested and to be tested;

(11) The issuance of permits under section 54-1378;

(12) Compliance with the provisions of the Uniform Methods and Rules for Brucellosis Eradication;

(13) The payment for activities and services conducted under the act;

(14) The preparation, maintenance, handling, and filing of records and reports by persons subject to the act, regarding activities performed in accordance with the act, including the vaccination, testing, branding, or movement of animals that may have been infected with or exposed to brucellosis; and

(15) Any other areas deemed necessary by the department to effectively control and eradicate brucellosis.

**Source:** Laws 1983, LB 573, § 16; Laws 1993, LB 1, § 2.

**54-1383 Department; judicial remedies available; county attorney; duties.**

(1) The department may apply for a restraining order or a temporary or permanent injunction, or mandatory injunction, against any person violating or threatening to violate sections 54-1367 to 54-1384 or the requirements of the rules and regulations adopted and promulgated under sections 54-1367 to 54-1384, in order to insure compliance with such provisions. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the county attorney of the county in which any violation occurs or is about to occur, when notified of such violation or threatened violation by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued without delay.

**Source:** Laws 1983, LB 573, § 17.

**54-1384 Violation; penalty.**

Any person violating sections 54-1367 to 54-1384 shall, unless another penalty is specifically provided, be guilty of a Class IV misdemeanor.

**Source:** Laws 1983, LB 573, § 18.

**ARTICLE 14**

**SCABIES**

- Section
- 54-1401. Terms, defined; exposed and infected flocks; requirements.
- 54-1402. Sheep; treated for scabies; sale for slaughter; lapse of time.
- 54-1403. Sheep; diversion from slaughter prohibited; feeding, breeding, and exhibition; certificate of veterinary inspection; permit.
- 54-1404. Sheep; auction markets; requirements.
- 54-1405. Sheep; moved intrastate; requirements.
- 54-1406. Sheep; moved to a county in a scabies eradication area; requirements.
- 54-1407. Sheep; inspection, examination, treatment; enter upon premises; without interference; report animal exposed or affected with scabies.
- 54-1408. Sheep; infected with scabies; quarantine; dipping; cost; violation; penalty.
- 54-1409. Domestic animals; scabies or mange; treatment.
- 54-1410. Director of Agriculture; rules and regulations.

## Section

54-1411. Violations; penalty.

54-1412. Transferred to section 54-724.01.

54-1413. Transferred to section 54-724.02.

**54-1401 Terms, defined; exposed and infected flocks; requirements.**

A scabies-free area shall be a county or group of counties in which a systematic inspection of all flocks of sheep including feed lots has been completed and no scabies is found to exist.

Scabies eradication area shall be a county or group of counties in which a systematic inspection of all flocks of sheep is being carried out but has not been completed.

Scabies quarantined area or premises shall be where scabies now exists or has existed and the required dipping procedures have not been completed.

All exposed flocks shall be quarantined and absolutely no animals removed from the premises until the flock has been dipped once in a permitted dip maintained at a required strength under the supervision of a state or federal inspector in accordance with the directions issued by the Department of Agriculture, Bureau of Animal Industry.

Exposed flocks shall mean flocks where no scabies exist but animals have been exposed to sheep affected with scabies.

All infected flocks shall be quarantined and absolutely no animals removed from the premises until the entire flock has been dipped twice ten to fourteen days apart in a permitted dip maintained at a required strength under the supervision of a state or federal inspector in accordance with the directions issued by the Department of Agriculture, Bureau of Animal Industry.

Infected flocks shall be flocks in which scabies exists or flocks to which animals have been added from a known infected source.

**Source:** Laws 1965, c. 327, § 1, p. 937.

**54-1402 Sheep; treated for scabies; sale for slaughter; lapse of time.**

Sheep that have been treated for scabies shall not be sold for slaughter until the elapse of a specified amount of time which shall depend upon the method of treatment as designated by the Department of Agriculture, Bureau of Animal Industry.

**Source:** Laws 1965, c. 327, § 2, p. 938.

**54-1403 Sheep; diversion from slaughter prohibited; feeding, breeding, and exhibition; certificate of veterinary inspection; permit.**

Sheep directed for slaughter in Nebraska shall not be diverted en route. Sheep for feeding, breeding, and exhibition purposes from scabies-certified-free states shall be accompanied by a certificate of veterinary inspection meeting the requirements of section 54-788, certifying that they are apparently free from disease. Sheep for feeding, breeding, and exhibition purposes from states designated as scabies eradication areas or from states where scabies exists and which are not designated as scabies eradication areas shall be dipped once in a permitted dip maintained at a required strength under the supervision of a state or federal inspector in accordance with the directions issued by the Department of Agriculture, Bureau of Animal Industry within ten days from their entry into

Nebraska. Sheep from a scabies eradication area shall be accompanied by a permit, and the number of the permit shall be recorded on the certificate of veterinary inspection which shall accompany the shipment.

**Source:** Laws 1965, c. 327, § 3, p. 938; Laws 2003, LB 160, § 9.

**54-1404 Sheep; auction markets; requirements.**

All sheep released from auction markets must be accompanied by form P-10 Nebraska permit to move livestock provided by the Department of Agriculture on which shall be designated the number of animals, purpose and destination of the shipment. An original and one copy of this form must be mailed to the Bureau of Animal Industry.

Any auction market that handles sheep to be sold for purposes other than direct to slaughter must maintain approved dipping facilities.

If yarding facilities are maintained which are sufficient to prevent commingling with other sheep and these facilities are not used for any other purpose, sheep from counties within an area designated as scabies free may be released without dipping. Sheep dipped within ten days prior to arrival at auction markets and where such dipping is supported by approved certification, may be released without further dipping. Sheep not in the above two categories must be dipped in a permitted dip maintained at a required strength under the supervision of a state or federal inspector in accordance with the directions issued by the Department of Agriculture, Bureau of Animal Industry within ten days of release.

**Source:** Laws 1965, c. 327, § 4, p. 938.

**54-1405 Sheep; moved intrastate; requirements.**

Sheep to be moved in Nebraska from one farm or ranch to another farm or ranch must not be diverted en route. Sheep being moved to a county within an area designated as scabies free may move without restriction if from a county of the same status or under special permit from the State Veterinarian if the native flock has been inspected and found free by a state or federal inspector or accredited veterinarian prior to movement. In the alternative, sheep may be moved on permit after being dipped in a permitted dip maintained at a required strength under the supervision of a state or federal inspector in accordance with the directions issued by the Department of Agriculture, Bureau of Animal Industry within ten days prior to movement.

**Source:** Laws 1965, c. 327, § 5, p. 939.

**54-1406 Sheep; moved to a county in a scabies eradication area; requirements.**

Sheep to be moved to a county within an area designated as a scabies eradication area:

- (1) May be moved without restrictions if from a county designated as scabies free;
- (2) If from a county within an area designated as a scabies eradication area and the entire flock has been inspected under a systematic inspection program and found free, sheep may move without further requirements; or
- (3) Must be dipped in a permitted dip maintained at a required strength under the supervision of a state or federal inspector in accordance with the

directions issued by the Department of Agriculture, Bureau of Animal Industry within ten days prior to movement.

**Source:** Laws 1965, c. 327, § 6, p. 939.

**54-1407 Sheep; inspection, examination, treatment; enter upon premises; without interference; report animal exposed or affected with scabies.**

In accordance with sections 54-701 to 54-705, any officer, agent, employee or appointee of the Department of Agriculture or the United States Department of Agriculture, Animal Disease Eradication Division, shall have the right to enter upon the premises of any person or persons for the purpose of making inspections of any animals found to be infected with or exposed to scabies and to declare, deliver and enforce any and all quarantines.

It shall be the duty of any owner or custodian of any flock or portion of a flock of sheep to make such sheep available for inspections, examinations or necessary treatments whenever any inspector or person employed or authorized by the Department of Agriculture shall find it necessary to inspect, examine, or treat such animals.

It shall be the duty of any owner or custodian of any sheep to report to the Bureau of Animal Industry when any animal is suspected of being exposed to or affected with scabies.

**Source:** Laws 1965, c. 327, § 7, p. 940.

**54-1408 Sheep; infected with scabies; quarantine; dipping; cost; violation; penalty.**

When animals are found to be infected with or exposed to scabies they shall be held in quarantine at a place to be prescribed by the Department of Agriculture until treated or dipped and the premises cleaned and disinfected as deemed necessary by the department. The cost of dipping or otherwise treating such animals as deemed necessary by the department shall be borne by the owner thereof.

Any conveyance or yarding facility must be cleaned and disinfected following transportation or yarding of any sheep known to be infected with scabies before being used for transporting or holding any other sheep.

Any person violating any of the provisions of this section shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 1965, c. 327, § 8, p. 940; Laws 1977, LB 39, § 41.

**54-1409 Domestic animals; scabies or mange; treatment.**

Whenever any domestic animal or animals are found to have scabies and are required by the Bureau of Animal Industry to be treated on account of such scabies, such treatment shall be applied as directed by the Bureau of Animal Industry, under the immediate supervision of an authorized veterinarian or other designated inspector. The treatment of scabies and mange or both, in the instance of livestock shall be in the following manner:

(1) The treatment, unless otherwise designated by the Bureau of Animal Industry, shall be by dipping in a bath or vat which shall be of sufficient size and so arranged as to permit complete immersion of the animal to be treated in the dipping fluid; and

(2) Treatment, unless otherwise directed by the Bureau of Animal Industry shall be by immersion in a permitted dip maintained at a required strength under the supervision of a state or federal inspector in accordance with the directions issued by the Department of Agriculture, Bureau of Animal Industry.

**Source:** Laws 1965, c. 327, § 9, p. 941.

**54-1410 Director of Agriculture; rules and regulations.**

The Director of Agriculture is authorized to make, promulgate, amend, repeal, and enforce necessary rules and regulations to carry out the provisions of sections 54-1401 to 54-1411.

**Source:** Laws 1965, c. 327, § 10, p. 941.

**54-1411 Violations; penalty.**

Any person violating any of the provisions of sections 54-1401 to 54-1411 for which a specific penalty is not otherwise provided shall be deemed guilty of a Class IV misdemeanor.

**Source:** Laws 1965, c. 327, § 11, p. 941; Laws 1977, LB 39, § 42.

**54-1412 Transferred to section 54-724.01.**

**54-1413 Transferred to section 54-724.02.**

**ARTICLE 15**

**HOG CHOLERA**

(a) DESTRUCTION OF HOGS

Section

54-1501.	Swine; affected with or exposed to hog cholera; destruction; inoculation.
54-1502.	Repealed. Laws 1983, LB 264, § 3.
54-1503.	Swine; hog cholera; held for destruction; care and feeding; cost.
54-1504.	Repealed. Laws 1987, LB 20, § 9.
54-1505.	Swine; hog cholera; destruction; disposal.
54-1506.	Repealed. Laws 1983, LB 264, § 3.
54-1507.	Repealed. Laws 1987, LB 20, § 9.
54-1507.01.	Repealed. Laws 1987, LB 20, § 9.
54-1508.	Swine; hog cholera on premises; report; contents.
54-1509.	Swine; hog cholera; violations; penalty.
54-1510.	Failure to comply with sections; injunction.
54-1511.	Department of Agriculture; federal government; cooperate.
54-1512.	Department of Agriculture; rules and regulations.

(b) CONTROL AND ERADICATION

54-1513.	Act, how cited.
54-1514.	Terms, defined.
54-1515.	Hog cholera vaccine or virus; manufacture, sell, use, possess, distribute; permit; application; approval.
54-1516.	Hog cholera serum; licensed by United States Department of Agriculture; manufacture, sell, offer for sale, use, possess, distribute; exception.
54-1517.	Swine; importation into state; requirements.
54-1518.	Swine; moving intrastate; requirements.
54-1519.	Director of Agriculture; rules and regulations.
54-1520.	Containers of hog cholera serum, vaccine, virus; label; contents.
54-1521.	Violations; penalty.

Section

## (c) SALES AND SHIPMENTS

54-1522. Double inoculation against cholera; tags; contents.

54-1523. Double inoculation against cholera; misrepresentation; penalty.

## (a) DESTRUCTION OF HOGS

**54-1501 Swine; affected with or exposed to hog cholera; destruction; inoculation.**

The Department of Agriculture may destroy or require the destruction of any swine which the Bureau of Animal Industry knows to be, or suspects is affected with or exposed to hog cholera, whenever the Department of Agriculture finds such destruction to be necessary to prevent or reduce the danger of the spread of hog cholera. In addition, the State Veterinarian, or his authorized agent, may, as often as is deemed necessary and at the swine owner's expense, order inoculation with hog cholera antiserum all swine imported into this state to prevent or reduce the spread of hog cholera.

**Source:** Laws 1965, c. 328, § 1, p. 942; Laws 1969, c. 456, § 1, p. 1549.

**54-1502 Repealed. Laws 1983, LB 264, § 3.****54-1503 Swine; hog cholera; held for destruction; care and feeding; cost.**

Expenses for the care and feeding of swine held for destruction and the expenses of destruction, burial, incineration, transportation, and other expenses incidental to their slaughter shall not be paid by the Bureau of Animal Industry.

**Source:** Laws 1965, c. 328, § 3, p. 943; Laws 1987, LB 20, § 5.

**54-1504 Repealed. Laws 1987, LB 20, § 9.****54-1505 Swine; hog cholera; destruction; disposal.**

Swine affected with or exposed to hog cholera which are to be destroyed under sections 54-1501 to 54-1512 shall be destroyed promptly after the Department of Agriculture makes its findings pursuant to section 54-1501 and disposed of through a method of salvage, burial, or burning as approved by the Bureau of Animal Industry.

**Source:** Laws 1965, c. 328, § 5, p. 944; Laws 1987, LB 20, § 6.

**54-1506 Repealed. Laws 1983, LB 264, § 3.****54-1507 Repealed. Laws 1987, LB 20, § 9.****54-1507.01 Repealed. Laws 1987, LB 20, § 9.****54-1508 Swine; hog cholera on premises; report; contents.**

When a licensed graduate veterinarian or authorized representative of the Department of Agriculture determines or suspects that hog cholera exists on any premises, he shall report immediately to the State Veterinarian or federal veterinarian in charge by telephone collect. The report shall include the following: (1) Name and address of the owner of the premises or caretaker of the swine, (2) location of the premises by county, (3) adequate geographical description, and (4) name and address of the attending veterinarian. Definite procedure shall follow for the epidemiological investigation of each outbreak or

suspected case of hog cholera involving the premises, practitioner and laboratory.

**Source:** Laws 1965, c. 328, § 8, p. 944.

**54-1509 Swine; hog cholera; violations; penalty.**

Any person, partnership, limited liability company, association, or corporation, or officer or member thereof, who (1) interferes with the destruction of swine mandated under sections 54-1501 to 54-1512, (2) violates a quarantine or disinfection order issued under such sections, (3) imports swine into this state without first obtaining a certificate of veterinary inspection meeting the requirements of section 54-788 and the required shipping permit from the Bureau of Animal Industry, or (4) after obtaining a certificate of veterinary inspection and shipping permit, diverts a shipment from the point of destination stated upon the certificate of veterinary inspection and shipping permit without written permission from the Bureau of Animal Industry shall be guilty of a Class IV felony.

**Source:** Laws 1965, c. 328, § 9, p. 945; Laws 1969, c. 456, § 4, p. 1551; Laws 1977, LB 39, § 43; Laws 1987, LB 20, § 7; Laws 1993, LB 121, § 341; Laws 2003, LB 160, § 10.

**54-1510 Failure to comply with sections; injunction.**

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

**Source:** Laws 1965, c. 328, § 10, p. 945; Laws 1994, LB 884, § 70.

**54-1511 Department of Agriculture; federal government; cooperate.**

The Department of Agriculture may cooperate with the United States, or any department, agency, or officer thereof, in the control and eradication of hog cholera.

**Source:** Laws 1965, c. 328, § 11, p. 945; Laws 1987, LB 20, § 8.

**54-1512 Department of Agriculture; rules and regulations.**

The Department of Agriculture may make, promulgate, amend, repeal, and enforce necessary rules and regulations for implementing the provisions of sections 54-1501 to 54-1512.

**Source:** Laws 1965, c. 328, § 12, p. 945.

(b) CONTROL AND ERADICATION

**54-1513 Act, how cited.**

Sections 54-1513 to 54-1521 may be cited as the Hog Cholera Control and Eradication Act.

**Source:** Laws 1969, c. 446, § 1, p. 1490.

**54-1514 Terms, defined.**

For purposes of the Hog Cholera Control and Eradication Act, unless the context otherwise requires:

(1) Hog cholera serum shall mean a serum which when injected into a susceptible hog will protect the animal for a variable time against hog cholera either from exposure to infected swine or from an injection of a minimum of two cubic centimeters of known virulent hog cholera virus;

(2) Virulent hog cholera virus shall mean a virus which when inoculated into a susceptible swine, in a minimum dose of two cubic centimeters, will cause hog cholera;

(3) Modified live hog cholera vaccine shall mean any vaccine prepared from a modified live hog cholera virus which will establish an immunity or resistance against hog cholera when the animal is exposed to infected swine or by injection of a minimum dose of two cubic centimeters of known virulent hog cholera virus;

(4) Killed or inactivated hog cholera virus shall mean any killed suspension of hog cholera virus which when inoculated into susceptible swine will not produce hog cholera;

(5) A virulent virus shall mean hog cholera virus which fails to cause hog cholera in swine, susceptible to such disease, when injected in doses of not more than two cubic centimeters;

(6) Impotent serum shall mean hog cholera serum which fails to protect swine against hog cholera when injected in doses as recommended on the label of the container, for the weight of swine indicated thereon, against a dose of virulent hog cholera virus of not less than two cubic centimeters;

(7) Person shall include individual, partnership, limited liability company, corporation, and association or any officer, partner, or member of same; and

(8) Director shall mean the Director of Agriculture.

**Source:** Laws 1969, c. 446, § 2, p. 1490; Laws 1993, LB 121, § 342.

**54-1515 Hog cholera vaccine or virus; manufacture, sell, use, possess, distribute; permit; application; approval.**

It shall be unlawful for any person to manufacture, sell, offer for sale, use, possess, or distribute any killed inactivated hog cholera vaccine, modified live virus hog cholera vaccine, or virulent hog cholera virus in the State of Nebraska unless a permit is first obtained from the Department of Agriculture. Application for a permit shall be made to the director upon forms prescribed by him or her for that purpose. Before a permit may be granted, the director shall obtain the joint approval in writing of the State Veterinarian and the heads of the Department of Veterinary Science and the Department of Animal Science, University of Nebraska Institute of Agriculture and Natural Resources, except that the provisions of this section shall not apply to possession by a common carrier in interstate commerce.

**Source:** Laws 1969, c. 446, § 3, p. 1491; Laws 1991, LB 663, § 36.

**54-1516 Hog cholera serum; licensed by United States Department of Agriculture; manufacture, sell, offer for sale, use, possess, distribute; exception.**

It shall be lawful to manufacture, sell, offer for sale, use, possess and distribute hog cholera serum in this state so long as the production thereof is licensed by the United States Department of Agriculture and the serum produced is released for sale and use by the United States Department of Agriculture and the serum is not impotent or contaminated with disease-producing or

other harmful bacteria or substance; *Provided*, that no person shall manufacture hog cholera serum in the State of Nebraska without first securing a manufacturer's permit from the Department of Agriculture of this state.

**Source:** Laws 1969, c. 446, § 4, p. 1491.

**54-1517 Swine; importation into state; requirements.**

The importation into this state of any swine which have been inoculated less than ninety days with any killed inactivated hog cholera vaccine, modified live virus hog cholera vaccine, or virulent hog cholera virus is expressly prohibited. All swine shall comply with entry requirements of the Department of Agriculture and shall be accompanied by a certificate of veterinary inspection meeting the requirements of section 54-788.

**Source:** Laws 1969, c. 446, § 5, p. 1491; Laws 2003, LB 160, § 11.

**54-1518 Swine; moving intrastate; requirements.**

All swine moving in intrastate commerce except those moving to immediate slaughter shall bear identification marks or tags as prescribed by rule and regulation promulgated by the State Veterinarian to show vaccination status and the point of origin of such swine; *Provided*, identification marks or tags shall not be required on swine produced upon a farm in this state and transported or moved to another farm in this state unless the owner is a dealer who buys, sells, or solicits swine for the purpose of resale, including those who buy or solicit from a concentration point, in which case said swine shall be tagged and identified in the manner prescribed by rule and regulation.

**Source:** Laws 1969, c. 446, § 6, p. 1491.

**54-1519 Director of Agriculture; rules and regulations.**

The Director of Agriculture shall have the authority to promulgate rules and regulations to carry out the purposes and intent of sections 54-1513 to 54-1521.

**Source:** Laws 1969, c. 446, § 7, p. 1492.

**54-1520 Containers of hog cholera serum, vaccine, virus; label; contents.**

Each container of hog cholera serum, vaccine, and virus shall have thereon a label showing the name of the manufacturer, the name of the contents, the date on which its potency is regarded as uncertain, the United States veterinary license number under which such product is manufactured and tested, and the doses and procedural recommendations of the manufacturer as being protective for swine of various weights.

**Source:** Laws 1969, c. 446, § 8, p. 1492.

**54-1521 Violations; penalty.**

Any person who shall violate the provisions of sections 54-1513 to 54-1521 shall be guilty of a Class IV felony.

**Source:** Laws 1969, c. 446, § 9, p. 1492; Laws 1977, LB 39, § 44.

(c) SALES AND SHIPMENTS

**54-1522 Double inoculation against cholera; tags; contents.**

Any person owning or possessing any hogs and desiring to ship, sell, or otherwise dispose of the same, may attach to any such hog, which has received double inoculation against hog cholera, a metal tag displaying the registered brand of such shipper, owner, or possessor, or such information as to enable any person reading the tag to readily ascertain the name and address of such shipper, owner, or possessor, which tag shall display the lettering CV. The tag shall be attached to the left ear of such hog at a point as close to the head as possible. The tag so affixed shall be the warranty of the shipper, owner, or possessor that the animal has actually received double inoculation against hog cholera.

**Source:** Laws 1929, c. 8, § 1, p. 75; C.S.1929, § 54-122; R.S.1943, § 54-157; R.S.1943, (1998), § 54-157; Laws 1999, LB 778, § 59.

**54-1523 Double inoculation against cholera; misrepresentation; penalty.**

Any person who shall attach or affix or shall cause to be attached or affixed the tag mentioned in section 54-1522 to any hog which has not heretofore been given the double inoculation for hog cholera, or any person who shall attach such tag to any such animal, not then knowing that such animal had been so inoculated, shall be guilty of a Class V misdemeanor. The affixing of any such tag to any such hog which has not been given the double inoculation for hog cholera shall be deemed a separate and distinct offense.

**Source:** Laws 1929, c. 8, § 2, p. 75; C.S.1929, § 54-123; R.S.1943, § 54-158; Laws 1977, LB 39, § 16; R.S.1943, (1998), § 54-158; Laws 1999, LB 778, § 60.

**ARTICLE 16**

**PATHOGEN-FREE SWINE**

Section

- 54-1601. SPF, defined.
- 54-1602. SPF Accredited; advertisement; subject to sections.
- 54-1603. University of Nebraska Institute of Agriculture and Natural Resources; accreditation.
- 54-1604. University of Nebraska Institute of Agriculture and Natural Resources; accreditation; withhold.
- 54-1605. Violations; penalty.

**54-1601 SPF, defined.**

As used in sections 54-1601 to 54-1605, unless the context otherwise requires, SPF shall mean specific pathogen-free swine, which must conform to the conditions and health standards prescribed by the University of Nebraska Institute of Agriculture and Natural Resources or its designated agents under such sections.

**Source:** Laws 1967, c. 338, § 1, p. 905; Laws 1991, LB 663, § 37.

**54-1602 SPF Accredited; advertisement; subject to sections.**

Every person, partnership, limited liability company, firm, association, or corporation which issues, uses, or circulates any certificate, advertisement, tag, seal, poster, letterhead, marking, circular, or written or printed representation or description of or pertaining to SPF swine intended for propagation or sale or sold or offered for sale in which the words SPF Accredited, Nebraska SPF

Accredited, or similar words or phrases are used or employed or in which are used or employed signs, symbols, maps, diagrams, pictures, words, or phrases expressly or impliedly stating or representing that such SPF swine comply with or conform to the standards or requirements recommended or approved by the University of Nebraska Institute of Agriculture and Natural Resources or by any legal entity or organization designated by such institute shall be subject to the provisions of sections 54-1601 to 54-1605.

**Source:** Laws 1967, c. 338, § 2, p. 905; Laws 1969, c. 457, § 1, p. 1552; Laws 1991, LB 663, § 38; Laws 1993, LB 121, § 343.

**54-1603 University of Nebraska Institute of Agriculture and Natural Resources; accreditation.**

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

**Source:** Laws 1967, c. 338, § 3, p. 906; Laws 1991, LB 663, § 39; Laws 1994, LB 884, § 71.

**54-1604 University of Nebraska Institute of Agriculture and Natural Resources; accreditation; withhold.**

The University of Nebraska Institute of Agriculture and Natural Resources or its designated agency may withhold Nebraska SPF accreditation from any producer of SPF swine who is engaged in or attempting to engage in any dishonest practice for the purpose of evading the provisions of sections 54-1601 to 54-1605, including standards, rules, and regulations approved by the institute to cover accreditation.

**Source:** Laws 1967, c. 338, § 4, p. 906; Laws 1991, LB 663, § 40.

**54-1605 Violations; penalty.**

It shall be unlawful for any person, partnership, limited liability company, firm, association, or corporation to issue, make, use, or circulate any accreditation without the authority and approval of the University of Nebraska Institute of Agriculture and Natural Resources or its duly authorized agency. Every person, partnership, limited liability company, firm, association, or corporation who violates any of the provisions of sections 54-1601 to 54-1605 pertaining to accreditation shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1967, c. 338, § 5, p. 906; Laws 1977, LB 39, § 45; Laws 1991, LB 663, § 41; Laws 1993, LB 121, § 344.

**ARTICLE 17**

**LIVESTOCK DEALER LICENSING ACT**

**Cross References**

License Suspension Act, see section 43-3301.

## Section

- 54-1701. Public policy.
- 54-1702. Act, how cited.
- 54-1703. Terms, defined.
- 54-1704. Livestock dealer; license; application; bond; form; renewal; fee; disposition.
- 54-1705. State Veterinarian; powers.
- 54-1706. Violations; order to appear; notice; hearing; appeal.
- 54-1707. Hearings; procedure; order; appeal.
- 54-1708. State Veterinarian; rules and regulations; adopt; inspections; fees.
- 54-1709. Licensed dealer; records; contents; access.
- 54-1710. Facility; standards; State Veterinarian; prescribe; concentration points; inspection; approval.
- 54-1711. Violations; penalty.

**54-1701 Public policy.**

Sections 54-1701 to 54-1711 shall be deemed an exercise of the police powers of the State of Nebraska for the protection of the agricultural public to facilitate the control and prevention of diseases in domestic animals by requiring compliance with the laws of this state enacted for that purpose together with such regulations as may have been or may be made pursuant thereto. It is, therefore, declared to be the public policy of this state that all dealers as defined in sections 54-1701 to 54-1711 shall be subject to sections 54-1701 to 54-1711, and that all the provisions of sections 54-1701 to 54-1711 shall be liberally construed for the accomplishment of this purpose.

**Source:** Laws 1969, c. 447, § 1, p. 1493.

**54-1702 Act, how cited.**

Sections 54-1701 to 54-1711 may be cited as the Nebraska Livestock Dealer Licensing Act.

**Source:** Laws 1969, c. 447, § 2, p. 1493.

**54-1703 Terms, defined.**

As used in sections 54-1701 to 54-1711, unless the context otherwise requires:

- (1) Department shall mean the Department of Agriculture;
- (2) Director shall mean the Director of Agriculture;
- (3) State Veterinarian shall mean the person officially appointed to this position by the director;
- (4) Livestock shall mean cattle, sheep, and swine;
- (5) Livestock dealer shall mean any person, partnership, limited liability company, association, or corporation who is engaged in the business of buying or selling livestock for the purpose of resale within this state either for his or her own account or as the employee or agent of the seller or purchaser, except an agent or employee who buys and sells exclusively for the account of a licensed dealer. Livestock dealer shall also include those who buy or sell from a concentration point. Livestock dealer shall not include a person or persons engaged in a farm or ranch operation who purchases livestock for utilization of same as an integral part of the livestock and livestock product production of his or her farm or ranch operation or purebred sales held by the breed registry associations or the purchase or sale of livestock primarily used for research, experimentation, exhibition, or entertainment purposes, including sales by the Future Farmers of America or 4-H groups; and

(6) Concentration point shall mean any place of business where livestock is assembled for resale.

**Source:** Laws 1969, c. 447, § 3, p. 1493; Laws 1972, LB 1361, § 1; Laws 1993, LB 121, § 345.

**54-1704 Livestock dealer; license; application; bond; form; renewal; fee; disposition.**

No person as defined in sections 54-1701 to 54-1711 as a livestock dealer shall:

(1) Engage in the business of buying, selling, or otherwise dealing in livestock in this state without a valid and effective license issued by the Director of Agriculture under the provisions of this section. All applications for a livestock dealer license or renewal of such license shall be made on forms prescribed for that purpose by the State Veterinarian. If the applicant is an individual, the application shall include the applicant's social security number. The department may by rule and regulation prescribe additional information to be contained in such application. The application shall be filed annually with the department on or before October 1 of each year with the applicable fee of fifty dollars. The license fees collected as provided by sections 54-1701 to 54-1711 shall be deposited in the state treasury, and by the State Treasurer placed in the Livestock Auction Market Fund. All money so collected shall be appropriated to the uses of the Department of Agriculture for the purpose of administering the provisions of sections 54-1701 to 54-1711;

(2)(a) Engage in the business of buying, selling, or otherwise dealing in livestock in this state without filing with the department, in connection with his or her application for a license, a fully executed duplicate of a valid and effective bond: (i) If he or she is registered and bonded under the provisions of the Packers and Stockyards Act of 1921 (7 U.S.C. 181 et seq.) he or she shall file a statement in the form prescribed by the department evidencing that he or she is maintaining a valid and effective bond or its equivalent under such act; or (ii) if he or she is not registered and bonded under the provisions of the Packers and Stockyards Act, he or she shall furnish in connection with his or her application for a license a fully executed duplicate of a valid and effective bond in the amount of five thousand dollars or such larger amount as may be specified by regulations promulgated by the department. (b) The bond shall contain the following conditions: (i) That the principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by such principal for his or her own account or for the accounts of others and such principal shall safely keep and properly disburse all funds, if any, which come into his or her hands for the purpose of paying for livestock purchased for the accounts of others; (ii) that any person damaged by failure of the principal to comply with the condition clause of the bond may maintain suit to recover on the bond; and (iii) that at least thirty days' notice in writing shall be given to the department by the party terminating the bond; or

(3) Continue in the business of a dealer after his or her license or bond has expired, or has been suspended or revoked.

**Source:** Laws 1969, c. 447, § 4, p. 1494; Laws 1972, LB 1361, § 2; Laws 1983, LB 617, § 10; Laws 1997, LB 752, § 136.

**54-1705 State Veterinarian; powers.**

The State Veterinarian shall have the power to:

(1) Enter premises and buildings occupied by a licensee at any reasonable time to examine books and records maintained by the licensee;

(2) Require, by general or special order, livestock dealers to file with the State Veterinarian, in such forms as he may prescribe, regular or special reports or answers, in writing to specific questions, for the purpose of furnishing information concerning livestock movement and animal disease control. Such reports may be required to be made under oath and filed within a reasonable time;

(3) Defer the granting of a license as required by sections 54-1701 to 54-1711 or suspend or revoke any such license already issued if licensee has violated the laws or regulations of this state pertaining to disease control and eradication or has knowingly committed or participated in the violation of an order or quarantine or other disciplinary order issued by the department; *Provided*, that before any license is suspended or revoked under this section, the licensee or applicant shall be furnished with a copy of the charges made against him and upon request of the licensee a hearing shall be had before the director or his designate; and

(4) Defer the granting of a license as required by sections 54-1701 to 54-1711 or suspend or revoke any such license already issued if the licensee has failed to pay the person or persons entitled thereto the purchase price of all livestock purchased for his own account or for the accounts of others; *Provided*, that before any license is suspended or revoked under this section, the licensee or applicant shall be furnished with a copy of the charges made against him and upon request of the licensee a hearing shall be had before the director or his designate.

**Source:** Laws 1969, c. 447, § 5, p. 1495; Laws 1972, LB 1361, § 3.

**54-1706 Violations; order to appear; notice; hearing; appeal.**

(1) Whenever the director or the State Veterinarian has reason to believe that any person has violated any of the provisions of the Nebraska Livestock Dealer Licensing Act or any rules or regulations adopted and promulgated under the act, an order may be entered requiring such person to appear before the director and show cause why an order should not be entered requiring such person to cease and desist from the violations charged. Such order shall set forth the alleged violations, fix the time and place of the hearing, and provide for notice thereof which shall be given not less than twenty days before the date of such hearing. After a hearing, or if the person charged with such violation fails to appear at the time of such hearing, if the director finds such person to be in violation, he or she shall enter an order requiring such person to cease and desist from the specific acts, practices, or omissions.

(2) Any person aggrieved by any order entered by the director or other action of the director may appeal the order or action, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1969, c. 447, § 6, p. 1495; Laws 1988, LB 352, § 96.

**Cross References**

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

**54-1707 Hearings; procedure; order; appeal.**

(1) Hearings shall be conducted by the director or by a hearing officer designated by him or her. Provision shall be made to insure that any such hearing officer other than the director shall not have participated in the performance of investigative or prosecuting functions in the case to which he or she is assigned. The hearing shall be conducted in an impartial manner by the hearing officer who may administer oaths, rule upon offers of proof and objections, and take such other action as may be necessary. He or she shall not be bound by formal rules of evidence as observed in courts of law but shall exclude irrelevant, immaterial, or unduly repetitious evidence. The burden of proof and of proceeding with the evidence shall be on the department, and every party shall have the right to compulsory process, to representation by counsel of his or her own choosing, and to cross-examination of and confrontation by witnesses against him or her.

(2) Whenever any hearing is conducted by any person other than the director, the person conducting the same shall render a recommended decision with appropriate proposed findings and orders disposing of all the relevant matters of fact and law involved in the proceeding. Thereafter the case may be remanded to the person or persons who conducted the hearing with such instructions as the director may deem appropriate, or the director himself or herself may perform such function and may conduct a new or supplemental hearing. The director may dispense with a recommended decision and proceed to the rendering of his or her final order thereon with appropriate findings of fact on the basis of the entire record as certified to him or her by the person conducting the hearing. Prior to each recommended and each final decision, the parties shall be afforded an opportunity to submit proposed findings, briefs, and arguments as the director may deem appropriate.

(3) Any person aggrieved by any order entered by the director or other action taken by the department may appeal the order or action, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1969, c. 447, § 7, p. 1496; Laws 1988, LB 352, § 97.

**Cross References**

Administrative Procedure Act, see section 84-920.

**54-1708 State Veterinarian; rules and regulations; adopt; inspections; fees.**

(1) The State Veterinarian shall, subject to the approval of the director, adopt rules and regulations necessary to carry out the purposes, provisions, and intent of sections 54-1701 to 54-1711.

(2) The State Veterinarian shall make the designation of the veterinarian required by the provisions of sections 54-1701 to 54-1711 by entering into an agreement with any duly licensed veterinarian for his or her professional services in performing necessary inspections. Such agreement shall provide that the State Veterinarian may terminate it at any time for what he or she deems to be just cause. Such contract shall make the veterinarian an agent for the Department of Agriculture to perform the duties assigned by sections 54-1701 to 54-1711 and the rules and regulations prescribed by the State Veterinarian, but shall not be deemed to make the veterinarian an officer or employee of the state. The orders of such veterinarian, issued in the performance of the duties assigned him or her by sections 54-1701 to 54-1711 and the rules and regulations prescribed by the State Veterinarian shall have the same force and effect as though such order had been made by the State Veterinarian.

Veterinarians, designated in accordance with the requirements of this section, shall not be liable for reasonable acts performed to carry out the duties as set forth in sections 54-1701 to 54-1711 and the rules and regulations prescribed by the State Veterinarian.

(3) Fees for such inspection and release shall be paid by the licensee.

**Source:** Laws 1969, c. 447, § 8, p. 1497; Laws 1980, LB 631, § 5.

**54-1709 Licensed dealer; records; contents; access.**

Every dealer required to be licensed under the provisions of sections 54-1701 to 54-1711 shall keep such records and accounts as shall fully and correctly disclose all purchases, sales or transfers involving livestock transactions consummated in connection with his business. The records pertaining to such business shall also disclose the true ownership of such business by stockholders or otherwise and shall contain such information as the director or State Veterinarian may prescribe including the manner in which such records shall be kept. Every licensee shall, during all reasonable times, permit authorized employees and agents of the department to have access to and to copy any or all records relating to his business.

**Source:** Laws 1969, c. 447, § 9, p. 1498.

**54-1710 Facility; standards; State Veterinarian; prescribe; concentration points; inspection; approval.**

Livestock moving in commerce handled by dealers covered by the provisions of sections 54-1701 to 54-1711 and held at a facility shall be held at a facility conforming to standards prescribed by regulation by the State Veterinarian, and in no case shall the standards be less than the standards prescribed for livestock auction markets. Such facility shall not be used unless it has been approved by the State Veterinarian.

Livestock moving into a concentration point shall not be removed from the premises until such livestock has been inspected and released by the approved veterinarian. No livestock shall be released from a concentration point until all the requirements of the State of Nebraska or the state of destination, whichever applies, shall have been met.

**Source:** Laws 1969, c. 447, § 10, p. 1498.

**54-1711 Violations; penalty.**

Any livestock dealer who violates any of the provisions of sections 54-1701 to 54-1711 or any rule or regulation promulgated thereunder, or any order of the department after such order has become final or upon termination of any review proceeding where the order has been sustained by a court of law, shall be guilty of a Class III misdemeanor. Each day of continued violation shall constitute a separate offense.

**Source:** Laws 1969, c. 447, § 11, p. 1498; Laws 1977, LB 39, § 46.

**ARTICLE 18**

**SALE OF LIVESTOCK**

Section

54-1801. Act, how cited.

54-1802. Terms, defined.

## Section

- 54-1803. Purchasing slaughter livestock; unlawful acts.  
 54-1804. Slaughter livestock; purchaser; requirements.  
 54-1805. Director of Agriculture; violations; restraining order; appointment of receiver; Attorney General, county attorney; duties.  
 54-1806. Director of Agriculture; reciprocal agreements; basis.  
 54-1807. Purchasers of slaughter livestock; records; contents.  
 54-1808. Violations; penalty.  
 54-1809. Purchase of slaughter livestock; unlawful acts.  
 54-1810. Purchase of slaughter livestock; effect of section.  
 54-1811. Purchase of slaughter livestock; violations; penalties.

**54-1801 Act, how cited.**

Sections 54-1801 to 54-1808 may be cited as the Nebraska Livestock Sellers Protective Act.

**Source:** Laws 1969, c. 448, § 1, p. 1499.

**54-1802 Terms, defined.**

For purposes of the Nebraska Livestock Sellers Protective Act, unless the context otherwise requires:

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

**Source:** Laws 1969, c. 448, § 2, p. 1499; Laws 1994, LB 884, § 72.

**54-1803 Purchasing slaughter livestock; unlawful acts.**

After December 25, 1969, it shall be unlawful for any person engaged in the business of purchasing slaughter livestock to:

- (1) Purchase slaughter livestock when insolvent; or
- (2) Neglect, before the close of the next business day following the purchase of slaughter livestock or within twenty-four hours following the determination of the purchase price, whichever may occur last, to remit to the seller or his representative the full amount of the purchase cost; *Provided*, that this section does not require payment in lieu of an express agreement to the contrary.

**Source:** Laws 1969, c. 448, § 3, p. 1500.

**54-1804 Slaughter livestock; purchaser; requirements.**

Any purchaser who buys slaughter livestock other than through a selling agent who is bonded or otherwise secured to assure payment as required by the United States Packers and Stockyards Act (7 U.S.C. 181) and the rules and regulations promulgated thereunder, shall be required to register with the director, and shall provide assurance of his financial ability to faithfully and promptly account for and pay to the seller or his designated representative, the total proceeds from the sale of slaughter livestock in accordance with the requirements which the director may establish by rule and regulation in accordance with the Administrative Procedure Act.

**Source:** Laws 1969, c. 448, § 4, p. 1500.

**Cross References**

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

**54-1805 Director of Agriculture; violations; restraining order; appointment of receiver; Attorney General, county attorney; duties.**

Whenever the director has reason to believe that the purchase of livestock for slaughter by a purchaser is causing or may reasonably be expected to result in a failure by the purchaser to fulfill obligations incurred in the purchase of livestock for slaughter or in the event of a violation of any of the provisions of sections 54-1801 to 54-1808 or the rules and regulations duly promulgated thereunder, the director may apply for a temporary or permanent injunction restraining any purchaser from purchasing slaughter livestock or violating or continuing to violate any of the provisions of sections 54-1801 to 54-1808 or any rule or regulation promulgated under sections 54-1801 to 54-1808, notwithstanding the existence of other remedies at law. For good cause shown, the district court may appoint the director or the director's designee to serve as a receiver for the purchaser for the protection of the sellers of slaughter livestock to the purchaser. It shall be the duty of each county attorney or the Attorney General to whom the director reports any violation to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

**Source:** Laws 1969, c. 448, § 5, p. 1500; Laws 1984, LB 824, § 1.

**54-1806 Director of Agriculture; reciprocal agreements; basis.**

The director shall have the power and authority to enter into reciprocal agreements with the duly authorized representatives of other jurisdictions, federal or state, for the exchange of information and audit reports on a cooperative basis which may assist the director in the proper administration of sections 54-1801 to 54-1808.

**Source:** Laws 1969, c. 448, § 6, p. 1501.

**54-1807 Purchasers of slaughter livestock; records; contents.**

All purchasers of slaughter livestock shall keep accurate records of all transactions conducted in the ordinary course of their business. Such records shall be available for examination and audit by the director or his duly authorized agent; *Provided*, that the director or his agent shall not divulge or make known in any manner, except in hearings before a court of law, any facts

or information regarding the purchaser which may be obtained by reason of such examination or audit of the records and transactions of the purchaser.

**Source:** Laws 1969, c. 448, § 7, p. 1501.

**54-1808 Violations; penalty.**

Any person violating any provision of sections 54-1801 to 54-1808 shall be guilty of a Class IV felony and shall be liable in double damages to any party injured thereby.

**Source:** Laws 1969, c. 448, § 8, p. 1501; Laws 1977, LB 39, § 47.

**54-1809 Purchase of slaughter livestock; unlawful acts.**

(1) It shall be unlawful to purchase slaughter livestock for other than cash or by negotiable instrument drawn upon a banking institution located within the same federal reserve district in which the purchaser's slaughter establishment is situated. This section shall not require payment in cash or by negotiable instrument in lieu of an express agreement in writing to the contrary.

(2) It shall be unlawful for a purchaser to engage in business in such a way that the purchaser causes accounts receivable to be paid directly to an out-of-state depository not under the control of the purchaser rather than directly to the purchaser if such business practice circumvents the rights of the seller.

**Source:** Laws 1975, LB 436, § 1; Laws 1984, LB 824, § 2.

**54-1810 Purchase of slaughter livestock; effect of section.**

Nothing in section 54-1809 shall be considered a limitation placed upon any purchaser of slaughter livestock to conduct business or other financial affairs or place accounts with any other financial institutions outside the state.

**Source:** Laws 1975, LB 436, § 2.

**54-1811 Purchase of slaughter livestock; violations; penalties.**

Any person, firm, corporation, or association, or any agent thereof, who shall violate the provisions of sections 54-1809 to 54-1811, shall be guilty of a Class II misdemeanor.

**Source:** Laws 1975, LB 436, § 3; Laws 1977, LB 39, § 48.

**ARTICLE 19**

**NEBRASKA MEAT AND POULTRY INSPECTION LAW**

**Cross References**

License Suspension Act, see section 43-3301.

**Section**

- 54-1901. Act, how cited.
- 54-1902. Terms, defined.
- 54-1903. Intent of sections.
- 54-1904. License; application; inspection; renewal; fee; suspension; when.
- 54-1905. Hearings; how conducted; order; appeal.
- 54-1906. Director of Agriculture; rules and regulations; adopt; requirements.
- 54-1907. Records; contents; access.
- 54-1908. Director of Agriculture; powers.
- 54-1909. Unlawful acts.
- 54-1910. Inspection of products; when completed.

§ 54-1901

LIVESTOCK

Section

- 54-1911. Exempted product; adulterated or misbranded; seized by inspector; when.  
54-1912. Product found adulterated or misbranded; seizure; destruction; procedure.  
54-1913. Officer, inspector, employee of state; bribes, acceptances; interference; penalty.  
54-1914. Director of Agriculture; violations; investigations; powers; subpoenas.  
54-1915. Director of Agriculture; cooperate with United States Department of Agriculture.

**54-1901 Act, how cited.**

Sections 54-1901 to 54-1915 may be cited as the Nebraska Meat and Poultry Inspection Law.

**Source:** Laws 1969, c. 449, § 1, p. 1502.

**54-1902 Terms, defined.**

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

- (1) Director shall mean the Director of Agriculture;
- (2) Department shall mean the Department of Agriculture;
- (3) Person shall include individuals, partnerships, limited liability companies, corporations, and associations and any officer, agent, partner, limited liability company member, or employee thereof;
- (4) Hydrolyzed whole poultry shall mean the animal feed product resulting from the hydrolyzation of whole carcasses of culled or dead, undecomposed poultry as such product is defined in the Official Publication of the Association of American Feed Control Officials;
- (5) Intrastate commerce shall mean commerce within this state;
- (6) Livestock shall mean any cattle, sheep, swine, goats, horses, mules, other equines, and other mammalian species as the director may determine, either living or dead;
- (7) Livestock product shall mean any carcass, part thereof, meat, or meat food product of any livestock;
- (8) Meat food product shall mean any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, except products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry and which are exempt from definition as a meat food product by the director under such conditions as he or she may prescribe to assure that the meat or other portions of such carcass contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines or other mammalian species as designated by the director shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, and goats;
- (9) Mobile or remote processing unit shall mean any equipment for processing whole poultry by grinding, chopping, or other comparable method that is, or is intended to be, transported to or permanently located at locations away from a rendering establishment for purposes of collecting poultry carcasses processed for transport to a rendering establishment in liquid suspension;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) Immediate container shall mean any consumer package or any other container in which livestock products or poultry products which are not consumer-packaged are packed;

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

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

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

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

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

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

(27) Establishment shall mean any building or structure in which slaughtering, butchering, meat canning, meat packing, meat manufacturing, poultry canning, poultry packing, poultry manufacturing, pet feed manufacturing, or rendering is carried on and the ground upon which such building or structure is erected and so much ground adjacent thereto as is used in carrying on the business of such establishment, including drains, gutters, and cesspools used in connection with the establishment and any place, including where a mobile or remote processing unit is located, or vehicle where livestock, poultry, livestock products, poultry products, meat food products, or poultry food products are prepared, manufactured, stored, sold, offered for sale, or exposed for sale. Establishment does not include operations under federal inspection;

(28) Rendering shall mean the business of processing livestock or poultry or carcasses or parts thereof not intended or capable for use as human food, including the processing of poultry carcasses into hydrolyzed whole poultry feed products;

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

(30) Official establishment shall mean any establishment as determined by the director at which antemortem and postmortem inspection of livestock or poultry or the inspection of the manufacturing of livestock products or poultry

products for human consumption is maintained under the authority of the Nebraska Meat and Poultry Inspection Law;

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

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

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

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

**Source:** Laws 1969, c. 449, § 2, p. 1502; Laws 1981, LB 487, § 42; Laws 1991, LB 358, § 5; Laws 1993, LB 121, § 346; Laws 1994, LB 884, § 73; Laws 1997, LB 199, § 2; Laws 2003, LB 160, § 12.

**Cross References**

Nebraska Pure Food Act, see section 81-2,239.

**54-1903 Intent of sections.**

The intent of sections 54-1901 to 54-1915 is to assure that only wholesome meat and poultry products enter regular commercial channels of commerce and to provide that same are identified and truthfully labeled. The director is designated as the administrator of sections 54-1901 to 54-1915 and the department is designated as the administrative state agency.

**Source:** Laws 1969, c. 449, § 3, p. 1507.

**54-1904 License; application; inspection; renewal; fee; suspension; when.**

It shall be unlawful for any person to operate or maintain any establishment unless first licensed by the department. A license may be obtained by application to the director upon forms prescribed by him or her for that purpose. If the applicant is an individual, the application shall include the applicant's social security number. The license shall authorize and restrict the licensee to the operation or operations requested in his or her application and approved by the director.

Application for a livestock establishment or a poultry establishment license shall be accompanied by a fee of fifty dollars for each establishment. A license application for a rendering establishment or for a pet feed establishment shall be accompanied by a fee of three hundred dollars for each establishment. Such fee shall be deposited in the state treasury and deposited in the Livestock Auction Market Fund.

No license shall be issued until an inspection of the facilities described in the license application is completed showing the proposed facilities to be in

conformity with the Nebraska Meat and Poultry Inspection Law and the rules and regulations adopted and promulgated thereunder by the director.

Licenses shall be renewable annually on or before their expiration. No license shall be transferable with respect to licensee or location. The renewal fee shall be the same as the application fee for each license.

Each license shall by order be summarily suspended whenever an inspection reveals that conditions in any establishment constitute a menace to the public health and shall remain suspended until such conditions are corrected, subject to review by the department and courts as is provided for in the Nebraska Meat and Poultry Inspection Law.

In addition, the director may, upon ten days' notice in writing, suspend or revoke any license issued hereunder or refuse to renew the same for violation of any of the provisions of the Nebraska Meat and Poultry Inspection Law or any rule or regulation duly adopted and promulgated by the director. The notice shall specify in writing the charges relied on, and the hearings, disposition, and court review shall be as prescribed by the Nebraska Meat and Poultry Inspection Law.

**Source:** Laws 1969, c. 449, § 4, p. 1507; Laws 1982, LB 928, § 43; Laws 1983, LB 617, § 11; Laws 1988, LB 352, § 98; Laws 1997, LB 752, § 137.

#### **54-1905 Hearings; how conducted; order; appeal.**

Hearings shall be conducted by the director who may administer oaths, rule upon offers of proof and objections, and take such other action as may be necessary.

The director shall not be bound by formal rules of evidence as observed in courts of law but shall exclude irrelevant, immaterial, or unduly repetitious evidence. The burden of proof and of proceeding with the evidence shall be on the department, and every party shall have the right to compulsory process, to representation by counsel of his or her own choosing, and to cross-examination of and confrontation by witnesses against him or her. The final determination of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1969, c. 449, § 5, p. 1508; Laws 1988, LB 352, § 99.

#### **Cross References**

Administrative Procedure Act, see section 84-920.

#### **54-1906 Director of Agriculture; rules and regulations; adopt; requirements.**

The director shall promulgate and enforce such rules and regulations as are necessary to the proper administration and enforcement of the provisions of the Nebraska Meat and Poultry Inspection Law. Such rules and regulations shall require:

(1) Antemortem and postmortem inspection, quarantine, segregation, sanitation standards and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock products and poultry products at all establishments licensed in this state, except those exempted by subdivision (9) of section 54-1908, rendering establishments and pet feed manufacturing establishments;

(2) The identification of livestock and poultry for inspection purposes and the marking and labeling of livestock products or poultry products or their containers, or both, to clearly identify the products as inspected and passed if inspected and passed, or not for sale if not inspected, or condemned if they are found upon inspection to be adulterated. Condemned products shall be decharacterized or denatured or destroyed and shall not be sold or offered for sale as human food;

(3) Prohibition of entry into official establishments of livestock products and poultry products not prepared under federal inspection, or inspection pursuant to the Nebraska Meat and Poultry Inspection Law, and further limit the entry of such articles and other materials into such establishments under such conditions as he or she deems necessary to effectuate the purposes of the Nebraska Meat and Poultry Inspection Law;

(4) That when a livestock product, meat food product, poultry product, or poultry food product leaves an official establishment it shall conform to the requirements of the Nebraska Pure Food Act;

(5) Prior approval of all labeling and containers to be used for such products when sold or transported in intrastate commerce to assure that they comply with the requirements of the Nebraska Pure Food Act;

(6) That necessary facilities, equipment, identification practices, sanitary standards, inspections of materials and ingredients be used in the preparation of products at a rendering establishment or a pet feed establishment for the protection of the health and welfare of the citizens of this state and their pets, livestock, and poultry. Inspections as described in this subdivision shall be at the expense of the establishment operator receiving the service;

(7) That the conveyance or conveyances used by pet feed manufacturers, renderers, and motor carriers are so constructed as to be leak proof, insect tight, readily cleaned, and disinfected and kept in a sanitary condition;

(8) That any mobile or remote processing unit used by renderers be kept in sanitary condition, transported, and utilized in a manner as determined prudent by the department to minimize the risk of the spread of disease;

(9) That the products of hydrolyzed whole poultry processing be processed in such a manner as to be suitable for animal food, including heating by boiling at two hundred twelve degrees Fahrenheit at sea level for thirty minutes, dry extrusion at a minimum temperature of two hundred eighty-four degrees Fahrenheit for thirty seconds with a pressure differential of approximately forty atmospheres as the product exits the extruder, or their equivalents as approved by the department unless it is shown to the satisfaction of the department that heating is not required to render the product suitable for animal food; and

(10) Inspection of all operations traditionally and usually conducted at retail stores where meat, meat food products, poultry, and poultry food products are sold, consumed, held for sale or offered for sale, and in connection therewith, to cause such operations to be inspected to protect the consuming public from meat, poultry, meat food products, and poultry food products which may be adulterated or misbranded by seizure or embargo of such products pursuant to the terms of section 54-1912.

**Source:** Laws 1969, c. 449, § 6, p. 1508; Laws 1981, LB 487, § 43; Laws 2003, LB 160, § 13.

Nebraska Pure Food Act, see section 81-2,239.

**54-1907 Records; contents; access.**

The following classes of persons shall keep such records for such periods as are specified in regulations adopted by the director to fully and correctly disclose all transactions involved in their business, and shall afford to the director and his representatives access to such places of business, and opportunity, at all reasonable times, to examine the facilities, inventory and records thereof, to copy the records, and to secure samples or specimens of inventory after paying or offering to pay for such sample or specimen:

(1) Any persons who engage in or for intrastate commerce in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling, transporting, or storing any livestock products or poultry products for human food or animal feed; or

(2) Any persons who engage in or for intrastate commerce in the business of rendering, pet feed manufacturing, buying, selling, storing, or transporting any wholesome or dead, dying, disabled or diseased livestock or poultry, or parts of the carcasses of any such livestock or poultry which died either by slaughter or otherwise.

**Source:** Laws 1969, c. 449, § 7, p. 1510.

**54-1908 Director of Agriculture; powers.**

The director shall have the authority to:

(1) Remove inspection from any establishment that fails to abide by sections 54-1901 to 54-1915 or any rule or regulation promulgated thereunder;

(2) Refuse to provide inspection service under sections 54-1901 to 54-1915 with respect to any establishment for causes specified in section 401 of the Federal Meat Inspection Act or section 18 of the Federal Poultry Products Inspection Act;

(3) Order labeling and containers to be withheld from use if he determines that the labeling is false or misleading or the containers are of a misleading size or form;

(4) Require that equines be slaughtered and prepared in establishments separate from establishments where other livestock are slaughtered or their products are prepared;

(5) Appoint as his agent and prescribe the duties of such inspectors and personnel, including employees of the United States Department of Agriculture, as he deems necessary for the efficient execution of the provisions of sections 54-1901 to 54-1915; *Provided*, that inspection requested at times other than regularly scheduled inspection times shall be at the establishment operator's expense;

(6) Cooperate with the Secretary of Agriculture of the United States or with any governmental subdivision of this state in the administration of sections 54-1901 to 54-1915, and to accept federal assistance or assistance from any governmental subdivision of this state for that purpose, and to spend funds of this state appropriated for administration of sections 54-1901 to 54-1915; *Provided*, that if the director enters into an agreement with the Secretary of Agriculture of the United States involving the acceptance of federal assistance

and the utilization of both state and federal personnel, the salaries of state personnel involved in carrying out the enforcement of sections 54-1901 to 54-1915 shall be comparable to those of their federal counterparts;

(7) Recommend to the Secretary of Agriculture of the United States for appointment to the advisory committees provided for in the federal acts, such officials or employees of the department as the director shall designate;

(8) Serve as the representative of the Governor for consultation with the secretary under paragraph (c) of section 301 of the Federal Meat Inspection Act and paragraph (c) of section 5 of the Federal Poultry Products Inspection Act;

(9) Exempt the operations or any part of the operations at any establishment from inspection or other requirements of sections 54-1901 to 54-1915 to the extent he determines such operations are exempt under the Federal Meat Inspection Act or the Federal Poultry Products Inspection Act when such exemption would not jeopardize the public health or welfare; or exempt from the inspection requirements of sections 54-1901 to 54-1915 the slaughter of livestock and poultry, preparation of livestock products and poultry products at any establishment in Nebraska when he determines that it is impractical to provide such inspection and that such exemption will otherwise facilitate enforcement of sections 54-1901 to 54-1915 and not endanger the health and welfare of the people of this state. The director may refuse, withdraw, or modify any exemption under this subdivision whenever he determines such action is necessary to effectuate the purposes of sections 54-1901 to 54-1915;

(10) Promulgate regulations prescribing the sizes and style of type to be used for labeling information required under sections 54-1901 to 54-1915, and definitions and standards of identity or composition or standards of fill of container, consistent with federal standards, when he deems such action appropriate for the protection of the health and welfare of the public;

(11) Promulgate regulations prescribing conditions of storage and handling of livestock products and poultry products by persons engaged in the business of buying, selling, freezing, storing, or transporting such articles in or for intra-state commerce as brokers, wholesalers, common carriers, or otherwise to assure that such articles will not be adulterated or misbranded when delivered to the consumer;

(12) Promulgate rules and regulations as he deems necessary prescribing sanitation, antemortem inspection, postmortem inspection, labeling requirements, and facility requirements for the slaughtering and preparation of horses, mules and other equines and other species in all establishments; and

(13) Promulgate rules and regulations as he deems necessary for the efficient execution of the provisions of sections 54-1901 to 54-1915, including rules of practice providing opportunity for hearing in connection with issuance of orders under section 54-1905 and prescribing procedure for proceedings in such cases.

**Source:** Laws 1969, c. 449, § 8, p. 1510.

#### **54-1909 Unlawful acts.**

It shall be unlawful for any person to:

(1) Slaughter any livestock or poultry or prepare any livestock products or poultry products which are capable of use as human food, at any establishment, without first obtaining a license from the director and then only when slaughter

or preparation is done in compliance with the requirements of sections 54-1901 to 54-1915 and regulations promulgated by the director;

(2) Engage in rendering or pet feed manufacturing without first obtaining a license from the director and then only when such activity is in compliance with the requirements of sections 54-1901 to 54-1915 and regulations promulgated by the director;

(3) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any such articles which (a) are capable of use as human food and (b) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or any articles required to be inspected under sections 54-1901 to 54-1915 unless they have been so inspected and passed;

(4) Slaughter livestock or poultry for regular commercial channels of commerce unless subjected to antemortem and postmortem inspection, or to sell, offer for sale, expose for sale or have in possession for the purpose of sale, transport or receive for transportation any livestock product or poultry product capable of use as human food which was slaughtered without antemortem and postmortem inspection and which fails to bear the marks of identification as required by sections 54-1901 to 54-1915 and rules and regulations thereunder. The possession of any quantity of livestock product or poultry product in an amount greater than meets the reasonable consumption of the owner thereof, including all members of his immediate household and nonpaying guests, shall be prima facie evidence of intent to sell same contrary to the provisions of sections 54-1901 to 54-1915;

(5) With respect to any such articles which are capable of use as human food, do any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded;

(6) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce or from any establishment, any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by the director, except as may be authorized by such regulations;

(7) Fail to mark or identify any livestock or poultry, part or product of such carcass as required by sections 54-1901 to 54-1915 or regulations promulgated hereunder;

(8) Violate any provision of the regulations or orders of the director entered pursuant to section 54-1904 or 54-1905 or regulations promulgated pursuant to section 54-1906 or 54-1908;

(9) Cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation thereof, except as authorized by the director;

(10) Forge any official device, mark, or certificate or without authorization from the director use any official device, mark or certificate, or simulation thereof, or alter, detach, remove, deface, or destroy any official device, mark, or certificate required pursuant to the terms of sections 54-1901 to 54-1915 and regulations promulgated by the director;

(11) Knowingly possess, without promptly notifying the director or his representative, any official device or any counterfeit, simulated, forged, or

improperly altered official certificate or any device or label or any carcass of any animal, including poultry, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark, or knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations promulgated by the director; or knowingly represent that any article has been inspected and passed, or exempted, under sections 54-1901 to 54-1915, when in fact it has not been so inspected and passed, or exempted;

(12) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the director to show the kinds of animals from which they were derived;

(13) Buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any livestock products or poultry products, or dead, dying, disabled, or diseased livestock or poultry which are not intended for use as human food unless they are denatured or otherwise identified or decharacterized as required by the regulations of the director so as to prevent them from being used for human food purposes;

(14) Give, pay, or offer, directly or indirectly, to any officer or employee of this state authorized to perform any of the duties prescribed by sections 54-1901 to 54-1915 or by the regulations of the director, any money or other thing of value, with intent to influence such officer or employee in the discharge of any such duty;

(15) Neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the director; or

(16) Willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under sections 54-1901 to 54-1915 or regulations thereunder, or willfully make, or cause to be made, any false entry in any account, record or memorandum kept by any person subject to sections 54-1901 to 54-1915 or willfully neglect or fail to make or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person or that shall willfully remove out of the jurisdiction of this state, or willfully mutilate, alter, or by any other means falsify any documentary evidence of any person subject to sections 54-1901 to 54-1915 or to willfully refuse to submit to the director or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any person subject to sections 54-1901 to 54-1915 in his possession or within his control; or for any inspector to make public any information obtained by the director, under the authority granted by sections 54-1901 to 54-1915, without first securing his authority to do so, unless directed by a court to divulge such information.

**Source:** Laws 1969, c. 449, § 9, p. 1513.

**54-1910 Inspection of products; when completed.**

No inspection of products placed in any container at any official establishment shall be deemed to be complete until the products are sealed or enclosed therein under the supervision of an inspector.

**Source:** Laws 1969, c. 499, § 10, p. 1516.

**54-1911 Exempted product; adulterated or misbranded; seized by inspector; when.**

Whenever any livestock product or poultry product or any product exempted from the definition of a livestock product and from the definition of a poultry product, or any dead, dying, disabled, or diseased livestock or poultry, is found by any authorized representative of the director upon any premises where it is held for purposes of distribution, or during or after distribution, in intrastate commerce or is otherwise subject to sections 54-1901 to 54-1915, and the authorized representative or inspector has reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected and fails to bear an official mark or is otherwise in violation of the provisions of sections 54-1901 to 54-1915 or of the federal acts or the Nebraska Pure Food Act, or that such article or animal has been or is intended to be distributed in violation of any such provisions, it may be seized and embargoed by such representative or inspector for a period not to exceed twenty days, pending action under section 54-1912 or notification of any federal authorities having jurisdiction over such article or animal, and shall not be moved by any person from the place at which it is located when so seized or embargoed until released by an inspector or representative of the department or by an order of a court having jurisdiction. All official marks may be required by such representative or inspector to be removed from such article or animal before it is released unless it appears to the satisfaction of the director that the article or animal is eligible to retain such mark or marks.

**Source:** Laws 1969, c. 449, § 11, p. 1516; Laws 1981, LB 487, § 44.

**Cross References**

Nebraska Pure Food Act, see section 81-2,239.

**54-1912 Product found adulterated or misbranded; seizure; destruction; procedure.**

Any livestock product or poultry product or any dead, dying, disabled, or diseased livestock or poultry that is being transported in intrastate commerce or is otherwise subject to sections 54-1901 to 54-1915, or is held for sale in this state after such transportation, and that (1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of sections 54-1901 to 54-1915 or any rules or regulations duly promulgated thereunder, or (2) is capable of use as a human food and found to be adulterated or misbranded, or (3) in any other way is in violation of sections 54-1901 to 54-1915, shall be seized and embargoed.

Upon receiving written permission from the owner or claimant, all articles, animals, or poultry under seizure or embargo shall be destroyed at the expense of the owner or claimant. When permission for destruction cannot be obtained, the director shall petition a judge of the district court in whose jurisdiction the article, animal, or poultry is seized or embargoed for a condemnation of such article, animal, or poultry. If the court finds that the seized or embargoed article, animal, or poultry is adulterated or misbranded, it shall, after entry of

the decree, be destroyed at the expense of the claimant or owner thereof, under the supervision of the director or an inspector, and all court costs and fees and storage and other proper expenses shall be taxed against the owner or claimant or his or her agent; *Provided*, that when the adulteration or misbranding can be corrected by proper labeling or further processing of the article of livestock or poultry, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned that such article of livestock or poultry shall be so labeled or further processed, may by order direct that such article of livestock or poultry be delivered to claimant thereof for labeling or further processing under the supervision of an inspector. The expense of such supervision may be assessed against the claimant. The article of livestock or poultry shall be returned to the claimant on the representation to the court by the director that it is no longer in violation of sections 54-1901 to 54-1915, the Nebraska Pure Food Act, or of any federal act or acts, and that the expenses of such supervision have been paid. In the case of mislabeled or misbranded articles of livestock or poultry which are abandoned by the owner and for which no claimant appears, the same may be sold by the director or his or her agent and the proceeds of the sale shall be paid to the State Treasurer to be placed in the General Fund. No article, poultry, or livestock shall be sold contrary to the provisions of sections 54-1901 to 54-1915, the Nebraska Pure Food Act, the Wholesome Meat Act, or the Wholesome Poultry Products Act.

The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of sections 54-1901 to 54-1915, or other laws. The district courts of this state are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, sections 54-1901 to 54-1915 and shall have jurisdiction in all other kinds of cases arising under sections 54-1901 to 54-1915 except as otherwise provided for in sections 54-1901 to 54-1915.

**Source:** Laws 1969, c. 449, § 12, p. 1517; Laws 1981, LB 487, § 45.

**Cross References**

Nebraska Pure Food Act, see section 81-2,239.

**54-1913 Officer, inspector, employee of state; bribes, acceptances; interference; penalty.**

(1) Any officer, inspector, or employee of this state authorized to perform any of the duties prescribed by sections 54-1901 to 54-1915 who shall accept any money, gift, or other thing of value from any person given with intent to influence his official action, or who shall receive or accept from any person engaged in intrastate commerce subject to sections 54-1901 to 54-1915 any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a Class III misdemeanor and shall be summarily discharged from office.

(2) Any person who forcibly assaults, resists, opposes, impedes, intimidates, bribes or attempts to bribe, or interferes with any inspector or employee while engaged in or on account of the performance of his official duties under sections 54-1901 to 54-1915, shall be deemed guilty of a Class II misdemeanor.

(3) Any person who violates any provisions of sections 54-1901 to 54-1915 or regulations duly promulgated thereunder, for which no other criminal penalty is provided by sections 54-1901 to 54-1915, shall be deemed guilty of a Class II

misdeemeanor, but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated, such person shall be guilty of a Class IV felony.

**Source:** Laws 1969, c. 449, § 13, p. 1518; Laws 1977, LB 39, § 49.

**54-1914 Director of Agriculture; violations; investigations; powers; subpoenas.**

The director shall have the following additional powers:

(1) Whenever he or she has reason to believe that any licensee may be in possession of information relevant to an investigation by him or her of suspected violations of the provisions of the Nebraska Meat and Poultry Inspection Law or regulations promulgated thereunder, the director may require such person to file with him or her in such form as he or she may prescribe special reports or answers in writing to specific questions, furnishing such information. Such reports and answers shall be made under oath and shall be filed with the director within such reasonable period as the director may prescribe, unless additional time is granted in any case upon prompt application for same.

(2) To have access to all establishments, including any premises where a mobile or remote processing unit is located or utilized, for the purposes of examination or inspection or both at all times and the right to copy any documentary evidence of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person or the taking of a deposition relating to any matter under his or her investigation. The director may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence in accordance with the provisions of section 54-1905. In case of disobedience to a subpoena, the director may invoke the aid of the district court of Lancaster County in requiring 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. Witnesses summoned or required to give depositions shall be paid the same fees that are paid witnesses in the district courts of this state and mileage at the same rate provided in section 81-1176 for state employees.

No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the director or in obedience to the subpoena of the director, whether such subpoena be signed or issued by the director or his or her delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the Nebraska Meat and Poultry Inspection Law, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture; but no individual shall be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she is compelled, after having claimed his or her privilege against self-incrimination, to testify or produce evidence, documentary or otherwise,

except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

**Source:** Laws 1969, c. 449, § 14, p. 1519; Laws 1981, LB 204, § 96; Laws 2003, LB 160, § 14.

**54-1915 Director of Agriculture; cooperate with United States Department of Agriculture.**

The director is hereby authorized to cooperate with the United States Department of Agriculture for the exchange and cross certification of employees or inspectors to implement sections 54-1901 to 54-1915.

**Source:** Laws 1969, c. 449, § 15, p. 1520.

**ARTICLE 20**

**NEBRASKA LIVESTOCK MARKET ACT**

Section

54-2001. Repealed. Laws 2001, LB 197, § 26.  
 54-2002. Repealed. Laws 2001, LB 197, § 26.  
 54-2003. Repealed. Laws 2001, LB 197, § 26.  
 54-2004. Repealed. Laws 2001, LB 197, § 26.  
 54-2005. Repealed. Laws 2001, LB 197, § 26.  
 54-2006. Repealed. Laws 2001, LB 197, § 26.  
 54-2007. Repealed. Laws 2001, LB 197, § 26.  
 54-2008. Repealed. Laws 2001, LB 197, § 26.  
 54-2009. Repealed. Laws 2001, LB 197, § 26.  
 54-2010. Repealed. Laws 2001, LB 197, § 26.  
 54-2011. Repealed. Laws 2001, LB 197, § 26.  
 54-2012. Repealed. Laws 2001, LB 197, § 26.  
 54-2013. Repealed. Laws 2001, LB 197, § 26.  
 54-2014. Repealed. Laws 2001, LB 197, § 26.  
 54-2015. Repealed. Laws 2001, LB 197, § 26.  
 54-2016. Repealed. Laws 2001, LB 197, § 26.  
 54-2017. Repealed. Laws 2001, LB 197, § 26.  
 54-2018. Repealed. Laws 2001, LB 197, § 26.  
 54-2019. Repealed. Laws 2001, LB 197, § 26.

**54-2001 Repealed. Laws 2001, LB 197, § 26.**

**54-2002 Repealed. Laws 2001, LB 197, § 26.**

**54-2003 Repealed. Laws 2001, LB 197, § 26.**

**54-2004 Repealed. Laws 2001, LB 197, § 26.**

**54-2005 Repealed. Laws 2001, LB 197, § 26.**

**54-2006 Repealed. Laws 2001, LB 197, § 26.**

**54-2007 Repealed. Laws 2001, LB 197, § 26.**

**54-2008 Repealed. Laws 2001, LB 197, § 26.**

**54-2009 Repealed. Laws 2001, LB 197, § 26.**

**54-2010 Repealed. Laws 2001, LB 197, § 26.**

**54-2011 Repealed. Laws 2001, LB 197, § 26.**

**54-2012 Repealed. Laws 2001, LB 197, § 26.**

**54-2013 Repealed. Laws 2001, LB 197, § 26.**

**54-2014 Repealed. Laws 2001, LB 197, § 26.**

**54-2015 Repealed. Laws 2001, LB 197, § 26.**

**54-2016 Repealed. Laws 2001, LB 197, § 26.**

**54-2017 Repealed. Laws 2001, LB 197, § 26.**

**54-2018 Repealed. Laws 2001, LB 197, § 26.**

**54-2019 Repealed. Laws 2001, LB 197, § 26.**

**ARTICLE 21**

**BEEF INDUSTRY DEVELOPMENT**

Section

- 54-2101. Repealed. Laws 1991, LB 583, § 12.
- 54-2102. Repealed. Laws 1991, LB 583, § 12.
- 54-2103. Repealed. Laws 1991, LB 583, § 12.
- 54-2104. Repealed. Laws 1991, LB 583, § 12.
- 54-2105. Repealed. Laws 1991, LB 583, § 12.
- 54-2106. Repealed. Laws 1991, LB 583, § 12.
- 54-2107. Repealed. Laws 1991, LB 583, § 12.
- 54-2108. Repealed. Laws 1991, LB 583, § 12.
- 54-2109. Repealed. Laws 1991, LB 583, § 12.
- 54-2110. Repealed. Laws 1991, LB 583, § 12.
- 54-2111. Repealed. Laws 1991, LB 583, § 12.
- 54-2112. Repealed. Laws 1991, LB 583, § 12.
- 54-2112.01. Repealed. Laws 1991, LB 583, § 12.
- 54-2113. Repealed. Laws 1991, LB 583, § 12.
- 54-2114. Repealed. Laws 1991, LB 583, § 12.
- 54-2115. Repealed. Laws 1991, LB 583, § 12.
- 54-2116. Repealed. Laws 1991, LB 583, § 12.
- 54-2117. Repealed. Laws 1991, LB 583, § 12.
- 54-2118. Repealed. Laws 1991, LB 583, § 12.
- 54-2119. Repealed. Laws 1991, LB 583, § 12.
- 54-2120. Repealed. Laws 1995, LB 11, § 1.
- 54-2121. Repealed. Laws 1995, LB 11, § 1.
- 54-2122. Repealed. Laws 1995, LB 11, § 1.
- 54-2123. Repealed. Laws 1995, LB 11, § 1.
- 54-2124. Repealed. Laws 1995, LB 11, § 1.
- 54-2125. Repealed. Laws 1995, LB 11, § 1.
- 54-2126. Repealed. Laws 1995, LB 11, § 1.

**54-2101 Repealed. Laws 1991, LB 583, § 12.**

**54-2102 Repealed. Laws 1991, LB 583, § 12.**

**54-2103 Repealed. Laws 1991, LB 583, § 12.**

**54-2104 Repealed. Laws 1991, LB 583, § 12.**

**54-2105 Repealed. Laws 1991, LB 583, § 12.**

**54-2106 Repealed. Laws 1991, LB 583, § 12.**

- 54-2107 Repealed. Laws 1991, LB 583, § 12.
- 54-2108 Repealed. Laws 1991, LB 583, § 12.
- 54-2109 Repealed. Laws 1991, LB 583, § 12.
- 54-2110 Repealed. Laws 1991, LB 583, § 12.
- 54-2111 Repealed. Laws 1991, LB 583, § 12.
- 54-2112 Repealed. Laws 1991, LB 583, § 12.
- 54-2112.01 Repealed. Laws 1991, LB 583, § 12.
- 54-2113 Repealed. Laws 1991, LB 583, § 12.
- 54-2114 Repealed. Laws 1991, LB 583, § 12.
- 54-2115 Repealed. Laws 1991, LB 583, § 12.
- 54-2116 Repealed. Laws 1991, LB 583, § 12.
- 54-2117 Repealed. Laws 1991, LB 583, § 12.
- 54-2118 Repealed. Laws 1991, LB 583, § 12.
- 54-2119 Repealed. Laws 1991, LB 583, § 12.
- 54-2120 Repealed. Laws 1995, LB 11, § 1.
- 54-2121 Repealed. Laws 1995, LB 11, § 1.
- 54-2122 Repealed. Laws 1995, LB 11, § 1.
- 54-2123 Repealed. Laws 1995, LB 11, § 1.
- 54-2124 Repealed. Laws 1995, LB 11, § 1.
- 54-2125 Repealed. Laws 1995, LB 11, § 1.
- 54-2126 Repealed. Laws 1995, LB 11, § 1.

**ARTICLE 22**  
**PSEUDORABIES**

Section	
54-2201.	Transferred to section 54-2235.
54-2202.	Transferred to section 54-2237.
54-2203.	Transferred to section 54-2259.
54-2204.	Repealed. Laws 1991, LB 359, § 67.
54-2205.	Transferred to section 54-2252.
54-2206.	Transferred to section 54-2247.
54-2207.	Repealed. Laws 1990, LB 1004, § 48.
54-2208.	Transferred to section 54-2254.
54-2208.01.	Transferred to section 54-2242.
54-2208.02.	Transferred to section 54-2244.
54-2208.03.	Transferred to section 54-2245.
54-2208.04.	Repealed. Laws 1991, LB 359, § 67.
54-2208.05.	Repealed. Laws 1991, LB 359, § 67.
54-2208.06.	Transferred to section 54-2264.
54-2209.	Transferred to section 54-2246.

## LIVESTOCK

Section	
54-2210.	Transferred to section 54-2256.
54-2211.	Repealed. Laws 1991, LB 359, § 67.
54-2212.	Transferred to section 54-2262.
54-2213.	Transferred to section 54-2253.
54-2214.	Transferred to section 54-2255.
54-2215.	Transferred to section 54-2265.
54-2216.	Transferred to section 54-2248.
54-2217.	Transferred to section 54-2251.
54-2218.	Transferred to section 54-2250.
54-2218.01.	Transferred to section 54-2239.
54-2218.02.	Repealed. Laws 1991, LB 359, § 67.
54-2219.	Transferred to section 54-2243.
54-2220.	Transferred to section 54-2249.
54-2220.01.	Repealed. Laws 1991, LB 359, § 67.
54-2220.02.	Transferred to section 54-2257.
54-2220.03.	Transferred to section 54-2258.
54-2220.04.	Repealed. Laws 1991, LB 359, § 67.
54-2221.	Transferred to section 54-2270.
54-2221.01.	Repealed. Laws 1990, LB 1004, § 48.
54-2221.02.	Repealed. Laws 1991, LB 359, § 67.
54-2221.03.	Repealed. Laws 1991, LB 359, § 67.
54-2221.04.	Transferred to section 54-2277.
54-2221.05.	Transferred to section 54-2278.
54-2221.06.	Repealed. Laws 1991, LB 359, § 67.
54-2221.07.	Transferred to section 54-2280.
54-2221.08.	Repealed. Laws 1991, LB 359, § 67.
54-2221.09.	Transferred to section 54-2281.
54-2221.10.	Transferred to section 54-2282.
54-2221.11.	Transferred to section 54-2283.
54-2221.12.	Transferred to section 54-2284.
54-2221.13.	Transferred to section 54-2285.
54-2221.14.	Transferred to section 54-2286.
54-2222.	Transferred to section 54-2287.
54-2223.	Transferred to section 54-2288.
54-2223.01.	Transferred to section 54-2236.
54-2223.02.	Repealed. Laws 1991, LB 359, § 67.
54-2223.03.	Transferred to section 54-2271.
54-2224.	Transferred to section 54-2289.
54-2225.	Transferred to section 54-2290.
54-2226.	Transferred to section 54-2291.
54-2227.	Transferred to section 54-2292.
54-2228.	Transferred to section 54-2293.
54-2229.	Transferred to section 54-2294.
54-2230.	Repealed. Laws 1991, LB 359, § 67.
54-2231.	Repealed. Laws 1991, LB 359, § 67.
54-2231.01.	Repealed. Laws 1991, LB 359, § 67.
54-2232.	Repealed. Laws 1991, LB 359, § 67.
54-2233.	Transferred to section 54-2298.
54-2234.	Transferred to section 54-22,100.
54-2235.	Act, how cited.
54-2236.	Pseudorabies control and eradication program; legislative intent.
54-2237.	Definitions, where found.
54-2238.	Accredited veterinarian, defined.
54-2239.	Affected herd, defined.
54-2240.	Affected premises, defined.
54-2241.	Affected swine herd, defined.
54-2242.	Area testing, defined.
54-2243.	Breeding swine, defined.
54-2244.	Circle testing, defined.
54-2245.	Cleanup testing, defined.
54-2246.	Concentration point, defined.

**PSEUDORABIES**

**§ 54-2201**

Section	
54-2247.	Department, defined.
54-2248.	Exposed, defined.
54-2249.	Feeder swine, defined.
54-2250.	Herd, defined.
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54-2252.	Livestock, defined.
54-2253.	Negative, defined.
54-2254.	Official test, defined.
54-2255.	Positive, defined.
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54-2257.	Program activity, defined.
54-2258.	Program area, defined.
54-2259.	Pseudorabies, defined.
54-2260.	Quarantine, defined.
54-2261.	Repealed. Laws 2003, LB 158, § 74.
54-2262.	Sale, defined.
54-2262.01.	Stage, defined.
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54-2264.	Surveillance, defined.
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54-2267.	Swine herd cleanup plan, defined.
54-2268.	Testing, defined.
54-2269.	Veterinarian, defined.
54-2270.	Department of Agriculture, Bureau of Animal Industry; cooperation with other organizations.
54-2271.	Department; federal funds; allocation.
54-2272.	Repealed. Laws 1996, LB 965, § 18.
54-2273.	Repealed. Laws 1996, LB 965, § 18.
54-2274.	Repealed. Laws 1996, LB 965, § 18.
54-2275.	Repealed. Laws 1996, LB 965, § 18.
54-2276.	Quarantine; cleanup plan.
54-2277.	Cleanup plan; requirements.
54-2278.	Area testing required; when.
54-2279.	Circle testing required; when.
54-2280.	Cleanup testing.
54-2281.	Random sample requirements; criteria.
54-2282.	Repealed. Laws 2003, LB 158, § 74.
54-2283.	Import requirements.
54-2284.	Repealed. Laws 2003, LB 158, § 74.
54-2285.	Repealed. Laws 2003, LB 158, § 74.
54-2286.	Surveillance procedures and criteria.
54-2287.	Department; conduct feeder and breeding swine testing program; status swine herd title.
54-2288.	Department; conduct pseudorabies control and eradication program; prohibited acts; violation; penalty.
54-2289.	Pseudorabies vaccine; department; powers.
54-2290.	Department; adopt rules and regulations.
54-2291.	Violation; action to enjoin; county attorney; duties.
54-2292.	Costs; Pseudorabies Control Cash Fund; created.
54-2293.	Pseudorabies Control Cash Fund; use; investment.
54-2294.	Department; access to premises.
54-2295.	Records and reports; access.
54-2296.	Testing; duties of owner; costs.
54-2297.	Prohibited acts.
54-2298.	Destination; diversion of livestock; prohibited; when.
54-2299.	Conformance with federal standards.
54-22,100.	Violation; penalty.

**54-2201 Transferred to section 54-2235.**

- 54-2202 Transferred to section 54-2237.
- 54-2203 Transferred to section 54-2259.
- 54-2204 Repealed. Laws 1991, LB 359, § 67.
- 54-2205 Transferred to section 54-2252.
- 54-2206 Transferred to section 54-2247.
- 54-2207 Repealed. Laws 1990, LB 1004, § 48.
- 54-2208 Transferred to section 54-2254.
- 54-2208.01 Transferred to section 54-2242.
- 54-2208.02 Transferred to section 54-2244.
- 54-2208.03 Transferred to section 54-2245.
- 54-2208.04 Repealed. Laws 1991, LB 359, § 67.
- 54-2208.05 Repealed. Laws 1991, LB 359, § 67.
- 54-2208.06 Transferred to section 54-2264.
- 54-2209 Transferred to section 54-2246.
- 54-2210 Transferred to section 54-2256.
- 54-2211 Repealed. Laws 1991, LB 359, § 67.
- 54-2212 Transferred to section 54-2262.
- 54-2213 Transferred to section 54-2253.
- 54-2214 Transferred to section 54-2255.
- 54-2215 Transferred to section 54-2265.
- 54-2216 Transferred to section 54-2248.
- 54-2217 Transferred to section 54-2251.
- 54-2218 Transferred to section 54-2250.
- 54-2218.01 Transferred to section 54-2239.
- 54-2218.02 Repealed. Laws 1991, LB 359, § 67.
- 54-2219 Transferred to section 54-2243.
- 54-2220 Transferred to section 54-2249.
- 54-2220.01 Repealed. Laws 1991, LB 359, § 67.
- 54-2220.02 Transferred to section 54-2257.
- 54-2220.03 Transferred to section 54-2258.

54-2220.04 Repealed. Laws 1991, LB 359, § 67.

54-2221 Transferred to section 54-2270.

54-2221.01 Repealed. Laws 1990, LB 1004, § 48.

54-2221.02 Repealed. Laws 1991, LB 359, § 67.

54-2221.03 Repealed. Laws 1991, LB 359, § 67.

54-2221.04 Transferred to section 54-2277.

54-2221.05 Transferred to section 54-2278.

54-2221.06 Repealed. Laws 1991, LB 359, § 67.

54-2221.07 Transferred to section 54-2280.

54-2221.08 Repealed. Laws 1991, LB 359, § 67.

54-2221.09 Transferred to section 54-2281.

54-2221.10 Transferred to section 54-2282.

54-2221.11 Transferred to section 54-2283.

54-2221.12 Transferred to section 54-2284.

54-2221.13 Transferred to section 54-2285.

54-2221.14 Transferred to section 54-2286.

54-2222 Transferred to section 54-2287.

54-2223 Transferred to section 54-2288.

54-2223.01 Transferred to section 54-2236.

54-2223.02 Repealed. Laws 1991, LB 359, § 67.

54-2223.03 Transferred to section 54-2271.

54-2224 Transferred to section 54-2289.

54-2225 Transferred to section 54-2290.

54-2226 Transferred to section 54-2291.

54-2227 Transferred to section 54-2292.

54-2228 Transferred to section 54-2293.

54-2229 Transferred to section 54-2294.

54-2230 Repealed. Laws 1991, LB 359, § 67.

54-2231 Repealed. Laws 1991, LB 359, § 67.

54-2231.01 Repealed. Laws 1991, LB 359, § 67.

**54-2232 Repealed. Laws 1991, LB 359, § 67.**

**54-2233 Transferred to section 54-2298.**

**54-2234 Transferred to section 54-22,100.**

**54-2235 Act, how cited.**

Sections 54-2235 to 54-22,100 shall be known and may be cited as the Pseudorabies Control and Eradication Act.

**Source:** Laws 1986, LB 775, § 1; Laws 1989, LB 574, § 1; Laws 1990, LB 1004, § 2; R.S.Supp.,1990, § 54-2201; Laws 1991, LB 359, § 1; Laws 1996, LB 965, § 1.

**54-2236 Pseudorabies control and eradication program; legislative intent.**

It is the intent of the Legislature to have a pseudorabies control and eradication program. The goal of the program is to eliminate pseudorabies from the livestock of the state by a process of eradication and surveillance. The program shall be designed to eradicate pseudorabies from all swine herds where pseudorabies is found and to use surveillance to achieve and maintain pseudorabies-free conditions in the state.

**Source:** Laws 1990, LB 1004, § 21; R.S.Supp.,1990, § 54-2223.01; Laws 1991, LB 359, § 53; Laws 1996, LB 965, § 2.

**54-2237 Definitions, where found.**

For purposes of the Pseudorabies Control and Eradication Act, unless the context otherwise requires, the definitions found in sections 54-2238 to 54-2269 shall be used.

**Source:** Laws 1986, LB 775, § 2; Laws 1990, LB 1004, § 3; R.S.Supp.,1990, § 54-2202; Laws 1991, LB 359, § 2; Laws 1996, LB 965, § 3.

**54-2238 Accredited veterinarian, defined.**

Accredited veterinarian shall mean a veterinarian approved by the Deputy Administrator of the United States Department of Agriculture in accordance with 9 C.F.R. part 161, in effect on January 1, 2002.

**Source:** Laws 1991, LB 359, § 3; Laws 2003, LB 158, § 62.

**54-2239 Affected herd, defined.**

Affected herd shall mean a herd in which livestock are infected.

**Source:** Laws 1990, LB 1004, § 5; R.S.Supp.,1990, § 54-2218.01; Laws 1991, LB 359, § 4.

**54-2240 Affected premises, defined.**

Affected premises shall mean land on which is located an affected swine herd and shall include the buildings and equipment located on such land.

**Source:** Laws 1991, LB 359, § 5; Laws 1993, LB 267, § 17.

**54-2241 Affected swine herd, defined.**

Affected swine herd shall mean a swine herd in which swine have been determined by the results of an official test to be infected with or diagnosed by a veterinarian as having pseudorabies.

**Source:** Laws 1991, LB 359, § 6.

**54-2242 Area testing, defined.**

Area testing shall mean testing of a random sample of each swine herd in a program area.

**Source:** Laws 1990, LB 1004, § 6; R.S.Supp.,1990, § 54-2208.01; Laws 1991, LB 359, § 7.

**54-2243 Breeding swine, defined.**

Breeding swine shall mean boars, sows, and gilts being used or intended for use for reproductive purposes.

**Source:** Laws 1986, LB 775, § 19; R.S.1943, (1988), § 54-2219; Laws 1991, LB 359, § 8.

**54-2244 Circle testing, defined.**

Circle testing shall mean testing of a random sample of each swine herd located within two miles of the affected premises if in a Stage II, III, or IV status area and within five miles if in a Stage V status area.

Stages II, III, IV, and V status areas are established pursuant to the Part III Program Stages and Requirements of the State-Federal-Industry Program Standards for Pseudorabies Eradication as approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, in effect on January 1, 2002.

**Source:** Laws 1990, LB 1004, § 7; R.S.Supp.,1990, § 54-2208.02; Laws 1991, LB 359, § 9; Laws 1993, LB 267, § 18; Laws 1996, LB 965, § 4; Laws 2003, LB 158, § 63.

**54-2245 Cleanup testing, defined.**

Cleanup testing shall mean testing done in an affected swine herd as part of a swine herd cleanup plan.

**Source:** Laws 1990, LB 1004, § 8; R.S.Supp.,1990, § 54-2208.03; Laws 1991, LB 359, § 10.

**54-2246 Concentration point, defined.**

Concentration point shall mean any facility where livestock from two or more herds are assembled and subsequently dispersed to one or more locations.

**Source:** Laws 1986, LB 775, § 9; R.S.1943, (1988), § 54-2209; Laws 1991, LB 359, § 11.

**54-2247 Department, defined.**

Department shall mean the Department of Agriculture or its authorized agent.

**Source:** Laws 1986, LB 775, § 6; R.S.1943, (1988), § 54-2206; Laws 1991, LB 359, § 12.

**54-2248 Exposed, defined.**

Exposed shall mean being part of an affected herd or having had a reasonable opportunity to come in contact with infected livestock or a pseudorabies virus.

**Source:** Laws 1986, LB 775, § 16; R.S.1943, (1988), § 54-2216; Laws 1991, LB 359, § 13.

**54-2249 Feeder swine, defined.**

Feeder swine shall mean swine being fed or intended to be fed for weight-gaining purposes and eventual slaughter.

**Source:** Laws 1986, LB 775, § 20; R.S.1943, (1988), § 54-2220; Laws 1991, LB 359, § 14.

**54-2250 Herd, defined.**

Herd shall mean (1) any group of livestock maintained on common ground for any purpose or (2) two or more groups of livestock under common ownership or supervision geographically separated but which have an interchange of livestock without regard to whether the livestock are infected or exposed.

**Source:** Laws 1986, LB 775, § 18; R.S.1943, (1988), § 54-2218; Laws 1991, LB 359, § 15.

**54-2251 Infected, defined.**

Infected shall mean determined by the results of an official test or diagnosed by a veterinarian as having pseudorabies.

**Source:** Laws 1986, LB 775, § 17; R.S.1943, (1988), § 54-2217; Laws 1991, LB 359, § 16.

**54-2252 Livestock, defined.**

Livestock shall mean cattle, swine, sheep, or goats.

**Source:** Laws 1986, LB 775, § 5; R.S.1943, (1988), § 54-2205; Laws 1991, LB 359, § 17.

**54-2253 Negative, defined.**

Negative shall mean not infected as determined by the department based on results of an official test.

**Source:** Laws 1986, LB 775, § 13; R.S.1943, (1988), § 54-2213; Laws 1991, LB 359, § 18.

**54-2254 Official test, defined.**

Official test shall mean any testing procedure recognized for use in the diagnosis of pseudorabies by (1) the United States Department of Agriculture in 9 C.F.R. part 85, in effect on January 1, 2002, or (2) the department in rules

and regulations adopted and promulgated pursuant to the Pseudorabies Control and Eradication Act.

**Source:** Laws 1986, LB 775, § 8; Laws 1990, LB 1004, § 4; R.S.Supp.,1990, § 54-2208; Laws 1991, LB 359, § 19; Laws 1993, LB 267, § 19; Laws 1996, LB 965, § 5; Laws 2003, LB 158, § 64.

**54-2255 Positive, defined.**

Positive shall mean infected as determined by the department based upon results of an official test.

**Source:** Laws 1986, LB 775, § 14; R.S.1943, (1988), § 54-2214; Laws 1991, LB 359, § 20.

**54-2256 Private treaty, defined.**

Private treaty shall mean a sale of livestock from one person to another person other than at a concentration point.

**Source:** Laws 1986, LB 775, § 10; R.S.1943, (1988), § 54-2210; Laws 1991, LB 359, § 21.

**54-2257 Program activity, defined.**

Program activity shall mean any activity required by the department for determining the presence of pseudorabies in swine herds or any activity relating to eradicating pseudorabies from swine herds and to surveillance as part of the pseudorabies control and eradication program.

**Source:** Laws 1990, LB 1004, § 12; R.S.Supp.,1990, § 54-2220.02; Laws 1991, LB 359, § 22.

**54-2258 Program area, defined.**

Program area shall mean a portion of a county, an entire county, a group of adjacent counties, or part of or the entire state designated by the department to be given priority assignment of a program activity and state funds.

**Source:** Laws 1990, LB 1004, § 13; R.S.Supp.,1990, § 54-2220.03; Laws 1991, LB 359, § 23.

**54-2259 Pseudorabies, defined.**

Pseudorabies shall mean the contagious, infectious, and communicable disease of livestock, variously known as Aujeszky's Disease, mad itch, PRV, or infectious bulbar paralysis.

**Source:** Laws 1986, LB 775, § 3; R.S.1943, (1988), § 54-2203; Laws 1991, LB 359, § 24.

**54-2260 Quarantine, defined.**

Quarantine shall mean restriction of:

(1) Movement imposed by the department on (a) livestock, including one or more livestock classified suspect, positive, or exposed, (b) a herd which is reasonably suspected of being infected or exposed, (c) a swine herd when the swine herd owner refuses testing of his or her swine herd as required by the Pseudorabies Control and Eradication Act, (d) swine imported into the state in

violation of the Animal Importation Act, or (e) swine imported into the state when a retest is required according to subdivision (4) of section 54-2290; and

(2) Use imposed by the department of the premises, vehicles, and equipment used for such livestock or herd.

**Source:** Laws 1991, LB 359, § 25; Laws 1996, LB 965, § 6.

**Cross References**

**Animal Importation Act**, see section 54-784.01.

**54-2261 Repealed. Laws 2003, LB 158, § 74.**

**54-2262 Sale, defined.**

Sale shall mean a sale, lease, loan, trade, or gift.

**Source:** Laws 1986, LB 775, § 12; R.S.1943, (1988), § 54-2212; Laws 1991, LB 359, § 27.

**54-2262.01 Stage, defined.**

Stage shall mean a designation II, III, IV, or V assigned to a state or area of a state by the United States Department of Agriculture with respect to the prevalence of pseudorabies contained therein.

**Source:** Laws 1996, LB 965, § 7.

**54-2263 Status swine herd, defined.**

Status swine herd shall mean a swine herd which has been given a title approved and assigned by the department according to the pseudorabies disease condition of the swine herd.

**Source:** Laws 1991, LB 359, § 28; Laws 1993, LB 267, § 20; Laws 1996, LB 965, § 8.

**54-2264 Surveillance, defined.**

Surveillance shall mean testing done to determine the presence of pseudorabies in the state or a program area.

**Source:** Laws 1990, LB 1004, § 16; R.S.Supp.,1990, § 54-2208.06; Laws 1991, LB 359, § 29.

**54-2265 Suspect, defined.**

Suspect shall mean unable to be classified as positive or negative, as determined by the department, based on the results of an official test.

**Source:** Laws 1986, LB 775, § 15; R.S.1943, (1988), § 54-2215; Laws 1991, LB 359, § 30.

**54-2266 Swine herd, defined.**

Swine herd shall mean (1) any group of swine maintained on common ground for any purpose or (2) two or more groups of swine under common ownership or supervision geographically separated but which have an interchange of swine without regard to whether the swine are infected or exposed.

**Source:** Laws 1991, LB 359, § 31.

**54-2267 Swine herd cleanup plan, defined.**

Swine herd cleanup plan shall mean a written agreement (1) which is designed to eradicate pseudorabies from the swine herd pursuant to section 54-2277, (2) which is developed by the swine herd owner or the authorized representative of the swine herd owner and the development of which may include the veterinarian for such swine herd, and (3) which is approved by the department.

**Source:** Laws 1991, LB 359, § 32.

**54-2268 Testing, defined.**

Testing shall mean (1) the collection of a blood sample from a swine by or under the supervision of an accredited veterinarian, (2) submitting such blood sample to a laboratory which is approved by the administrator of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, and which is set out in the Veterinary Services Notice listing such laboratories, and (3) subjecting such blood sample to an official test.

**Source:** Laws 1991, LB 359, § 33.

**54-2269 Veterinarian, defined.**

Veterinarian shall mean an individual who is a graduate of a college of veterinary medicine.

**Source:** Laws 1991, LB 359, § 34.

**54-2270 Department of Agriculture, Bureau of Animal Industry; cooperation with other organizations.**

The Pseudorabies Control and Eradication Act shall be administered by the Bureau of Animal Industry of the department. In administering such act, the department shall cooperate and may contract with persons or appropriate local, state, or national organizations, public or private, for the performance of activities required or authorized pursuant to such act.

**Source:** Laws 1986, LB 775, § 21; Laws 1990, LB 1004, § 17; R.S.Supp.,1990, § 54-2221; Laws 1991, LB 359, § 35.

**54-2271 Department; federal funds; allocation.**

The department shall cooperate with the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, by recommending where and how federal funds allocated for the pseudorabies control and eradication program in Nebraska should be spent.

**Source:** Laws 1990, LB 1004, § 26; R.S.Supp.,1990, § 54-2223.03; Laws 1991, LB 359, § 54.

**54-2272 Repealed. Laws 1996, LB 965, § 18.**

**54-2273 Repealed. Laws 1996, LB 965, § 18.**

**54-2274 Repealed. Laws 1996, LB 965, § 18.**

**54-2275 Repealed. Laws 1996, LB 965, § 18.**

**54-2276 Quarantine; cleanup plan.**

Any swine herd determined to be an affected swine herd by the department and any swine herd for which the owner refuses to comply with the Pseudorabies Control and Eradication Act or any rules and regulations adopted and promulgated thereto shall be put under quarantine by the department, and a swine herd cleanup plan shall be filed pursuant to section 54-2277.

**Source:** Laws 1991, LB 359, § 40; Laws 1993, LB 267, § 22.

**54-2277 Cleanup plan; requirements.**

Each owner or the authorized representative of the owner of a swine herd under quarantine shall file a swine herd cleanup plan with the department within seven days after the date of issuance of the quarantine.

**Source:** Laws 1990, LB 1004, § 25; R.S.Supp.,1990, § 54-2221.04; Laws 1991, LB 359, § 41; Laws 1996, LB 965, § 9; Laws 2003, LB 158, § 65.

**54-2278 Area testing required; when.**

The department shall determine when and where area testing shall be done based on epidemiological evaluation.

**Source:** Laws 1990, LB 1004, § 28; R.S.Supp.,1990, § 54-2221.05; Laws 1991, LB 359, § 42.

**54-2279 Circle testing required; when.**

The department may require circle testing around any affected swine herd.

**Source:** Laws 1991, LB 359, § 43.

**54-2280 Cleanup testing.**

Cleanup testing (1) shall include testing of one hundred percent of the breeding swine in an affected swine herd for the purpose of removing infected swine and may include testing of up to one hundred percent of all other swine on the same premises or (2) may include testing of up to one hundred percent of all swine on the premises in an affected swine herd without breeding swine for the purpose of removing infected swine.

**Source:** Laws 1990, LB 1004, § 30; R.S.Supp.,1990, § 54-2221.07; Laws 1991, LB 359, § 44; Laws 2003, LB 158, § 66; Laws 2004, LB 837, § 1.

**54-2281 Random sample requirements; criteria.**

The department shall establish criteria for random sample requirements to be used for testing pursuant to the Pseudorabies Control and Eradication Act.

**Source:** Laws 1990, LB 1004, § 32; R.S.Supp.,1990, § 54-2221.09; Laws 1991, LB 359, § 45.

**54-2282 Repealed. Laws 2003, LB 158, § 74.**

**54-2283 Import requirements.**

The department shall establish import requirements for all swine imported into Nebraska.

**Source:** Laws 1990, LB 1004, § 34; R.S.Supp.,1990, § 54-2221.11; Laws 1991, LB 359, § 47.

**54-2284 Repealed. Laws 2003, LB 158, § 74.**

**54-2285 Repealed. Laws 2003, LB 158, § 74.**

**54-2286 Surveillance procedures and criteria.**

The department shall establish procedures and criteria for surveillance. Such surveillance procedures may include testing of samples collected at slaughter establishments, at concentration points, and from any swine herd.

**Source:** Laws 1990, LB 1004, § 37; R.S.Supp.,1990, § 54-2221.14; Laws 1991, LB 359, § 50.

**54-2287 Department; conduct feeder and breeding swine testing program; status swine herd title.**

(1) The department shall continually conduct a feeder and breeding swine testing program. Under the program, the department may require testing of both feeder and breeding swine whenever such swine are moving in commerce through concentration points or whenever feeder and breeding swine are sold at private treaty.

(2) The department shall assign a status swine herd title to those swine herds which meet the requirements developed by the department for such title. Such requirements shall include (a) the method and number of swine subjected to testing, (b) the procedure for herd additions, deletions, and movement into and out of such herds, and (c) a legal description of the land on which facilities are located to maintain a qualified pseudorabies negative herd or a qualified pseudorabies negative growout herd.

(3) The department may cancel or suspend the title of a qualified pseudorabies negative herd or a qualified pseudorabies negative growout herd for failure to meet the requirements of subsection (2) of this section. The department shall not renew such titles if the approved testing schedule is not adhered to.

**Source:** Laws 1986, LB 775, § 22; R.S.1943, (1988), § 54-2222; Laws 1991, LB 359, § 51; Laws 1996, LB 965, § 11; Laws 2003, LB 158, § 67.

**54-2288 Department; conduct pseudorabies control and eradication program; prohibited acts; violation; penalty.**

The department shall continually conduct a pseudorabies control and eradication program. Under the program, the department shall quarantine livestock and may require the testing of swine exposed to or reasonably suspected of having been exposed to infected livestock. Under the program, the department shall also quarantine livestock and require the testing of swine imported into Nebraska in violation of pseudorabies-related importation requirements existing in rules and regulations adopted and promulgated by the department. The department shall quarantine swine when a retest of such swine is a requirement of the pseudorabies importation rules and regulations. The department may prohibit the addition of swine into affected or exposed swine herds.

It shall be unlawful for any person to fail to test or to remove any livestock which have been placed in quarantine from the place of quarantine until such quarantine is released by the department except authorized movement for slaughter or other movement as authorized by the department.

Any person violating this section shall be guilty of a Class III misdemeanor for the first offense and a Class II misdemeanor for each subsequent offense.

**Source:** Laws 1986, LB 775, § 23; Laws 1990, LB 1004, § 18; R.S.Supp.,1990, § 54-2223; Laws 1991, LB 359, § 52; Laws 1996, LB 965, § 12.

**54-2289 Pseudorabies vaccine; department; powers.**

For the protection of the livestock industry in Nebraska and to aid in achieving the purposes of the Pseudorabies Control and Eradication Act, the department shall regulate the sale and use of pseudorabies vaccine. The department may restrict the sale and use of pseudorabies vaccine and when deemed appropriate by the department may require the use of pseudorabies vaccine. The department shall require detailed record keeping and reporting by persons involved in the sale or use, or both, of such vaccine.

**Source:** Laws 1986, LB 775, § 24; Laws 1990, LB 1004, § 19; R.S.Supp.,1990, § 54-2224; Laws 1991, LB 359, § 55; Laws 2003, LB 158, § 68.

**54-2290 Department; adopt rules and regulations.**

The department shall adopt and promulgate rules and regulations to aid in implementing the Pseudorabies Control and Eradication Act. The rules and regulations may include, but shall not be limited to, provisions governing:

(1) The conduct of the feeder and breeding swine testing program, including provisions governing: (a) When, where, how, by whom, and how often testing is to be done; (b) what swine are to be subjected to testing; (c) how and by whom results of testing are to be recorded; (d) by whom and to whom the results of the testing are to be reported; and (e) how, by whom, and for what purposes such results will be utilized;

(2) The conduct of the pseudorabies control and eradication program, including provisions governing: (a) When, where, how, by whom, and how often testing is to be done; (b) what swine are to be subjected to testing; (c) requirements of swine herd cleanup plans, including form, execution, contents, duration, amendments, and enforcement; (d) how and by whom results of testing are to be recorded; (e) by whom and to whom the results of the testing are to be reported; (f) how, by whom, and for what purposes such results will be utilized; and (g) assignment of and requirements for titles for status swine herds and the suspension, expiration, and cancellation of such titles;

(3) The conduct of surveillance in swine herds and at slaughter establishments and concentration points, including provisions governing: (a) When, where, how, by whom, and how often testing is to be done; (b) what swine and swine herds are to be subjected to testing; (c) how and by whom results of testing are to be recorded and reported; and (d) the use of the results of testing by the department;

(4) Importation of swine, including provisions governing: (a) Age, origin, entry, movement, and destination in the state; (b) when, where, how, by whom,

and how often imported swine are to be subjected to testing; (c) what imported swine are to be subjected to testing; and (d) how testing results are to be recorded, reported, and utilized;

(5)(a) What constitutes a program area; (b) what epidemiological factors will be considered in determining the program area; and (c) when and for what purpose a program activity will be selected;

(6) The issuance and release of quarantines and the requirements regarding the handling, movement, and disposition of livestock under quarantine;

(7) The cleaning and disinfecting of affected premises, including provisions governing: (a) The materials to be used; (b) the procedures to be used; and (c) when such procedures are to be performed;

(8) The testing of livestock to detect pseudorabies, including provisions governing: (a) Which tests are to be deemed official tests; (b) by whom the testing is to be administered; (c) how the testing is to be conducted; (d) the reaction tolerances to be recognized; and (e) the classification of results as to negative, suspect, or positive. These rules and regulations shall be consistent with the best available scientific information relative to the control and eradication of pseudorabies;

(9) The pseudorabies vaccination program, including provisions governing: (a) The vaccines to be used; (b) the age of the swine to be vaccinated; (c) the effect of vaccination on the interpretation of test results; and (d) the reported sale and use of vaccine;

(10) The identification of swine subject to the act, including provisions governing: (a) Exposed and infected swine; (b) vaccinated swine; and (c) swine to be tested;

(11) Random sampling of swine herds, including provisions governing: (a) When, where, how, by whom, and how often a random sample is to be used in testing swine herds; (b) when and for what purpose a random sample of a swine herd will be subjected to testing; (c) the number of feeder, breeding, and other swine in a particular status swine herd or in a swine herd which is not a status swine herd constituting a random sample to be subjected to testing; (d) the age of swine in a status swine herd and a swine herd which is not a status swine herd to be used as a random sample and subjected to testing; and (e) how testing results are to be recorded, reported, and utilized;

(12) Compliance with Part III Program Stages and Requirements of the State-Federal-Industry Program Standards for Pseudorabies Eradication as approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, in effect on January 1, 2002;

(13) Compliance with 9 C.F.R. part 85, in effect on January 1, 2002, for pseudorabies control and eradication;

(14) Administration of the pseudorabies control and eradication program subject to the availability of state funds;

(15) The assessment and collection of costs for services provided and expenses, not to exceed actual costs, incurred under the act;

(16) The preparation, maintenance, handling, filing, and disposition of records and reports by persons subject to the act concerning the vaccination, testing, or movement of swine;

(17) Program activities and cleanup testing under the act on which state funds, if appropriated and available, shall be used by the department and limitations on use of such state funds for testing and other activities under the act; and

(18) Any other areas deemed necessary by the department to effectively control and eradicate pseudorabies.

**Source:** Laws 1986, LB 775, § 25; Laws 1990, LB 1004, § 20; R.S.Supp.,1990, § 54-2225; Laws 1991, LB 359, § 56; Laws 1993, LB 267, § 23; Laws 1996, LB 965, § 13; Laws 2003, LB 158, § 69.

**54-2291 Violation; action to enjoin; county attorney; duties.**

(1) In order to insure compliance with the Pseudorabies Control and Eradication Act, the department may apply for a temporary restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated under the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) The county attorney of the county in which violations of the act or the rules and regulations thereunder are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under subsection (1) of this section to be instituted and pursued without delay.

**Source:** Laws 1986, LB 775, § 26; Laws 1990, LB 1004, § 38; R.S.Supp.,1990, § 54-2226; Laws 1991, LB 359, § 57.

**54-2292 Costs; Pseudorabies Control Cash Fund; created.**

The department may assess and collect costs for services provided and expenses incurred pursuant to its responsibilities under the Pseudorabies Control and Eradication Act. All costs assessed and collected pursuant to this section shall be remitted to the State Treasurer. The State Treasurer shall credit such costs to the Pseudorabies Control Cash Fund which is hereby created.

**Source:** Laws 1986, LB 775, § 27; Laws 1990, LB 1004, § 39; R.S.Supp.,1990, § 54-2227; Laws 1991, LB 359, § 58.

**54-2293 Pseudorabies Control Cash Fund; use; investment.**

The Pseudorabies Control Cash Fund shall consist of money appropriated by the Legislature and gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The fund shall be utilized for the purpose of carrying out the Pseudorabies Control and Eradication 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 1986, LB 775, § 28; Laws 1990, LB 1004, § 40; R.S.Supp.,1990, § 54-2228; Laws 1991, LB 359, § 59; Laws 1994, LB 1066, § 43.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-2294 Department; access to premises.**

In administering the Pseudorabies Control and Eradication Act, the agents and employees of the department shall have access to any premises where livestock may be for purposes of the pseudorabies surveillance testing program or when the department has reasonable cause to believe that infected or exposed livestock are present on the premises.

**Source:** Laws 1986, LB 775, § 29; Laws 1990, LB 1004, § 41; R.S.Supp.,1990, § 54-2229; Laws 1991, LB 359, § 60; Laws 1996, LB 965, § 14.

**54-2295 Records and reports; access.**

(1) Any person subject to the Pseudorabies Control and Eradication Act shall for two years keep on file records or make reports pertaining to vaccination, testing, and movement of livestock infected with or exposed to or suspected of being infected with or exposed to pseudorabies. Such person shall keep on file any other records or make any other reports the department deems necessary to enforce such act.

(2) Any person subject to the act shall, at all reasonable times, provide access to all records and reports to the department and its representatives for the purpose of examining and copying such records and reports necessary to enforce the act.

**Source:** Laws 1991, LB 359, § 61; Laws 1993, LB 267, § 24.

**54-2296 Testing; duties of owner; costs.**

(1) When testing is to be performed pursuant to the Pseudorabies Control and Eradication Act, the owner of the swine shall be responsible for gathering, confining, and restraining such swine for testing and for providing the necessary facilities and assistance.

(2) The department may provide state funds for certain activities or any portion thereof in connection with the implementation of the act to or on behalf of swine herd owners if funds for such activities or any portion thereof have been appropriated and are available. The department shall develop statewide priorities for the expenditure of state funds available for program activities.

(3) Part of such state funds may be used by the department to pay a portion of the cost of testing done by or for accredited veterinarians if such work is approved by the department. All of such testing shall be performed by or under the direct supervision of the accredited veterinarian, except that nothing in this subsection shall restrict an employee of the state or federal government in the performance of such employee's duties under the act or federal law.

(4) In administering the act and programs pursuant thereto, the department shall not pay for (a) testing done for change of ownership at private treaty or at concentration points, (b) costs of gathering, confining, and restraining swine subjected to testing or costs of providing necessary facilities and assistance, and (c) the cost of testing to qualify or maintain a status swine herd.

**Source:** Laws 1991, LB 359, § 62; Laws 1996, LB 965, § 15; Laws 2003, LB 158, § 70.

**54-2297 Prohibited acts.**

(1) It shall be unlawful for a buyer to purchase feeder swine, breeding swine, or both from a seller who has not complied with the Pseudorabies Control and Eradication Act or to import such swine into the state when the seller has not complied with the Pseudorabies Control and Eradication Act or the Animal Importation Act.

(2) It shall be unlawful for a seller to sell or import swine if not in compliance with such acts.

**Source:** Laws 1991, LB 359, § 63; Laws 1992, LB 366, § 23.

## Cross References

**Animal Importation Act**, see section 54-784.01.

**54-2298 Destination; diversion of livestock; prohibited; when.**

Whenever livestock are required or designated pursuant to the Pseudorabies Control and Eradication Act to move to a particular destination, it shall be unlawful to divert the livestock from such destination without having first obtained permission from the department.

**Source:** Laws 1986, LB 775, § 33; Laws 1990, LB 1004, § 45; R.S.Supp.,1990, § 54-2233; Laws 1991, LB 359, § 64.

**54-2299 Conformance with federal standards.**

In administering the Pseudorabies Control and Eradication Act and conducting program activities authorized by the act, the department shall as far as reasonably practical conform its program activities to Part III Program Stages and Requirements of the State-Federal-Industry Program Standards for Pseudorabies Eradication as approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, in effect on January 1, 2002.

**Source:** Laws 1991, LB 359, § 65; Laws 1993, LB 267, § 25; Laws 1996, LB 965, § 16; Laws 2003, LB 158, § 71.

**54-22,100 Violation; penalty.**

Except as provided in section 54-2288, any person who violates the Pseudorabies Control and Eradication Act or any rules and regulations adopted and promulgated pursuant thereto shall be guilty of a Class IV misdemeanor for the first offense and shall be guilty of a Class II misdemeanor for each subsequent offense.

**Source:** Laws 1986, LB 775, § 34; Laws 1990, LB 1004, § 46; R.S.Supp.,1990, § 54-2234; Laws 1991, LB 359, § 66.

**ARTICLE 23****DOMESTICATED CERVINE ANIMAL ACT**

## Section

54-2301. Repealed. Laws 1999, LB 404, § 27.

54-2302. Act, how cited.

54-2303. Legislative findings.

54-2304. Terms, defined.

54-2305. Domesticated cervine animal facility permit required; when.

54-2306. Permit; application; fee; penalty; expiration of permit.

## Section

- 54-2307. Denial of permit; when.  
 54-2308. Permit; conditions; inspection of facility; fee.  
 54-2309. Permitholder; reports.  
 54-2310. Permitholder; duties; probation; suspension; revocation; procedure; reinstatement.  
 54-2311. Notice or order; service; hearing; procedure; appeal.  
 54-2312. Animal identification.  
 54-2313. Luring or enticement of wildlife prohibited.  
 54-2314. Quarantine; department; powers.  
 54-2315. Cost of testing.  
 54-2316. Escape; recapture or destroy animal.  
 54-2317. Wild cervidae; duties upon discovery.  
 54-2318. Rules and regulations.  
 54-2319. Herd certification program authorized.  
 54-2320. Domesticated Cervine Animal Cash Fund; created; use; investment.  
 54-2321. Administration of act.  
 54-2322. Commission; access to premises.  
 54-2323. Enforcement of act; violations; penalties.  
 54-2324. Act; how construed.

**54-2301 Repealed. Laws 1999, LB 404, § 27.****54-2302 Act, how cited.**

Sections 54-2302 to 54-2324 shall be known and may be cited as the Domesticated Cervine Animal Act.

**Source:** Laws 1999, LB 404, § 1; Laws 2002, LB 1003, § 37.

**54-2303 Legislative findings.**

The Legislature finds and declares that the production of domesticated cervine animals contributes to the strength of the economy of this state. The Legislature further declares that the Department of Agriculture under the powers and duties provided by law for the protection of the health of livestock is the appropriate agency to adopt, promulgate, and enforce rules and regulations necessary to control disease, importation, identification, issuing of permits, containment, and escape of domesticated cervine animals.

**Source:** Laws 1999, LB 404, § 2.

**54-2304 Terms, defined.**

For purposes of the Domesticated Cervine Animal Act, unless the context otherwise requires:

- (1) Commission means the Game and Parks Commission or its authorized agent;
- (2) Department means the Department of Agriculture or its authorized agent;
- (3) Director means the Director of Agriculture or his or her designee;
- (4) Domesticated cervine animal has the same meaning as in section 54-701.03; and
- (5) Person means any individual, firm, group of individuals, partnership, limited liability company, corporation, unincorporated association, cooperative, or other entity, public or private.

**Source:** Laws 1999, LB 404, § 3.

**54-2305 Domesticated cervine animal facility permit required; when.**

On and after January 1, 2000, it is unlawful for any person to own, possess, buy, sell, or barter any domesticated cervine animal in this state unless such animal is individually identified and kept at a premises for which a domesticated cervine animal facility permit has been issued by the department. Permits shall be issued only after a determination that the applicant is in compliance with the Domesticated Cervine Animal Act. This section shall not be construed to require a municipal, state, or federal zoo, park, refuge, or wildlife area, a bona fide circus or animal exhibit, or any private, nonprofit zoological society to obtain a permit in order to own, possess, buy, sell, or barter a domesticated cervine animal, but such facilities shall be governed by the provisions of the act and the rules and regulations promulgated thereunder regarding the testing, control, and eradication of cervidae diseases including chronic wasting disease.

**Source:** Laws 1999, LB 404, § 4; Laws 2002, LB 1003, § 38.

**54-2306 Permit; application; fee; penalty; expiration of permit.**

(1) On and after August 1, 1999, any person required to obtain a permit under section 54-2305 shall file an application with the department in the manner established by the department. Such application shall include:

- (a) The name, residence, and place of business of the applicant;
- (b) The exact description of the land upon which the domesticated cervine animal facility is to be located and the nature of the applicant's title to the land, whether in fee or under lease; and
- (c) The kind and number of domesticated cervine animals authorized to be kept or reared in such facility.

(2) The department may by rule and regulation prescribe additional information to be contained in such application. The application shall be filed annually with the department on or before October 1 of each year. The annual fee for a domesticated cervine animal facility permit shall not be less than ten dollars nor more than two hundred dollars, as established by the department. Permittees not filing by October 1 shall be considered delinquent. The department may impose a penalty for delinquency, not to exceed one hundred dollars per month or a portion of a month, in addition to the permit fees. Such permits shall expire on December 31 of the year of issuance.

**Source:** Laws 1999, LB 404, § 5.

**54-2307 Denial of permit; when.**

The department may deny a domesticated cervine animal facility permit to an applicant who is or has been convicted of violating the laws or regulations of this state or any other state pertaining to domesticated cervine animals or has knowingly committed or participated in the violation of an order of quarantine or other disciplinary order issued by the department.

**Source:** Laws 1999, LB 404, § 6.

**54-2308 Permit; conditions; inspection of facility; fee.**

(1) No person shall be issued a domesticated cervine animal facility permit under section 54-2305 without proof of initial inspection and approval of the minimum construction requirements established under this section.

- (2) The department shall inspect and approve or disapprove:
- (a) The initial construction and new construction of perimeter fencing; and
  - (b) The initial construction and new construction of a handling facility which is capable of sorting and restraining individual animals for testing, identification, treatment, or other purposes deemed necessary by the department.
- (3) The department may inspect and approve or disapprove:
- (a) The maintenance of perimeter fencing; and
  - (b) The maintenance of a handling facility which is capable of sorting and restraining individual animals for testing, identification, treatment, or other purposes deemed necessary by the department.
- (4) The department shall, in consultation with the commission, adopt and promulgate rules and regulations specifying the minimum initial construction, subsequent new construction, and maintenance requirements of perimeter fencing and handling facilities and shall establish a fee to defray the expenses associated with inspecting domesticated cervine animal facilities.

**Source:** Laws 1999, LB 404, § 7.

**54-2309 Permitholder; reports.**

The department may require, by general or special order, a permitholder under the Domesticated Cervine Animal Act to file with the department, on such forms as prescribed, regular or special reports or answers, in writing, to specific questions for the purpose of furnishing information concerning any activity undertaken. Special reports shall be made under oath and filed within thirty days.

**Source:** Laws 1999, LB 404, § 8.

**54-2310 Permitholder; duties; probation; suspension; revocation; procedure; reinstatement.**

(1) A permitholder under the Domesticated Cervine Animal Act shall comply with the act, the rules and regulations adopted and promulgated pursuant thereto, and any order of the director issued pursuant thereto. The permitholder shall not interfere with the department in the performance of its duties.

(2) A permitholder may be put on probation requiring such person to comply with the conditions set out in an order of probation issued by the director after:

- (a) The director determines the permitholder has not complied with subsection (1) of this section;
- (b) the permitholder is given written notice to comply and written notice of the right to a hearing and to show cause why an order of probation should not be issued; and
- (c) the director finds that issuing an order of probation is appropriate, based on the hearing record or on the available information, if the hearing is waived by the permitholder.

(3) A permit may be suspended after:

- (a) The director determines the permitholder has not complied with subsection (1) of this section;
- (b) the permitholder is given written notice to comply and written notice of a right to a hearing to show cause why the permit should not be suspended; and
- (c) the director finds that issuing an order suspending the permit is appropriate, based on the hearing record or on the available information, if the hearing is waived by the permitholder.

(4) A permit may be immediately suspended and the director may order the permit holder's facility closed prior to hearing when: (a) The director determines an immediate danger to the health of livestock exists due to infectious, contagious, transmissible diseases in or caused by the permit holder's facility; (b) the director determines that an immediate danger to the health of wildlife exists due to infectious, contagious, transmissible diseases in or caused by the permit holder's facility; and (c) the permit holder receives the written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the permit holder may request, in writing, a date for a hearing and the director shall consider the interests of the permit holder when the department establishes the date and time of the hearing, except that no hearing shall be held earlier than is reasonable under the circumstances. When a permit holder does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and shall notify the permit holder of the date and time of such hearing.

(5) A permit may be revoked after: (a) The director determines the permit holder has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section; (b) the permit holder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be revoked; and (c) the director finds that issuing an order revoking the permit is appropriate based on the hearing record or on the available record or on the available information if the hearing is waived by the permit holder.

(6) Any domesticated cervine animal facility for which a permit has been suspended may possess, while correcting the violation, but may not buy, sell, or barter animals, or parts thereof, until the permit is reinstated. Any domesticated cervine animal facility for which a permit has been revoked shall be permitted to dispose of all animals on its premises, with approval of the department, within thirty days after the issuance of the order of revocation and shall close and remain closed until a new permit is issued.

(7) The director may terminate proceedings to suspend or revoke a permit or to subject a permit holder to an order of probation at any time if the reasons for such proceedings no longer exist. A permit which has been suspended may be reinstated. A person with a revoked permit may be issued a new permit. A permit holder may no longer be subject to an order of probation if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(8) Proceedings for suspension, revocation, or probation shall not preclude the department from pursuing other civil or criminal actions.

**Source:** Laws 1999, LB 404, § 9.

**54-2311 Notice or order; service; hearing; procedure; appeal.**

(1) Any notice or order under the Domesticated Cervine Animal Act shall be personally served on the permit holder or on the person authorized by the permit holder to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the permit holder or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) A notice to comply under section 54-2310 shall state the acts or omissions with which the permitholder is charged.

(3) A notice of the permitholder's right to a hearing under section 54-2310 shall state the time and place of the hearing except as provided in subsection (4) of section 54-2310 and shall include notice that the permitholder's right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the permitholder's right to a hearing to show cause why the permit should not be revoked shall include notice to the permitholder that the permit may be revoked or suspended, that the permitholder may be subject to an order of probation, and that the permit may be suspended and the permitholder subject to an order of probation, if the director determines such action is appropriate. A notice of the permitholder's right to a hearing to show cause why the permit should not be suspended shall include notice to the permitholder that the permit may be suspended and that the permitholder may also be subject to an order of probation if the director determines such action is appropriate.

(4) The hearings provided for in the act shall be conducted by the director at the time and place the director designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 54-2310, the director shall sustain, modify, or rescind the order. All hearings shall be in compliance with the Administrative Procedure Act.

(5) A permitholder is deemed to waive the right to a hearing if such permitholder does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the permitholder makes a showing to the director that the permitholder had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the permitholder waives the right to a hearing, the director shall make a final finding based upon available information and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 54-2310, the director shall sustain, modify, or rescind the order.

(6) Any person aggrieved by the finding of the director has ten days from the entry of the director's order to request a new hearing if such person can show a mistake of fact has been made which affected the director's determination. Any order of the director becomes final upon the expiration of ten days after its entry if no request for a new hearing is made.

(7) Any person aggrieved by any order entered by the director or any other action taken by the department may appeal the order or action, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1999, LB 404, § 10.

**Cross References**

Administrative Procedure Act, see section 84-920.

**54-2312 Animal identification.**

A domesticated cervine animal, or any part thereof, shall be appropriately marked for proof of ownership according to rules and regulations adopted by

the department. The department shall adopt and promulgate rules and regulations specifying the acceptable forms of domesticated cervine animal identification in a manner which visibly distinguishes a domesticated cervine animal from wild cervidae. The department, in consultation with the commission, shall establish separate identification or proof of ownership requirements for transporting taken domesticated cervine animals.

**Source:** Laws 1999, LB 404, § 11.

**54-2313 Luring or enticement of wildlife prohibited.**

The luring or enticement of wildlife into a permitted domesticated cervine animal facility for the purpose of containing such wildlife is cause for permit suspension under section 54-2310 and shall be considered a violation of section 37-479. Any permitholder under the Domesticated Cervine Animal Act who lures or entices wildlife into such a facility is responsible for any and all expenses incurred by the commission to remove such wildlife from the facility.

**Source:** Laws 1999, LB 404, § 12; Laws 2009, LB105, § 38.

**54-2314 Quarantine; department; powers.**

(1) In order to prevent, suppress, control, and eradicate dangerous transmissible diseases among the domesticated cervine animals of this state, the department may place in quarantine any county, or part of any county, any private premises, or any private or public stockyards and may quarantine any domesticated cervine animal infected with such disease or which has been or is suspected of having been exposed to such disease. Such animals shall remain under quarantine until released by the department. An infected animal may be destroyed as provided by section 54-747.

(2) The department may regulate or prohibit the arrival into, departure from, and movement within the state of any domesticated cervine animal infected with a dangerous transmissible disease or exposed or suspected of having been exposed to such disease.

**Source:** Laws 1999, LB 404, § 13.

**54-2315 Cost of testing.**

When testing of domesticated cervine animals is performed pursuant to an order by the department, the owners of such animals are responsible for the cost of gathering, confining, restraining, and testing such animals and for providing the necessary facilities and assistance.

**Source:** Laws 1999, LB 404, § 14.

**54-2316 Escape; recapture or destroy animal.**

(1) Any permitholder under the Domesticated Cervine Animal Act shall, within twenty-four hours after the discovery of the escape of any such animals, notify the department, which shall immediately notify the commission, of such escape.

(2) It is the responsibility of the permitholder to recapture or destroy any escaped domesticated cervine animal within five days.

(3) If the permitholder is unwilling or unable to capture any escaped domesticated cervine animal within five days after the discovery of such escape,

the commission may destroy such escaped animals. The commission may, on a case-by-case basis, extend the number of days for a permitholder to recapture or destroy any escaped domesticated cervine animal.

(4) Any escaped domesticated cervine animal known to have originated from an area placed under quarantine by the department pursuant to section 54-2314 may be destroyed by the commission upon notice of the escape of such animal.

(5) Any expenses incurred by the department or the commission to recapture or destroy escaped domesticated cervine animals shall be assessed to the permitholder. The department and the commission shall not be held liable for the value of any domesticated cervine animal destroyed under this section.

**Source:** Laws 1999, LB 404, § 15.

#### **54-2317 Wild cervidae; duties upon discovery.**

Any permitholder under the Domesticated Cervine Animal Act shall, within twenty-four hours after the discovery of wild cervidae in a domesticated cervine animal facility, notify the commission and the department of such occurrence. The commission shall adopt policies providing for the disposition of wild cervidae found in a domesticated cervine animal facility and shall consult with the department before removal of such animals from the facility.

**Source:** Laws 1999, LB 404, § 16.

#### **54-2318 Rules and regulations.**

The department may adopt and promulgate rules and regulations for the testing, control, and eradication of diseases, including, but not limited to, chronic wasting disease, brucellosis, and tuberculosis in domesticated cervine animal herds in the state. The rules and regulations may include, but are not limited to, provisions governing:

- (1) Testing, test results, and test subjects;
- (2) Intrastate change of ownership, including provisions requiring all domesticated cervine breeding animals to be tested or originate from a herd which is in a herd certification program as established by the department under section 54-2319; and
- (3) Any other issues deemed necessary by the department to effectively control and eradicate diseases.

**Source:** Laws 1999, LB 404, § 17.

#### **54-2319 Herd certification program authorized.**

In addition to administering the Domesticated Cervine Animal Act and conducting program activities authorized by the act, the department may develop a herd certification program and may cooperate with the United States Government, or any department, agency, or officer thereof, in the development of such program, including the adoption of or reference to applicable federal regulations or industry guidelines.

**Source:** Laws 1999, LB 404, § 18.

#### **54-2320 Domesticated Cervine Animal Cash Fund; created; use; investment.**

The department may assess and collect costs for services provided and expenses incurred pursuant to its responsibilities under the Domesticated Cervine Animal Act. All costs assessed and collected pursuant to the act shall be remitted to the State Treasurer for credit to the Domesticated Cervine Animal Cash Fund, which fund is hereby created. The fund shall be utilized by the department for the purpose of carrying out the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1999, LB 404, § 19.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-2321 Administration of act.**

In administering the Domesticated Cervine Animal Act, the agents and employees of the department:

(1) Shall have access, upon notification, to any premises where domesticated cervine animals may be for the purpose of implementing the rules and regulations adopted and promulgated under the act; and

(2) May enter any premises occupied by a permitholder at any reasonable time to examine books and records maintained by the permitholder. Such books and records shall be maintained by the permitholder for review for five years after the death or disposal of any domesticated cervine animal from the facility.

**Source:** Laws 1999, LB 404, § 20.

**54-2322 Commission; access to premises.**

The commission shall have access, upon notification, to any premises where domesticated cervine animals may be for the purpose of assessing or removing populations of wild cervidae.

**Source:** Laws 1999, LB 404, § 21; Laws 2002, LB 1003, § 40.

**54-2323 Enforcement of act; violations; penalties.**

(1) In order to insure compliance with the Domesticated Cervine Animal Act, the department may apply for a temporary restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated under the act. The district court of the county where the violation is occurring or is about to occur has jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) The Attorney General or the county attorney of the county in which violations of the act, rules, or regulations are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under subsection (1) of this section to be instituted and pursued without delay.

(3) Any person who violates the Domesticated Cervine Animal Act or any rules or regulations adopted and promulgated pursuant to the act is guilty of a

Class IV misdemeanor for the first offense and a Class II misdemeanor for each subsequent offense.

**Source:** Laws 1999, LB 404, § 22.

**54-2324 Act; how construed.**

Nothing in the Domesticated Cervine Animal Act shall be construed to authorize any person to import, own, or possess any species of cervine animal the importation or possession of which is prohibited under section 37-524 and the rules and regulations promulgated thereunder.

**Source:** Laws 2002, LB 1003, § 39.

**ARTICLE 24**

**LIVESTOCK WASTE MANAGEMENT ACT**

Section

54-2401.	Transferred to section 54-2416.
54-2402.	Transferred to section 54-2417.
54-2403.	Repealed. Laws 2004, LB 916, § 29.
54-2404.	Transferred to section 54-2419.
54-2404.01.	Transferred to section 54-2420.
54-2404.02.	Transferred to section 54-2421.
54-2405.	Repealed. Laws 2004, LB 916, § 29.
54-2406.	Transferred to section 54-2423.
54-2407.	Repealed. Laws 2004, LB 916, § 29.
54-2408.	Transferred to section 54-2428.
54-2409.	Repealed. Laws 2004, LB 916, § 29.
54-2410.	Repealed. Laws 2004, LB 916, § 29.
54-2411.	Transferred to section 54-2433.
54-2412.	Transferred to section 54-2429.
54-2413.	Transferred to section 54-2435.
54-2414.	Transferred to section 54-2434.
54-2415.	Transferred to section 54-2430.
54-2416.	Act, how cited.
54-2417.	Terms, defined.
54-2418.	Department; duties.
54-2419.	Permits; approval; conditions; restrictions.
54-2420.	Section; how construed.
54-2421.	Cold water class A streams; designation.
54-2422.	Inspection and construction and operating permit requirements; exemptions.
54-2423.	Animal feeding operation; request inspection; when; fees; department; duties.
54-2424.	Animal feeding operation; operating requirements; when.
54-2425.	National Pollutant Discharge Elimination System permit; department; duties.
54-2426.	Applications; contents.
54-2427.	Public participation; when.
54-2428.	National Pollutant Discharge Elimination System permit; construction and operating permit; application and modification; fees; Livestock Waste Management Cash Fund; created; use; investment; report.
54-2429.	National Pollutant Discharge Elimination System permit; construction and operating permit; application; approval from Department of Natural Resources; Department of Environmental Quality; powers; applicability of Engineers and Architects Regulation Act.
54-2430.	Surface water runoff; diversion requirements; increase in acreage limitation; conditions.
54-2431.	Applications; rejection; when; disciplinary actions; grounds.
54-2432.	Acts prohibited.

§ 54-2401

LIVESTOCK

Section

- 54-2433. Department; contracts authorized.  
54-2434. Enforcement of act; legislative intent.  
54-2435. Council; rules and regulations.  
54-2436. Reinstatement of operating permit; conditions; fee.  
54-2437. Conditional use permit or special exception; county planning commission or county board; powers.  
54-2438. Major modification; applications; contents.

**54-2401 Transferred to section 54-2416.**

**54-2402 Transferred to section 54-2417.**

**54-2403 Repealed. Laws 2004, LB 916, § 29.**

**54-2404 Transferred to section 54-2419.**

**54-2404.01 Transferred to section 54-2420.**

**54-2404.02 Transferred to section 54-2421.**

**54-2405 Repealed. Laws 2004, LB 916, § 29.**

**54-2406 Transferred to section 54-2423.**

**54-2407 Repealed. Laws 2004, LB 916, § 29.**

**54-2408 Transferred to section 54-2428.**

**54-2409 Repealed. Laws 2004, LB 916, § 29.**

**54-2410 Repealed. Laws 2004, LB 916, § 29.**

**54-2411 Transferred to section 54-2433.**

**54-2412 Transferred to section 54-2429.**

**54-2413 Transferred to section 54-2435.**

**54-2414 Transferred to section 54-2434.**

**54-2415 Transferred to section 54-2430.**

**54-2416 Act, how cited.**

Sections 54-2416 to 54-2438 shall be known and may be cited as the Livestock Waste Management Act.

**Source:** Laws 1998, LB 1209, § 1; Laws 1999, LB 822, § 7; Laws 2003, LB 619, § 15; R.S.Supp.,2003, § 54-2401; Laws 2004, LB 916, § 5; Laws 2006, LB 975, § 1.

**54-2417 Terms, defined.**

For purposes of the Livestock Waste Management Act:

(1) Animal feeding operation means a location where beef cattle, dairy cattle, horses, swine, sheep, poultry, or other livestock have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any

portion of the location. Two or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of livestock waste. Animal feeding operation does not include aquaculture as defined in section 2-3804.01;

(2) Best management practices means schedules of activities, prohibitions, maintenance procedures, and other management practices found to be the most effective methods based on the best available technology achievable for specific sites to prevent or reduce the discharge of pollutants to waters of the state and control odor where appropriate. Best management practices also includes operating procedures and practices to control site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage;

(3) Construct means the initiation of physical onsite activities;

(4) Construction and operating permit means the state permit to construct and operate a livestock waste control facility, including conditions imposed on the livestock waste control facility and the associated animal feeding operation;

(5) Construction approval means an approval issued prior to December 1, 2006, by the department allowing construction of a livestock waste control facility;

(6) Council means the Environmental Quality Council;

(7) Department means the Department of Environmental Quality;

(8) Discharge means the spilling, leaking, pumping, pouring, emitting, emptying, or dumping of pollutants into any waters of the state or in a place which will likely reach waters of the state;

(9) Existing livestock waste control facility means a livestock waste control facility in existence prior to April 15, 1998, that does not hold a permit and which has requested an inspection prior to January 1, 2000;

(10) Livestock waste control facility means any structure or combination of structures utilized to control livestock waste at an animal feeding operation until it can be used, recycled, or disposed of in an environmentally acceptable manner. Such structures include, but are not limited to, diversion terraces, holding ponds, debris basins, liquid manure storage pits, lagoons, and other such devices utilized to control livestock waste;

(11) Major modification means an expansion or increase to the lot area or feeding area; change in the location of the animal feeding operation; change in the methods of waste treatment, waste storage, or land application of waste; increase in the number of animals; change in animal species; or change in the size or location of the livestock waste control facility;

(12) National Pollutant Discharge Elimination System permit means either a general permit or an individual permit issued by the department pursuant to subsection (11) of section 81-1505. A general permit authorizes categories of disposal practices or livestock waste control facilities and covers a geographic area corresponding to existing geographic or political boundaries, though it may exclude specified areas from coverage. General permits are limited to the same or similar types of animal feeding operations or livestock waste control facilities which require the same or similar monitoring and, in the opinion of the Director of Environmental Quality, are more appropriately controlled under a general permit than under an individual permit;

(13) New animal feeding operation means an animal feeding operation constructed after July 16, 2004;

(14) New livestock waste control facility means any livestock waste control facility for which a construction permit, an operating permit, a National Pollutant Discharge Elimination System permit, a construction approval, or a construction and operating permit, or an application therefor, is submitted on or after April 15, 1998;

(15) Operating permit means a permit issued prior to December 1, 2006, by the department after the completion of the livestock waste control facility in accordance with the construction approval and the submittal of a completed certification form to the department;

(16) Person has the same meaning as in section 81-1502; and

(17) Waters of the state has the same meaning as in section 81-1502.

**Source:** Laws 1998, LB 1209, § 2; Laws 1999, LB 870, § 5; R.S.Supp.,2002, § 54-2402; Laws 2004, LB 916, § 6; Laws 2006, LB 975, § 2; Laws 2009, LB56, § 1.

#### **54-2418 Department; duties.**

The department shall (1) administer the animal feeding operation permitting program in accordance with the National Pollutant Discharge Elimination System of the federal Clean Water Act, 33 U.S.C. 1251 et seq., through the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts and (2) administer the state program for construction and operating permits and major modification approval for animal feeding operations and livestock waste control facilities provided under the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts.

**Source:** Laws 2004, LB 916, § 7; Laws 2006, LB 975, § 3.

#### **Cross References**

**Environmental Protection Act**, see section 81-1532.

#### **54-2419 Permits; approval; conditions; restrictions.**

(1) No new animal feeding operation shall be issued a National Pollutant Discharge Elimination System permit or a construction and operating permit in any part of a watershed that feeds directly or indirectly into a cold water class A stream, delineated pursuant to section 54-2421.

(2) An existing animal feeding operation may not expand if its livestock waste control facility is located within one mile of a designated cold water class A stream segment delineated pursuant to section 54-2421 and the same cold water class A stream watershed as the animal feeding operation, except that an existing animal feeding operation used for research sponsored by the University of Nebraska at a facility owned by the University of Nebraska may expand if the department determines based on scientific information provided in the application or other available scientific information that the proposed expansion does not pose a potential threat to the stream.

(3) Existing animal feeding operations may receive a new or modified National Pollutant Discharge Elimination System permit, a new or modified

construction and operating permit, a modified operating permit, or a modified construction approval if:

(a) The existing animal feeding operation does not currently have a National Pollutant Discharge Elimination System permit or a construction and operating permit and upon inspection by the department a determination is made that one is necessary;

(b) The existing animal feeding operation modifies its operation but does not expand its approved livestock waste control facility;

(c) The existing animal feeding operation's livestock waste control facility is located more than two miles from a designated cold water class A stream segment delineated pursuant to section 54-2421 and in the same cold water class A stream watershed as the animal feeding operation; or

(d) The existing animal feeding operation or livestock waste control facility is located less than two miles but more than one mile from a cold water class A stream delineated pursuant to section 54-2421, and the department determines based on scientific information provided in the application or other available scientific information that the proposed expansion does not pose a potential threat to the stream.

(4) The department may deny or restrict an application for a transfer or major modification of an existing National Pollutant Discharge Elimination System permit or a construction and operating permit based upon the potential degradation of a cold water class A stream.

**Source:** Laws 1998, LB 1209, § 4; Laws 1999, LB 822, § 8; Laws 1999, LB 870, § 7; R.S.Supp.,2002, § 54-2404; Laws 2004, LB 916, § 8; Laws 2006, LB 975, § 4.

**54-2420 Section; how construed.**

Nothing in section 54-2419 shall be construed to change the zoning authority of a county that existed prior to May 25, 1999.

**Source:** Laws 1999, LB 822, § 10; R.S.Supp.,2002, § 54-2404.01; Laws 2004, LB 916, § 9.

**54-2421 Cold water class A streams; designation.**

A map delineating segments and watershed boundaries for cold water class A streams, as designated prior to May 25, 1999, and prepared by the Department of Environmental Quality and the Department of Natural Resources, shall be maintained by the Department of Environmental Quality and used by the department for determinations made concerning cold water class A streams and stream watersheds under the Livestock Waste Management Act unless changed by the council. Beginning on May 25, 1999, the council may designate and may redesignate previously designated waters of this state as cold water class A streams for purposes of the act based on the determination by the council that the waters provide or could provide habitat of sufficient water volume or flow, water quality, substrate composition, and water temperature capable of maintaining year-round populations of cold water biota, including reproduction of a salmonoid (trout) population. The council shall not designate or redesignate a stream as a cold water class A stream unless the stream has supported the reproduction of a salmonoid (trout) population within the previous five years. The department shall revise and maintain the cold water class A

stream and stream watershed map to incorporate all designations and redesignations of the council.

**Source:** Laws 1999, LB 822, § 9; Laws 2000, LB 900, § 242; R.S.Supp.,2002, § 54-2404.02; Laws 2004, LB 916, § 10.

**54-2422 Inspection and construction and operating permit requirements; exemptions.**

Animal feeding operations with animal capacity that is less than three hundred cattle, two hundred mature dairy cattle, seven hundred fifty swine weighing fifty-five pounds or more per head, three thousand swine weighing less than fifty-five pounds per head, one thousand five hundred ducks with liquid manure handling system, ten thousand ducks without liquid manure handling system, nine thousand chickens with liquid manure handling system, thirty-seven thousand five hundred chickens without liquid manure handling system, twenty-five thousand laying hens without liquid manure handling system, sixteen thousand five hundred turkeys, three thousand sheep, or one hundred fifty horses are exempt from the inspection and construction and operating permit requirements of the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated by the council pursuant to such acts, unless the animal feeding operation has intentionally or negligently discharged pollutants to waters of the state or the department has determined that a discharge is more likely than not to occur.

**Source:** Laws 2004, LB 916, § 11; Laws 2006, LB 975, § 5; Laws 2009, LB56, § 2.

**Cross References**

Environmental Protection Act, see section 81-1532.

**54-2423 Animal feeding operation; request inspection; when; fees; department; duties.**

(1) If any person owning or operating an animal feeding operation (a) does not hold a National Pollutant Discharge Elimination System permit, an operating permit, or a construction and operating permit or have construction approval, (b) has not been notified by the department that no National Pollutant Discharge Elimination System permit or construction and operating permit is required, or (c) is not exempt under section 54-2422, such person shall, on forms prescribed by the department, request the department to inspect such person's animal feeding operation to determine if a livestock waste control facility is required. If an inspection is requested prior to January 1, 1999, an inspection fee for such inspection shall not be assessed. For inspections requested on or after July 16, 2004, there shall be an inspection fee established by the council with a minimum fee of one hundred dollars and a maximum fee of five hundred dollars. Such fee may be set according to animal capacity.

(2) The department shall, in conjunction with natural resources districts and the Cooperative Extension Service of the University of Nebraska, publicize information to make owners and operators of affected animal feeding operations aware of the need to request an inspection.

(3) Any person required to request an inspection under this section who operates an animal feeding operation after January 1, 2000, without first

submitting the request for inspection required under this section shall be assessed, except for good cause shown, a late fee of not less than fifty dollars nor more than five hundred dollars for each offense. Each month a violation continues shall constitute a separate offense. Exceptions to this provision are:

(a) An animal feeding operation exempted by the department from National Pollutant Discharge Elimination System permit requirements prior to July 16, 2004; or

(b) A livestock operation that became an animal feeding operation by enactment of the Livestock Waste Management Act as such act existed on July 16, 2004, but was not required to request an inspection prior to that date.

(4) A person meeting the provisions of subdivision (3)(b) of this section shall request an inspection prior to January 1, 2009, and pay fees required pursuant to subsection (1) of this section.

(5) Any person required to request an inspection under subsection (4) of this section who operates an animal feeding operation after December 31, 2008, shall be assessed, except for good cause shown, a late fee of not less than fifty dollars nor more than five hundred dollars for each offense. Each month a violation continues shall constitute a separate offense.

**Source:** Laws 1998, LB 1209, § 6; Laws 1999, LB 870, § 8; R.S.Supp.,2002, § 54-2406; Laws 2004, LB 916, § 12; Laws 2006, LB 975, § 6; Laws 2007, LB677, § 1.

**54-2424 Animal feeding operation; operating requirements; when.**

Any animal feeding operation which was in existence on January 1, 2004, and does not have any permit on March 17, 2006, shall be subject, in addition to any other requirements of the Environmental Protection Act, Livestock Waste Management Act, and rules and regulations adopted and promulgated pursuant to such acts, to the same or substantially similar operating requirements as the requirements that existed on January 1, 2004.

**Source:** Laws 2004, LB 916, § 13; Laws 2006, LB 975, § 7.

**Cross References**

Environmental Protection Act, see section 81-1532.

**54-2425 National Pollutant Discharge Elimination System permit; department; duties.**

(1) After an initial inspection has been conducted pursuant to section 54-2423 for each new application for a construction and operating permit or major modification submitted to the department, the department shall, within ten days, make a determination as to whether a National Pollutant Discharge Elimination System permit is required for the proposed animal feeding operation. If an application has been submitted prior to an initial inspection being conducted pursuant to section 54-2423, such application shall be returned to the applicant without the department conducting any review of the application.

(2) If it is determined that a National Pollutant Discharge Elimination System permit is required, the department shall contact the applicant to determine whether the applicant requests the department to delay review of the construction and operating permit or major modification application until an individual National Pollutant Discharge Elimination System permit application is submitted.

(3) If the applicant requests the department to delay review of the construction and operating permit or major modification application, upon receipt of the individual National Pollutant Discharge Elimination System permit application and the construction and operating permit or major modification application, the applications shall be reviewed simultaneously utilizing the processes and timelines for review of an individual National Pollutant Discharge Elimination System permit application.

(4) If (a) the department determines a National Pollutant Discharge Elimination System permit is not required or (b) if the applicant requests the department to proceed with review of the construction and operating permit or major modification application independent of a National Pollutant Discharge Elimination System permit application, the department shall, for both subdivisions (4)(a) and (4)(b) of this section:

(i) Within five days send a copy of the application to the natural resources district or districts and the county board or boards of the counties in which the livestock waste control facility is located or proposed to be located. The natural resources district or districts and the county board or boards shall have thirty days to comment to the department regarding any conditions that may exist at the proposed site which the department should consider regarding the content of the application for a construction and operating permit or major modification;

(ii) Within sixty days, (A) issue a proposed decision on the application for a construction and operating permit or major modification and (B) issue a notice providing an opportunity for any interested person to submit written comments on such proposed decision within thirty days after the first day of publication of such notice. The notice shall be published in a daily or weekly newspaper or other publication with general circulation in the area of the existing or proposed animal feeding operation, and a copy of the notice shall be provided to the applicant; and

(iii) Within one hundred ten days approve or deny the application and transmit its findings and conclusions to the applicant.

**Source:** Laws 2004, LB 916, § 14; Laws 2006, LB 975, § 8.

#### **54-2426 Applications; contents.**

Each application for a National Pollutant Discharge Elimination System permit or construction and operating permit shall include, in addition to other requirements, (1) a certification that the information contained in the application is accurate to the best of the applicant's knowledge and belief and that the applicant has the authority under the laws of the State of Nebraska to sign the application and (2) a completed nutrient management plan and supporting documentation unless such information has been previously submitted and is unchanged. The nutrient management plan shall be considered a part of the application. For National Pollutant Discharge Elimination System permits, the plan shall, at a minimum, meet and conform to the requirements of the National Pollutant Discharge Elimination System in the federal Clean Water Act, 33 U.S.C. 1251 et seq. A copy of the nutrient management plan and supporting documentation shall continuously be kept on file at the department. The operator shall at least annually update changes made to the nutrient management plan as required pursuant to rules and regulations adopted and promulgated by the council. For a construction and operating permit, the plan

shall contain, at a minimum, the information which the department required to be included in all nutrient management plans on January 1, 2004.

**Source:** Laws 2004, LB 916, § 15; Laws 2006, LB 975, § 9.

**54-2427 Public participation; when.**

Once the department has made a determination to approve or deny an application for a National Pollutant Discharge Elimination System permit, the department shall provide opportunities for public participation, including, but not limited to, public comment, opportunity for public hearing, and agency response to comments, which are at least as stringent as the requirements of the National Pollutant Discharge Elimination System in the federal Clean Water Act, 33 U.S.C. 1251 et seq.

**Source:** Laws 2004, LB 916, § 16.

**54-2428 National Pollutant Discharge Elimination System permit; construction and operating permit; application and modification; fees; Livestock Waste Management Cash Fund; created; use; investment; report.**

(1) Any person required to obtain a National Pollutant Discharge Elimination System permit for an animal feeding operation or a construction and operating permit for a livestock waste control facility shall file an application with the department accompanied by the appropriate fees in the manner established by the department. The application fee shall be established by the council with a maximum fee of two hundred dollars. For major modifications to an application or a permit, the fee shall equal the amount of the application fee.

(2) On or before March 1, 2006, and each year thereafter, each person who has a National Pollutant Discharge Elimination System permit or who has a large concentrated animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and a state operating permit, a construction and operating permit, or a construction approval issued pursuant to the Environmental Protection Act or the Livestock Waste Management Act shall pay a per head annual fee based on the permitted capacity identified in the permit for that facility. The department shall invoice each permittee by February 1, 2006, and February 1 of each year thereafter.

(3) The initial annual fee shall be: Beef cattle, ten cents per head; veal calves, ten cents per head; dairy cows, fifteen cents per head; swine larger than fifty-five pounds, four dollars per one hundred head or fraction thereof; swine less than fifty pounds, one dollar per one hundred head or fraction thereof; horses, twenty cents per head; sheep or lambs, one dollar per one hundred head or fraction thereof; turkeys, two dollars per one thousand head or fraction thereof; chickens or ducks with liquid manure facility, three dollars per one thousand head or fraction thereof; and chickens or ducks with other than liquid manure facility, one dollar per one thousand head or fraction thereof. This fee structure may be reviewed in fiscal year 2007-08.

(4) Beginning in fiscal year 2007-08, the department shall annually review and adjust the fee structure in this section and section 54-2423 to ensure that fees are adequate to meet twenty percent of the program costs from the previous fiscal year. All fees collected under this section and sections 54-2423, 54-2435, and 54-2436 shall be remitted to the State Treasurer for credit to the Livestock Waste Management Cash Fund which is created for the purposes described in the Livestock Waste Management Act. Transfers may be made

from the fund to the General Fund at the direction of the Legislature. Any money in the Livestock Waste Management Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) On or before January 1 of each year, the department shall submit a report to the Legislature in sufficient detail to document all direct and indirect costs incurred in the previous fiscal year in carrying out the Livestock Waste Management Act, including the number of inspections conducted, the number of animal feeding operations with livestock waste control facilities, the number of animal feeding operations inspected, the size of the livestock waste control facilities, the results of water quality monitoring programs, and other elements relating to carrying out the act. The Appropriations Committee of the Legislature shall review the report in its analysis of executive programs in order to verify that the revenue generated from fees was used solely to offset appropriate and reasonable costs associated with carrying out the act.

**Source:** Laws 1998, LB 1209, § 8; Laws 1999, LB 870, § 10; R.S.Supp.,2002, § 54-2408; Laws 2004, LB 916, § 17; Laws 2006, LB 975, § 10; Laws 2009, First Spec. Sess., LB3, § 30.

**Cross References**

**Environmental Protection Act**, see section 81-1532.

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**54-2429 National Pollutant Discharge Elimination System permit; construction and operating permit; application; approval from Department of Natural Resources; Department of Environmental Quality; powers; applicability of Engineers and Architects Regulation Act.**

(1) An applicant for a National Pollutant Discharge Elimination System permit or a construction and operating permit under the Environmental Protection Act or the Livestock Waste Management Act shall, before issuance by the Department of Environmental Quality, obtain any necessary approvals from the Department of Natural Resources under the Safety of Dams and Reservoirs Act and certify such approvals to the Department of Environmental Quality. The Department of Environmental Quality, with the concurrence of the Department of Natural Resources, may require the applicant to obtain approval from the Department of Natural Resources for any dam, holding pond, or lagoon structure which would not otherwise require approval under the Safety of Dams and Reservoirs Act but which in the event of a failure could result in a significant discharge into waters of the state and have a significant impact on the environment. The Department of Environmental Quality may provide for the payment of such costs of the Department of Natural Resources with revenue generated under section 54-2428.

(2) An applicant required to obtain a National Pollutant Discharge Elimination System permit is subject to the requirements of the Engineers and Architects Regulation Act.

(3) An applicant who has a large concentrated animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and who is required to obtain a construction and operating permit is subject to the requirements of the Engineers and Architects Regulation Act.

(4) An applicant who has a small or medium animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and who is required to obtain a construction and operating permit, but not required to obtain a National Pollutant Discharge Elimination System permit, is exempt from the Engineers and Architects Regulation Act.

(5) The department may require an engineering evaluation or assessment performed by a licensed professional engineer for a livestock waste control facility if after an inspection: (a) The department determines that the facility has (i) visible signs of structural breakage below the permanent pool, (ii) signs of discharge or proven discharge due to structural weakness, (iii) improper maintenance, or (iv) inadequate capacity; or (b) the department has reason to believe that an animal feeding operation with a livestock waste control facility has violated or threatens to violate the Environmental Protection Act, the Livestock Waste Management Act, or any rules or regulations adopted and promulgated under such acts. Animal feeding operations not required to have a permit under the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated pursuant to such acts are exempt from the Engineers and Architects Regulation Act.

**Source:** Laws 1998, LB 1209, § 12; Laws 1999, LB 870, § 13; Laws 2000, LB 900, § 243; Laws 2003, LB 619, § 16; R.S.Supp.,2003, § 54-2412; Laws 2004, LB 916, § 18; Laws 2005, LB 335, § 80; Laws 2006, LB 975, § 11; Laws 2007, LB313, § 1.

**Cross References**

**Engineers and Architects Regulation Act**, see section 81-3401.

**Environmental Protection Act**, see section 81-1532.

**Safety of Dams and Reservoirs Act**, see section 46-1601.

**54-2430 Surface water runoff; diversion requirements; increase in acreage limitation; conditions.**

(1) Except as provided in this section, no new livestock waste control facility shall be constructed and no physical onsite activities specific to a new livestock waste control facility, except the use of a borrow site for construction of other components of the animal feeding operation, shall be initiated unless surface water runoff from the upstream area, except incidental runoff, is adequately diverted around the structure and is not permitted to enter the reservoir area. For purposes of this section, incidental runoff means the runoff that drains from the slope of the embankments, the top of the dam, the reservoir area, the feedlots, the associated roadways, and up to twenty-five acres of additional area that cannot be diverted. Incidental runoff capacity from a twenty-five-year frequency, twenty-four-hour storm shall be provided for in the waste reservoir in addition to the capacity required for the waste effluent or stored materials.

(2) The Department of Natural Resources shall permit a requested increase in the twenty-five-acre limitation for a new livestock waste control facility for an animal feeding operation for which an inspection was requested prior to January 1, 2000, unless the department determines that the detriment to existing water users that would result from permitting the acreage increase would outweigh the detriment to the operator of the animal feeding operation if the increase were not permitted.

(3) For other new livestock waste control facilities, the Department of Natural Resources may permit an increase in the twenty-five-acre limitation if

it determines that (a) the applicant has no reasonable way to limit the amount of the additional runoff acreage to twenty-five acres or less at the proposed location of the livestock waste control facility, (b) the applicant has no reasonable alternative for relocating the livestock waste control facility so that the additional runoff acreage would not exceed twenty-five acres, and (c) either (i) an increase in the permitted runoff acreage would not reduce water supplies to the detriment of existing water users or (ii)(A) the requested facility is for a proposed expansion of an animal feeding operation in existence and in compliance with the Livestock Waste Management Act as of January 1, 2003, (B) the amount of the runoff acreage permitted in excess of the twenty-five-acre limitation is not more than fifteen percent of total permitted feedlot area, and (C) any detriment to existing water users that would result from permitting the acreage increase would be outweighed by the detriment to the operator of the animal feeding operation if the increase were not permitted.

**Source:** Laws 2003, LB 619, § 17; R.S.Supp.,2003, § 54-2415; Laws 2004, LB 916, § 19.

**54-2431 Applications; rejection; when; disciplinary actions; grounds.**

(1) For purposes of this section:

(a) Applicant means the person who has applied for a National Pollutant Discharge Elimination System permit, a construction and operating permit, or a major modification of a National Pollutant Discharge Elimination System permit or construction and operating permit, but does not include any other person who is a relative, partner, member, shareholder, resident, parent company, subsidiary, or other affiliate of the applicant;

(b) Discharge violation means a discharge, found by the department after investigation, notice, and hearing, to have been caused intentionally or negligently by the applicant or permitholder; and

(c) Permitholder means the person who has received a National Pollutant Discharge Elimination System permit, a construction and operating permit, or a major modification of a National Pollutant Discharge Elimination System permit or construction and operating permit, but does not include any other person who is a relative, partner, member, shareholder, resident, parent company, subsidiary, or other affiliate of the permitholder.

(2) Notwithstanding the rules and regulations adopted and promulgated under subdivision (1)(e) of section 54-2435, the department may reject an application for a new National Pollutant Discharge Elimination System permit, an application for a new construction and operating permit, or an application for a major modification of a National Pollutant Discharge Elimination System permit or a construction and operating permit, and the department may revoke or suspend a National Pollutant Discharge Elimination System permit or construction and operating permit, upon a finding pursuant to subsection (3) of this section that the applicant or permitholder is unsuited to perform the obligations of a permitholder.

(3) The applicant or permitholder shall be determined unsuited to perform the obligations of a permitholder if the department finds, upon an investigation and hearing, that within the past five years the applicant or permitholder:

(a) Has committed three separate and distinct discharge violations at the same animal feeding operation in Nebraska owned or operated by the applicant or permitholder; or

(b) Has a criminal conviction for a violation of section 81-1506 or a felony criminal conviction for violation of the environmental law in any jurisdiction.

**Source:** Laws 2004, LB 916, § 20; Laws 2006, LB 975, § 12; Laws 2009, LB56, § 3.

**54-2432 Acts prohibited.**

Except as provided in section 54-2422, it shall be unlawful for any person to:

(1) Construct or operate an animal feeding operation prior to an inspection from the department, unless exempted from inspection by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts;

(2) Construct a livestock waste control facility without first obtaining a construction and operating permit from the department, unless exempted from the requirement for a construction and operating permit by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts. The use of a borrow site for construction of other components of the animal feeding operation does not constitute construction of the livestock waste control facility;

(3) Operate an animal feeding operation prior to construction of an approved livestock waste control facility, unless exempted from the requirement for a livestock waste control facility by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts;

(4) Discharge animal excreta, feed, bedding, spillage or overflow from the watering systems, wash and flushing waters, sprinkling water from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, or other materials polluted by livestock waste in violation of or without first obtaining a National Pollutant Discharge Elimination System permit, a construction and operating permit, or an exemption from the department, if required by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts; or

(5) Violate the terms of a National Pollutant Discharge Elimination System permit or construction and operating permit or any provision of the Livestock Waste Management Act and rules and regulations adopted and promulgated by the council pursuant to the act.

**Source:** Laws 2004, LB 916, § 21; Laws 2006, LB 975, § 13.

**Cross References**

Environmental Protection Act, see section 81-1532.

**54-2433 Department; contracts authorized.**

In carrying out its responsibilities under the Livestock Waste Management Act, the department may contract with the various natural resources districts as appropriate. The contract may include all tasks or duties necessary to carry out the act but shall not enable the natural resources districts to issue National

Pollutant Discharge Elimination System permits or construction and operating permits or initiate enforcement proceedings. The contract may provide for payment of natural resources districts' costs by the department.

**Source:** Laws 1998, LB 1209, § 11; Laws 1999, LB 870, § 12; R.S.Supp.,2002, § 54-2411; Laws 2004, LB 916, § 22; Laws 2006, LB 975, § 14.

**54-2434 Enforcement of act; legislative intent.**

It is the intent of the Legislature that in enforcing the provisions of the Livestock Waste Management Act the department shall give priority to the larger animal feeding operations in the state.

**Source:** Laws 1998, LB 1209, § 14; R.S.1943, (1998), § 54-2414; Laws 2004, LB 916, § 23.

**54-2435 Council; rules and regulations.**

(1) The council shall adopt and promulgate rules and regulations for animal feeding operations under the Environmental Protection Act and the Livestock Waste Management Act which provide for:

(a) Requirements for animal feeding operations which shall include:

(i) Location restrictions and setbacks to protect waters of the state;

(ii) Applications and inspection requests;

(iii) Identification of ownership;

(iv) Numbers, size, and types of animals;

(v) Type of waste control facility;

(vi) Design, construction, operation, and maintenance;

(vii) Monitoring of surface or ground water which may be necessary as determined by the department where a significant risk to waters of the state exists;

(viii) Nutrient management, a nutrient management plan to be submitted with the application for a National Pollutant Discharge Elimination System permit or a construction and operating permit, and a description of the types of changes made to the nutrient management plan required to be updated pursuant to section 54-2426;

(ix) Closure and corrective action;

(x) Best management practices; and

(xi) Other such requirements deemed necessary to protect waters of the state;

(b) A National Pollutant Discharge Elimination System permit process for animal feeding operations;

(c) National Pollutant Discharge Elimination System permit issuance, denial, renewal, revocation, suspension, reinstatement, termination, or transfer;

(d) Training requirements for permitholders;

(e) Construction and operating permit issuance, denial, revocation, suspension, reinstatement, termination, or transfer;

(f) Construction and operating permit and National Pollutant Discharge Elimination System permit major modification issuance, denial, revocation, or termination;

- (g) Public notice and hearing requirements;
  - (h) Requirements for existing livestock waste control facilities;
  - (i) Requirements for adequate area and proper methods and rates for land application of waste and nutrients such as nitrogen and phosphorus;
  - (j) Requirements for record keeping and reporting;
  - (k) A fee schedule pursuant to sections 54-2423 and 54-2428;
  - (l) Procedures for collection of fees pursuant to this section and sections 54-2423 and 54-2428;
  - (m) Procedures for exemptions as provided for in the requirements of the Environmental Protection Act and the Livestock Waste Management Act; and
  - (n) Procedures governing proceedings to determine discharge violations under section 54-2431.
- (2) Rules and regulations adopted and promulgated under this section may be based upon the size of the animal feeding operation and the form of waste management and may include more stringent requirements for larger animal feeding operations and waste control technologies that are more likely to cause adverse impacts.
- (3) The council may adopt and promulgate any other rules and regulations necessary to carry out the purposes of the Environmental Protection Act and the Livestock Waste Management Act.
- (4) Rules and regulations adopted pursuant to this section shall be no less stringent than the federal Clean Water Act, 33 U.S.C. 1251 et seq.
- (5) If a conflict arises between the authority of the council under the Environmental Protection Act and the authority of the council under the Livestock Waste Management Act, the authority of the council under the Livestock Waste Management Act shall control.

**Source:** Laws 1998, LB 1209, § 13; Laws 1999, LB 870, § 14; R.S.Supp.,2002, § 54-2413; Laws 2004, LB 916, § 24; Laws 2006, LB 975, § 15; Laws 2009, LB56, § 4.

**Cross References**

Environmental Protection Act, see section 81-1532.

**54-2436 Reinstatement of operating permit; conditions; fee.**

- (1) Any person who held an operating permit on December 31, 2005, and whose permit expired pursuant to rules and regulations may file a request for reinstatement of the operating permit subject to the following conditions:
- (a) The request must be filed on or before December 31, 2007;
  - (b) The person shall certify that the livestock operation is in compliance with the operating permit as it existed on the date the operating permit expired; and
  - (c) The request shall be accompanied by a twenty-five-dollar nonrefundable filing fee.
- (2) The department shall, upon receipt of a complete and timely request for reinstatement, reinstate the permit with the same conditions as existed when the permit expired.

**Source:** Laws 2006, LB 975, § 16.

**54-2437 Conditional use permit or special exception; county planning commission or county board; powers.**

(1) A county planning commission or county board shall grant a conditional use permit or special exception to an existing animal feeding operation seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the operation has complied with inspection requirements pursuant to section 54-2423, and the construction or modification of the livestock waste control facility will not increase the animal capacity of such operation. The number of conditional use permits or special exceptions granted to such an operation under this subsection is unlimited.

(2) A county planning commission or county board shall grant a conditional use permit or special exception to an existing beef cattle or dairy cattle animal feeding operation that has an animal capacity of five thousand or fewer beef cattle or three thousand five hundred or fewer dairy cattle that is seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the operation has complied with inspection requirements pursuant to section 54-2423, and construction or modification of the livestock waste control facility would allow the animal capacity of the operation to increase not more than:

(a) Five hundred beef cattle if the operation has an existing animal capacity of three thousand beef cattle or fewer;

(b) Three hundred beef cattle if the operation has an existing animal capacity of more than three thousand beef cattle but no more than five thousand beef cattle;

(c) Three hundred fifty dairy cattle if the operation has an existing animal capacity of two thousand dairy cattle or fewer; or

(d) Two hundred ten dairy cattle if the operation has an existing animal capacity of more than two thousand dairy cattle but no more than three thousand five hundred dairy cattle.

Only one conditional use permit or special exception per operation is allowed under this subsection.

**Source:** Laws 2006, LB 975, § 17.

**54-2438 Major modification; applications; contents.**

Each application for a major modification of an operating permit, a construction approval, a construction and operating permit, or a National Pollutant Discharge Elimination System permit or an application for a construction and operating permit or a National Pollutant Discharge Elimination System permit shall contain (1) a certification that the information contained in the application is accurate to the best of the applicant's knowledge and belief and that the applicant has the authority under the laws of the State of Nebraska to sign the application, (2) a detailed description of the major modification requested, (3) a completed nutrient management plan and supporting documentation unless such information has been previously submitted and is unchanged, and (4) such information as required by rules and regulations adopted and promulgated by the council.

**Source:** Laws 2006, LB 975, § 18.

## ARTICLE 25

## CONTROLLED SUBSTANCES ANIMAL WELFARE ACT

## Section

- 54-2501. Act, how cited.  
54-2502. Purpose of act.  
54-2503. Terms, defined.  
54-2504. Collaborating veterinarian agreement; required; when; contents.  
54-2505. Liability.  
54-2506. Insurance required.

**54-2501 Act, how cited.**

Sections 54-2501 to 54-2506 shall be known and may be cited as the Controlled Substances Animal Welfare Act.

**Source:** Laws 1999, LB 573, § 1.

**54-2502 Purpose of act.**

The purpose of the Controlled Substances Animal Welfare Act is to allow animal welfare organizations to obtain proper controlled substances for the purpose of humane euthanasia of seized, stray, injured, sick, homeless, abandoned, or unwanted domesticated and nondomesticated or wild animals.

**Source:** Laws 1999, LB 573, § 2.

**54-2503 Terms, defined.**

For purposes of the Controlled Substances Animal Welfare Act:

- (1) Animal welfare organization means a Nebraska nonprofit corporation whose purpose is promoting the welfare, protection, and humane treatment of animals, and whose activities may include the seizure, impoundment, boarding, or kenneling of stray, injured, sick, homeless, abandoned, or unwanted animals;
- (2) Euthanizing drug means sodium pentobarbital or any controlled substance used for the purpose of humane euthanasia of seized, stray, injured, sick, homeless, abandoned, or unwanted animals; and
- (3) Veterinarian means a person authorized by law to practice veterinary medicine in this state.

**Source:** Laws 1999, LB 573, § 3.

**54-2504 Collaborating veterinarian agreement; required; when; contents.**

Possession and administration of a euthanizing drug by an animal welfare organization shall be pursuant to a collaborating veterinarian agreement. A collaborating veterinarian agreement is between a veterinarian and an animal welfare organization and includes:

- (1) Designation of the responsible individual or individuals for the animal welfare organization;
- (2) Provisions for the proper storage and inventory of the euthanizing drugs;
- (3) Maintenance of effective controls against the diversion of such drugs;
- (4) Provisions for proper training of any animal welfare organization staff whose duties include administering a euthanizing drug. Such training includes information in at least the following areas: The pharmacology, proper administration, and storage of euthanizing drugs; federal and state laws regulating the

storage and inventory of euthanizing drugs; stress management; and proper disposal of euthanized animals; and

(5) Maintenance of a valid veterinary-client-patient relationship.

Pursuant to a collaborating veterinarian agreement, a veterinarian shall maintain a separate registration under section 28-408 at the principal place of business of the animal welfare organization.

**Source:** Laws 1999, LB 573, § 4.

**54-2505 Liability.**

If a veterinarian assists an animal welfare organization in obtaining euthanizing drugs pursuant to a collaborating veterinarian agreement authorized by the Controlled Substances Animal Welfare Act, such veterinarian is not liable for any acts or omissions on the part of the animal welfare organization, except that disciplinary action may be taken against the separate registration pursuant to section 28-409. The animal welfare organization is liable under the Uniform Controlled Substances Act for acts or omissions on the part of its staff members.

**Source:** Laws 1999, LB 573, § 5.

**Cross References**

Uniform Controlled Substances Act, see section 28-401.01.

**54-2506 Insurance required.**

No animal welfare organization shall accept controlled substances under a collaborating veterinarian agreement unless, at the time of the acceptance, it has in effect third-party liability insurance covering damages resulting from the improper handling or control of controlled substances.

**Source:** Laws 1999, LB 573, § 6.

**ARTICLE 26**

**COMPETITIVE LIVESTOCK MARKETS ACT**

Section

- 54-2601. Act, how cited.
- 54-2602. Terms, defined.
- 54-2603. Legislative findings.
- 54-2604. Packers; acts prohibited.
- 54-2605. Violations by packer; enforcement; penalty.
- 54-2606. Packer violation; proceeds of livestock sale; fines; distribution.
- 54-2607. Sales of swine; packers; prohibited acts.
- 54-2608. Sales of swine; authorized; when.
- 54-2609. Sales of swine; contracts allowed; conditions.
- 54-2610. Sales of swine; contract voidable by seller.
- 54-2611. Sales of swine; recovery of damages.
- 54-2612. Sales of swine; violation; penalty.
- 54-2613. Sales of swine; packer; reporting requirements.
- 54-2614. Sales of swine; reports available to public; department; duty.
- 54-2615. Sales of swine; packer; failure to make reports; false information; penalties.
- 54-2616. Sales of swine; enforcement of provisions; restraining order.
- 54-2617. Sales of cattle; packer; prohibited acts.
- 54-2618. Sales of cattle; contracts allowed; conditions.
- 54-2619. Sales of cattle; pricing mechanisms; restrictions.
- 54-2620. Sales of cattle; contract voidable by seller.

## Section

- 54-2621. Sales of cattle; recovery of damages.  
54-2622. Sales of cattle; violation; penalty.  
54-2623. Sales of cattle; packer; reporting requirements.  
54-2624. Sales of cattle; reports available to public; department; duty.  
54-2625. Sales of cattle; packer; failure to make reports; false information; penalties.  
54-2626. Sales of cattle; enforcement of provisions; restraining order.  
54-2627. Fee per animal unit; department assess.  
54-2627.01. Preemption by federal Livestock Mandatory Reporting Act of 1999; director; duties.  
54-2628. Competitive Livestock Markets Cash Fund; created; use; investment.  
54-2629. Rules and regulations.  
54-2630. Attorney General; enforcement powers.  
54-2631. Attorney General; reciprocal agreements; authorized.

**54-2601 Act, how cited.**

Sections 54-2601 to 54-2631 shall be known and may be cited as the Competitive Livestock Markets Act.

**Source:** Laws 1999, LB 835, § 1; Laws 2006, LB 856, § 25.

**54-2602 Terms, defined.**

For purposes of the Competitive Livestock Markets Act:

- (1) Animal unit means one head of cattle, three calves under four hundred fifty pounds, or five swine;
- (2) Department means the Department of Agriculture;
- (3) Director means the Director of Agriculture or his or her designee;
- (4) Livestock means live cattle or swine;
- (5) Packer means a person, or agent of such person, engaged in the business of slaughtering livestock in Nebraska in excess of one hundred fifty thousand animal units per year; and
- (6) Person includes individuals, firms, associations, limited liability companies, and corporations and officers or limited liability company members thereof.

**Source:** Laws 1999, LB 835, § 2.

**54-2603 Legislative findings.**

(1) The Legislature finds that family farmers and ranchers have been experiencing, with greater frequency, severely depressed livestock market prices. These market conditions are disproportionately affecting independent producers, which make up the majority of farms and ranches, and are threatening the economic stability of Nebraska's rural communities. The Legislature further finds that packer concentration, vertical integration, and contractual arrangements are undermining the system of price discovery. In the absence of any meaningful federal response to the conditions described, the purpose of the Competitive Livestock Markets Act is to increase livestock market price transparency, ensuring that producers can compete in a free and open market. This is accomplished by establishing minimum price and contract reporting requirements, eliminating volume premiums and volume-based incentives, scrutinizing livestock production contracts and marketing agreements, and statutorily rein-

forcing the constitutional prohibition against the ownership, keeping, or feeding of livestock by packers for the production of livestock or livestock products.

(2) The Legislature further finds that the mandatory reporting of price and other terms in negotiated or contract procurement of livestock that has been in place under the federal Livestock Mandatory Reporting Act of 1999 is an important reform of livestock markets that contributes to greater market transparency, enhances the ability of livestock sellers to more competently and confidently market livestock, and lessens the existence of conditions under which market price manipulation and unfair preference or advantage in packer procurement practices can occur. It is a purpose of the Competitive Livestock Markets Act to provide for the continuation of mandatory price reporting for the benefit of Nebraska producers and protection of the integrity of livestock markets in Nebraska in the event of termination of the federal Livestock Mandatory Reporting Act of 1999 and its preemption of similar state price reporting laws as well as to provide for an orderly implementation of the state price reporting system authorized by the Competitive Livestock Markets Act, should Congress fail to reauthorize the federal Livestock Mandatory Reporting Act of 1999.

**Source:** Laws 1999, LB 835, § 3; Laws 2006, LB 856, § 26.

**54-2604 Packers; acts prohibited.**

After May 27, 1999, it is unlawful for a packer to directly or indirectly be engaged in the ownership, keeping, or feeding of livestock for the production of livestock or livestock products, other than temporary ownership, keeping, and feeding, not to exceed five days, necessary and incidental to the process of slaughter.

**Source:** Laws 1999, LB 835, § 4.

**54-2605 Violations by packer; enforcement; penalty.**

Whenever the Attorney General has reason to believe that a packer is violating section 54-2604, he or she shall commence an action in district court to enjoin the livestock operation. The court, upon determination that such packer is in violation of section 54-2604, shall order such livestock to be removed and sold and shall assess the packer a fine of not less than one thousand dollars for each day of violation.

**Source:** Laws 1999, LB 835, § 5.

**54-2606 Packer violation; proceeds of livestock sale; fines; distribution.**

The proceeds from any livestock ordered to be sold pursuant to section 54-2605 shall not be distributed until all fines and costs associated with such action have been paid. All money collected as a fine shall be remitted to the State Treasurer for credit to the permanent school fund. All fines levied under this section remaining unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name of the State of Nebraska, in the district court of the county in which the violation occurred.

**Source:** Laws 1999, LB 835, § 6.

**54-2607 Sales of swine; packers; prohibited acts.**

Except as provided in sections 54-2608 and 54-2609, it is unlawful for a packer purchasing or entering into a contract to purchase swine to pay or enter into a contract to pay different prices to the sellers of the swine. This section shall not be construed to mean that a price or payment method must remain fixed throughout any marketing period.

**Source:** Laws 1999, LB 835, § 7.

**54-2608 Sales of swine; authorized; when.**

Section 54-2607 does not apply to any direct, spot, or cash purchase of swine if the following requirements are met:

(1) The difference in price is based on: (a) A payment method specifying prices paid for criteria relating to carcass merit; or (b) actual and quantifiable costs related to transporting and acquiring the swine by the packer; and

(2) After making the payment to a seller, the packer reports the payment information required under section 54-2613, including the payment method specifying prices paid for criteria relating to carcass merit and transportation and acquisition costs.

**Source:** Laws 1999, LB 835, § 8.

**54-2609 Sales of swine; contracts allowed; conditions.**

Section 54-2607 does not apply to any contract to purchase swine at a certain date or time if the following requirements are met:

(1) The difference in price is based on: (a) A payment method specifying prices paid for criteria relating to carcass merit; or (b) actual and quantifiable costs related to transporting and acquiring the swine by the packer;

(2) The packer reports the payment information required under section 54-2613, including the payment method specifying prices paid for criteria relating to carcass merit and transportation and acquisition costs;

(3) The packer reports the information required under section 54-2613, including the price to be paid for swine to be delivered on specified delivery dates or times; and

(4) An offer to enter into a contract for the delivery of swine, according to the same terms and conditions, is made to other sellers.

**Source:** Laws 1999, LB 835, § 9.

**54-2610 Sales of swine; contract voidable by seller.**

Any contract made by a packer in violation of section 54-2607 is voidable by the seller.

**Source:** Laws 1999, LB 835, § 10.

**54-2611 Sales of swine; recovery of damages.**

A seller may bring an action against any packer violating section 54-2607 to recover damages sustained by reason of such violation.

**Source:** Laws 1999, LB 835, § 11.

**54-2612 Sales of swine; violation; penalty.**

Any packer acting in violation of section 54-2607 is guilty of a Class IV misdemeanor and shall be fined five hundred dollars per violation.

**Source:** Laws 1999, LB 835, § 12.

**54-2613 Sales of swine; packer; reporting requirements.**

Beginning February 15, 2000, a packer shall, two times each day during which swine are purchased, report to the department and to the United States Department of Agriculture, agricultural market service livestock news branch, all swine that are purchased in the cash, spot, or direct market since the last report. A packer shall, one time each day during which swine are purchased, report to the department and to the United States Department of Agriculture, agricultural market service livestock news branch, all swine that are purchased by contract that day. Such reports shall be completed on forms prepared by the department, in consultation with the agricultural market service livestock news branch, and shall include:

- (1) The cash price paid and the number of swine purchased in the cash, spot, or direct market at price intervals representative of the day's trade;
- (2) The base price paid and premium and discount payment adjustments for quality characteristics including grade, yield, and backfat;
- (3) Base price and premium and discount factors for swine purchased using a formula-based pricing system; and
- (4) The number of swine purchased under contract, in which the date of delivery is set for more than fourteen days after the making of the contract, and the base price to be paid or the formula that will be used to determine the base price to be paid.

The report shall not include information regarding the identity of a seller.

**Source:** Laws 1999, LB 835, § 13.

**54-2614 Sales of swine; reports available to public; department; duty.**

The department shall make report information received under section 54-2613 available to the public in a timely manner to permit the use of the information while it is still relevant.

**Source:** Laws 1999, LB 835, § 14.

**54-2615 Sales of swine; packer; failure to make reports; false information; penalties.**

The failure of a packer to report information to the department as required in section 54-2613 is punishable by a civil penalty not to exceed one thousand dollars for each day that a complete report is not made available to the department. The intentional reporting of false information by a packer in the report to the department required in section 54-2613 is a Class IV misdemeanor.

**Source:** Laws 1999, LB 835, § 15.

**54-2616 Sales of swine; enforcement of provisions; restraining order.**

The Attorney General shall enforce the provisions of sections 54-2607 to 54-2615, and the director shall refer any violations of these provisions to the Attorney General. The Attorney General or any person injured by a violation of

these provisions may bring an action in district court to restrain a packer from violating these provisions.

**Source:** Laws 1999, LB 835, § 16.

**54-2617 Sales of cattle; packer; prohibited acts.**

It is unlawful for a packer to enter into a contract to purchase cattle for slaughter if:

- (1) The contract specifies that the seller is not allowed to report the terms of the contract; or
- (2) The date of delivery of such cattle is not specified.

**Source:** Laws 1999, LB 835, § 17.

**54-2618 Sales of cattle; contracts allowed; conditions.**

Section 54-2617 does not apply to any contract to purchase cattle for slaughter if the following conditions are met:

- (1) The contract to purchase cattle for slaughter specifies the month of delivery and allows the seller to set the week for delivery within such month; and
- (2) The packer reports the contract information as required under section 54-2623, including specified delivery dates or times.

**Source:** Laws 1999, LB 835, § 18.

**54-2619 Sales of cattle; pricing mechanisms; restrictions.**

It is unlawful for a packer to enter into a contract to purchase cattle for slaughter using a formula or grid pricing mechanism if the packer fails to negotiate a base price prior to the cattle being committed or scheduled for slaughter.

**Source:** Laws 1999, LB 835, § 19.

**54-2620 Sales of cattle; contract voidable by seller.**

Any contract to purchase cattle for slaughter that is in violation of section 54-2617 or 54-2619 is voidable by the seller.

**Source:** Laws 1999, LB 835, § 20.

**54-2621 Sales of cattle; recovery of damages.**

A seller may bring an action against any packer violating section 54-2617 or 54-2619 to recover damages sustained by reason of such violation.

**Source:** Laws 1999, LB 835, § 21.

**54-2622 Sales of cattle; violation; penalty.**

Any packer acting in violation of section 54-2617 or 54-2619 shall be guilty of a Class IV misdemeanor and shall be fined five hundred dollars per violation.

**Source:** Laws 1999, LB 835, § 22.

**54-2623 Sales of cattle; packer; reporting requirements.**

Beginning February 15, 2000, a packer shall, two times each day during which cattle are purchased, report to the department and to the United States Department of Agriculture, agricultural market service livestock news branch, all cattle that are purchased in the cash, spot, or direct market since the last report. A packer shall, one time each day during which cattle are purchased, report to the department and to the United States Department of Agriculture, agricultural market service livestock news branch, all cattle that are purchased by contract that day. Such reports shall be completed on forms prepared by the department, in consultation with the agricultural market service livestock news branch, and shall include:

- (1) The cash price paid and the number of cattle purchased at price intervals representative of the day's trade;
- (2) Quality characteristics, including sex of the cattle, estimated percentage of the meat which will be graded choice or better upon inspection based upon the United States Department of Agriculture official grades, and estimated live weight, as well as premium and discount factors that may apply to these characteristics;
- (3) Base price and premium and discount factors for cattle purchased using a formula or grid pricing mechanism; and
- (4) The delivery month, volume, and applicable basis level for all cattle purchased under basis contract.

The report shall not include information regarding the identity of a seller.

**Source:** Laws 1999, LB 835, § 23.

**54-2624 Sales of cattle; reports available to public; department; duty.**

The department shall make report information received under section 54-2623 available to the public in a timely manner to permit the use of the information while it is still relevant.

**Source:** Laws 1999, LB 835, § 24.

**54-2625 Sales of cattle; packer; failure to make reports; false information; penalties.**

The failure of a packer to report information to the department as required in section 54-2623 is punishable by a civil penalty not to exceed one thousand dollars for each day that a complete report is not made available to the department. The intentional reporting of false information by a packer in the report to the department required in section 54-2623 is a Class IV misdemeanor.

**Source:** Laws 1999, LB 835, § 25.

**54-2626 Sales of cattle; enforcement of provisions; restraining order.**

The Attorney General shall enforce the provisions of sections 54-2617 to 54-2625, and the director shall refer any violations of these provisions to the Attorney General. The Attorney General or any person injured by a violation of these provisions may bring an action in district court to restrain a packer from violating these provisions.

**Source:** Laws 1999, LB 835, § 26.

**54-2627 Fee per animal unit; department assess.**

The department shall assess a fee not to exceed two cents per animal unit reported under sections 54-2613 and 54-2623 as direct-purchased or contract-purchased.

**Source:** Laws 1999, LB 835, § 27.

**54-2627.01 Preemption by federal Livestock Mandatory Reporting Act of 1999; director; duties.**

(1) Sections 54-2607 to 54-2627 are preempted by the federal Livestock Mandatory Reporting Act of 1999, 7 U.S.C. 1635 to 1636h, when such federal act is in effect.

(2)(a) If Congress does not reauthorize the federal Livestock Mandatory Reporting Act of 1999 before December 1, 2006, the director shall, on December 1, 2006, or as soon before or after as practicable, prepare a budget and an appropriation request from the General Fund, from the Competitive Livestock Markets Cash Fund, or from other cash funds under the control of the director, for submission to the Legislature in an amount sufficient to enable the department to carry out its duties under sections 54-2607 to 54-2627, and such sections shall become applicable on October 1, 2007.

(b) If, on or after December 1, 2006, Congress does not reauthorize the federal Livestock Mandatory Reporting Act of 1999, the director shall prepare such budget and appropriation request on or before a date that is twelve calendar months after the date such federal act expires or is terminated, and sections 54-2607 to 54-2627 shall become applicable on the first day of the calendar quarter that is eighteen months after the date such sections are not preempted by the federal act. No General Funds shall be appropriated for implementation of sections 54-2607 to 54-2627 after the date of commencement provided for in this section of reporting of price and other data regarding livestock transactions pursuant to sections 54-2613 and 54-2623. It is the intent of the Legislature that any General Funds appropriated for purposes of this section shall be reimbursed to the General Fund.

**Source:** Laws 2006, LB 856, § 27.

**54-2628 Competitive Livestock Markets Cash Fund; created; use; investment.**

The Competitive Livestock Markets Cash Fund is created. The fund shall be administered by the department. The fund shall consist of investigative and enforcement expense assessments against violators of the Competitive Livestock Markets Act and fees paid by a packer pursuant to section 54-2627. The money in the fund shall be used to defray the investigative, enforcement, and reporting expenses of the department in administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1999, LB 835, § 28.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-2629 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to carry out sections 54-2607 to 54-2628.

**Source:** Laws 1999, LB 835, § 29.

**54-2630 Attorney General; enforcement powers.**

The Attorney General, for the enforcement of the Competitive Livestock Markets Act, shall have the authority to subpoena witnesses, compel their attendance, examine them under oath, and require the production of documents, records, or tangible things deemed relevant to the proper performance of his or her duties. Service of any subpoena shall be made in the manner prescribed by the rules of civil procedure.

**Source:** Laws 1999, LB 835, § 30.

**54-2631 Attorney General; reciprocal agreements; authorized.**

The Attorney General shall have the power and authority to enter into reciprocal agreements with the duly authorized representatives of other jurisdictions, federal or state, for the exchange of information on a cooperative basis which may assist in the proper administration of the Competitive Livestock Markets Act.

**Source:** Laws 1999, LB 835, § 31.

**ARTICLE 27**

**SCRAPIE CONTROL AND ERADICATION ACT**

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**54-2701 Act, how cited.**

Sections 54-2701 to 54-2761 shall be known and may be cited as the Scrapie Control and Eradication Act.

**Source:** Laws 2003, LB 158, § 1.

**54-2702 Legislative intent.**

It is the intent of the Legislature to have a scrapie control and eradication program. The goal of the program is to eliminate scrapie from the animals of the state through a process of eradication and surveillance. The program shall be designed to eradicate scrapie from all flocks where scrapie is found and to use surveillance to achieve and maintain scrapie-free conditions in the state. The department in cooperation with APHIS will enforce the program subject to the availability of funds appropriated by the Congress of the United States or the Legislature.

**Source:** Laws 2003, LB 158, § 2.

**54-2703 Definitions, where found; citation to Code of Federal Regulations.**

For purposes of the Scrapie Control and Eradication Act, unless the context otherwise requires, the definitions found in sections 54-2704 to 54-2741 shall be used. All citations to the Code of Federal Regulations, C.F.R., in the act refer to such regulations as they existed on January 1, 2003.

**Source:** Laws 2003, LB 158, § 3.

**54-2704 Accredited veterinarian, defined.**

Accredited veterinarian means a veterinarian approved by the administrator of APHIS and the State Veterinarian in accordance with 9 C.F.R. 161 to perform functions required by cooperative state-federal animal disease control and eradication programs.

**Source:** Laws 2003, LB 158, § 4.

**54-2705 Administrator, defined.**

Administrator means the administrator of APHIS or any employee of the United States Department of Agriculture to whom the administrator has delegated authority to act for the administrator.

**Source:** Laws 2003, LB 158, § 5.

**54-2706 Animal, defined.**

Animal means any sheep or goat.

**Source:** Laws 2003, LB 158, § 6.

**54-2707 APHIS, defined.**

APHIS means the United States Department of Agriculture, Animal and Plant Health Inspection Service.

**Source:** Laws 2003, LB 158, § 7.

**54-2708 APHIS representative, defined.**

APHIS representative means an individual employed by APHIS in animal health activities who is authorized by the administrator to perform the functions and duties involved in the scrapie control and eradication program.

**Source:** Laws 2003, LB 158, § 8.

**54-2709 Approved laboratory, defined.**

Approved laboratory means a diagnostic laboratory approved by APHIS to conduct tests for scrapie or genotypes on one or more tissues.

**Source:** Laws 2003, LB 158, § 9.

**54-2710 Certificate of veterinary inspection, defined.**

Certificate of veterinary inspection means an official document approved by the department or United States Department of Agriculture issued by an accredited veterinarian at the point of origin of movement of animals.

**Source:** Laws 2003, LB 158, § 10.

**54-2711 Commingle, defined.**

Commingle means to group animals together having physical contact with each other, including contact through a fence, but not limited contact. Commingling includes sharing the same section in a transportation unit where physical contact may occur.

**Source:** Laws 2003, LB 158, § 11.

**54-2712 Consistent state, defined.**

Consistent state means a state listed in 9 C.F.R. 79.1 that the administrator has determined is conducting an active scrapie control and eradication program.

**Source:** Laws 2003, LB 158, § 12.

**54-2713 Department, defined.**

Department means the Department of Agriculture or its authorized designee.

**Source:** Laws 2003, LB 158, § 13.

**54-2714 Designated scrapie epidemiologist, defined.**

Designated scrapie epidemiologist means a state or federal veterinarian designated by the state, in conjunction with APHIS, to make decisions about the use and interpretation of diagnostic tests and field investigation data and the management of scrapie-affected flocks.

**Source:** Laws 2003, LB 158, § 14.

**54-2715 Exposed animal, defined.**

Exposed animal means:

- (1) Any animal that has been in the same flock at the same time as a scrapie-positive female animal, excluding limited contacts;
- (2) Any animal born in a flock after a scrapie-positive animal was born into that flock or lambed in that flock, if born before that flock completes the requirements of a flock plan;
- (3) Any animal that was commingled with a scrapie-positive female animal during or up to thirty days after she lambed, kidded, or aborted, or while a visible vaginal discharge was present, or that was commingled with any other scrapie-positive female animal for twenty-four hours or more, including during activities such as shows and sales or while in marketing channels; or
- (4) Any animal in a noncompliant flock.

**Source:** Laws 2003, LB 158, § 15.

**54-2716 Exposed flock, defined.**

Exposed flock means any flock in which a scrapie-positive animal was born or lambed or any flock that currently contains a female high-risk, exposed, or suspect animal, or that once contained a female high-risk or suspect animal that lambed in the flock and from which tissues were not submitted for official testing and found negative. A flock that has completed a postexposure management and monitoring plan following the exposure will no longer be an exposed flock.

**Source:** Laws 2003, LB 158, § 16.

**54-2717 Flock, defined.**

Flock means a group of sheep or goats or a mixture of both species, residing on the same premises, and all animals under common ownership or supervision on two or more premises with animal interchange between the premises. Changes in ownership of part or all of a flock do not change the identity of the flock or the regulatory requirements applicable to the flock. Animals maintained temporarily on a premises for activities such as shows and sales or while

in marketing channels are not a flock. More than one flock may be maintained on a single premises if:

- (1) The flocks are enrolled as separate flocks in the scrapie flock certification program; or
- (2) The department or APHIS representative determines, based upon examination of flock records, that:
  - (a) There is no interchange of animals between the flocks;
  - (b) The flocks never commingle and are kept at least thirty feet apart at all times or are separated by a solid wall through, over, or under which fluids cannot pass and through which contact cannot occur;
  - (c) The flocks have separate flock records and identification;
  - (d) The flocks have separate lambing facilities, including buildings and pastures, and a pasture or building used for lambing by one flock is not used by the other flock at any time; and
  - (e) The flocks do not share equipment without cleaning and disinfection in accordance with 9 C.F.R. 54.7(e). Additional guidance on acceptable means of cleaning and disinfection is also available in the federal scrapie flock certification program standards and the federal Scrapie Eradication Uniform Methods and Rules.

**Source:** Laws 2003, LB 158, § 17.

**54-2718 Flock of origin, defined.**

Flock of origin means the flock in which an animal most recently resided in which it either was born, gave birth, or was used for breeding purposes. The determination that an animal originated in a flock may be based either on the physical presence of the animal in the flock, the presence of official identification on the animal traceable to the flock, the presence of other identification on the animal that is listed on the bill of sale, or other evidence to be determined by the designated scrapie epidemiologist.

**Source:** Laws 2003, LB 158, § 18.

**54-2719 Flock plan, defined.**

Flock plan means a written flock management agreement signed by the owner of a flock, the accredited veterinarian if one is employed by the owner, and a department or APHIS representative, in which each participant agrees to undertake actions specified in the flock plan to control the spread of scrapie from and eradicate scrapie in an infected flock or source flock or to reduce the risk of the occurrence of scrapie in a flock that contains a high-risk or an exposed animal. As part of a flock plan, the flock owner shall provide the facilities and personnel needed to carry out the requirements of the flock plan. The flock plan shall include the requirements in 9 C.F.R. 54.8.

**Source:** Laws 2003, LB 158, § 19.

**54-2720 Goats that reside with sheep, defined.**

Goats that reside with sheep means goats that are kept on the same premises where sheep are found, regardless of separate fencing, penning, or housing, unless designated as a separate flock by the designated scrapie epidemiologist.

**Source:** Laws 2003, LB 158, § 20.

**54-2721 High-risk animal, defined.**

High-risk animal means a sexually intact animal that is:

- (1) The progeny of a scrapie-positive dam;
- (2) Born in the same flock during the same lambing season as progeny of a scrapie-positive dam, unless the progeny of the scrapie-positive dam are from separate contemporary lambing groups;
- (3) Born in the same flock during the same lambing season that a scrapie-positive animal was born or during any subsequent lambing season, if born before that flock completes requirements of a flock plan; or
- (4) An exposed female sheep determined to be genetically susceptible or of unknown genotype.

Male sheep that have been tested and classified as resistant using an official genotype test are excluded from the definition of high-risk animal.

**Source:** Laws 2003, LB 158, § 21.

**54-2722 Infected flock, defined.**

Infected flock means any flock in which the designated scrapie epidemiologist has determined that a scrapie-positive female animal has resided unless an epidemiological investigation conducted by the designated scrapie epidemiologist shows that the animal did not lamb or abort in the flock. A flock will no longer be considered an infected flock after it has completed the requirements of a flock plan.

**Source:** Laws 2003, LB 158, § 22.

**54-2723 Interstate commerce, defined.**

Interstate commerce means trade, traffic, transportation, or other commerce between a place in a state and any place outside that state, or between points within a state but through any place outside that state.

**Source:** Laws 2003, LB 158, § 23.

**54-2724 Limited contact, defined.**

Limited contact means incidental contacts between animals from different flocks off the flock's premises such as at fairs, shows, exhibitions, and sales; between ewes being inseminated, flushed, or implanted; or between rams at ram test or collection stations. Embryo transfer and artificial insemination equipment and surgical tools shall be sterilized before each use for these contacts to be considered limited contacts. Limited contacts do not include any contact, incidental or otherwise, with animals in the same flock or with an animal during or up to thirty days after a female animal lambed, kidded, or aborted or when there is any visible vaginal discharge. Limited contacts do not include any activity where uninhibited contact occurs, such as sharing an enclosure, sharing a section of a transport vehicle, or residing in other flocks for breeding or other purposes, except as allowed by the scrapie flock certification program standards.

**Source:** Laws 2003, LB 158, § 24.

**54-2725 Live-animal screening test, defined.**

Live-animal screening test means any test for the diagnosis of scrapie in a live animal that is approved by the administrator as usually reliable but not definitive for diagnosing scrapie and that is conducted in a laboratory approved by the administrator.

**Source:** Laws 2003, LB 158, § 25.

**54-2726 Noncompliant flock, defined.**

Noncompliant flock means:

(1) Any source or infected flock whose owner declines to enter into a flock plan or postexposure management and monitoring plan within thirty days after being so designated, or whose owner is not in compliance with either plan;

(2) Any exposed flock whose owner fails to make animals available for testing within sixty days after notification, or as mutually agreed, or whose owner fails to submit required postmortem samples;

(3) Any flock whose owner or manager has misrepresented, or who employs a person who has misrepresented, the scrapie status of an animal or any other information on a certificate, permit, owner statement, or other official document within the past five years;

(4) Any flock whose owner or manager has moved, or who employs a person who has moved, an animal in violation of the Scrapie Control and Eradication Act within the past five years; or

(5) Any flock which fails to follow the requirements of a flock plan or a postexposure management and monitoring plan.

**Source:** Laws 2003, LB 158, § 26.

**54-2727 Official genotype test, defined.**

Official genotype test means any test to determine the genotype of a live or dead animal that is conducted at an approved laboratory or at the National Veterinary Services Laboratory when the animal is officially identified and the samples used for the test are collected and shipped to the laboratory by either an accredited veterinarian or a department or APHIS representative.

**Source:** Laws 2003, LB 158, § 27.

**54-2728 Official identification, defined.**

Official identification means identification approved by the department and APHIS for use in the scrapie control and eradication program in Nebraska.

**Source:** Laws 2003, LB 158, § 28.

**54-2729 Official test, defined.**

Official test means any test for the diagnosis of scrapie in a live or dead animal that is approved by the administrator for that use and conducted at an approved laboratory or at the National Veterinary Services Laboratory.

**Source:** Laws 2003, LB 158, § 29.

**54-2730 Owner, defined.**

Owner means a person, partnership, company, corporation, or any other legal entity which has legal or rightful title to animals, whether or not the animals are subject to a mortgage.

**Source:** Laws 2003, LB 158, § 30.

**54-2731 Permit, defined.**

Permit means an official document issued by a department or APHIS representative or an authorized accredited veterinarian that allows the interstate movement of animals under quarantine, such as exposed, noncompliant, infected, or source flock animals, whether the animals are high-risk, exposed, scrapie-positive, or scrapie-suspect. A seal may be required by the department or area veterinarian-in-charge.

**Source:** Laws 2003, LB 158, § 31.

**54-2732 Postexposure management and monitoring plan, defined.**

Postexposure management and monitoring plan means a written agreement signed by the owner of a flock, any accredited veterinarian employed by the owner, and a department or APHIS representative, in which each participant agrees to undertake actions specified in the agreement to monitor for the occurrence of scrapie in the flock for at least five years after the last high-risk or scrapie-positive animal is removed from the flock or after the last exposure of the flock to a scrapie-positive animal, unless otherwise specified by a department or APHIS representative. As part of a postexposure management and monitoring plan, the flock owner shall provide the facilities and personnel needed to carry out the requirements of the plan. The plan shall include the requirements in 9 C.F.R. 54.8.

**Source:** Laws 2003, LB 158, § 32.

**54-2733 Premises, defined.**

Premises means the ground, area, buildings, and equipment occupied by one or more flocks.

**Source:** Laws 2003, LB 158, § 33.

**54-2734 Quarantine, defined.**

Quarantine means an imposed restriction by the department prohibiting movement of animals to any location without specific written permits and prohibition of use by the department of the premises, vehicles, and equipment used for such animals or flocks.

**Source:** Laws 2003, LB 158, § 34.

**54-2735 Scrapie, defined.**

Scrapie means a nonfebrile, transmissible, insidious, degenerative disease affecting the central nervous system of sheep and goats.

**Source:** Laws 2003, LB 158, § 35.

**54-2736 Scrapie control and eradication program, defined.**

Scrapie control and eradication program means the cooperative state-federal-industry program administered by APHIS and consistent states to control and eradicate scrapie.

**Source:** Laws 2003, LB 158, § 36.

**54-2737 Scrapie flock certification program, defined.**

Scrapie flock certification program means a voluntary state-federal-industry cooperative program established and maintained to reduce the occurrence and spread of scrapie, identify flocks that have been free of evidence of scrapie over specified time periods, and contribute to the eventual eradication of scrapie.

**Source:** Laws 2003, LB 158, § 37.

**54-2738 Scrapie-positive animal, defined.**

Scrapie-positive animal means an animal for which a diagnosis of scrapie has been made by an approved laboratory through one of the following:

- (1) Histopathological examination of central nervous system tissues from the animal for characteristic microscopic lesions of scrapie;
- (2) The use of proteinase-resistant protein analysis methods including, but not limited to, immunohistochemistry or western blotting on central nervous system or peripheral tissue samples from a live or a dead animal for which a given method has been approved by the administrator for use on that tissue;
- (3) Bioassay;
- (4) Scrapie associated fibrils detected by electron microscopy; or
- (5) Any other test method approved by the administrator in accordance with 9 C.F.R. 54.10.

**Source:** Laws 2003, LB 158, § 38.

**54-2739 Source flock, defined.**

Source flock means a flock in which a department or APHIS representative has determined that at least one animal was born that was diagnosed as a scrapie-positive animal at an age of seventy-two months or less. The determination that an animal was born in a source flock shall be in accordance with the guidelines in 9 C.F.R. parts 54 and 79. A flock will no longer be a source flock after the requirements of a flock plan have been completed.

**Source:** Laws 2003, LB 158, § 39.

**54-2740 Suspect animal, defined.**

Suspect animal means:

- (1) A sheep or goat that exhibits any of the following possible signs of scrapie and that has been determined to be suspicious for scrapie by an accredited veterinarian or a department or APHIS representative. Possible signs include: Weight loss despite retention of appetite; behavioral abnormalities; itching; wool pulling; biting at legs or sides; lip smacking; motor abnormalities such as incoordination, high stepping gait of forelimbs, bunny hop movement of rear legs, or swaying of back end; increased sensitivity to noise and sudden movement; or tremor, star gazing, head pressing, recumbency, or other signs of neurological disease or chronic wasting;

(2) A sheep or goat that has tested positive for scrapie or for the proteinase-resistant protein associated with scrapie on a live-animal screening test or any other official test, unless the animal is designated a scrapie-positive animal; and

(3) A sheep or goat that has tested inconclusive or suggestive on an official test for scrapie.

**Source:** Laws 2003, LB 158, § 40.

**54-2741 Trace, defined.**

Trace means all actions required to identify the flock of origin or destination of an animal.

**Source:** Laws 2003, LB 158, § 41.

**54-2742 Administration and enforcement of act.**

The Scrapie Control and Eradication Act shall be administered and enforced by the Bureau of Animal Industry of the department. In administering the act, the department shall cooperate and may contract with persons or appropriate local, state, or national organizations, public or private, for the performance of activities required or authorized pursuant to the act.

**Source:** Laws 2003, LB 158, § 42.

**54-2743 Department; cooperate with APHIS.**

The department shall cooperate with APHIS by recommending where and how federal funds and state personnel and materials are allocated for the scrapie control and eradication program.

**Source:** Laws 2003, LB 158, § 43.

**54-2744 Infected flock or animal; quarantine; when.**

Any flock or animal determined by the department to be infected and any flock or animal for which the owner refuses to comply with the Scrapie Control and Eradication Act or any rules and regulations adopted and promulgated pursuant thereto shall be put under quarantine by the department, at the expense of the owner, and a flock plan shall be filed.

**Source:** Laws 2003, LB 158, § 44.

**54-2745 Exposed flock or animal; source flock; quarantine; when.**

Any flock or animal determined to be exposed or to be a source flock by the department and any flock or animal for which the owner refuses to comply with the Scrapie Control and Eradication Act or any rules and regulations adopted and promulgated pursuant thereto may be put under quarantine by the department, at the expense of the owner, and a flock plan shall be filed.

**Source:** Laws 2003, LB 158, § 45.

**54-2746 Flock plan.**

Each owner or authorized representative of the owner of a flock under quarantine shall file a flock plan with the department within a maximum of thirty days after the date of issuance of the quarantine. The flock plan shall include followup inspections. Each owner or authorized representative shall follow as standards for the flock plan those indicated by the scrapie control and

eradication program and those indicated by the postexposure management and monitoring plan.

**Source:** Laws 2003, LB 158, § 46.

**54-2747 Duty to report.**

It is the duty of any person who discovers, suspects, or has reason to believe that any sheep or goat belonging to him or her or which he or she has in his or her possession or custody or which, belonging to another, may come under his or her observation, is affected with signs consistent with scrapie to immediately report such fact, belief, or suspicion to the department or to any agent, employee, or appointee thereof.

**Source:** Laws 2003, LB 158, § 47.

**54-2748 Rules and regulations.**

The department may adopt and promulgate rules and regulations to aid in implementing the Scrapie Control and Eradication Act. The rules and regulations may include, but are not limited to:

(1) The scrapie flock certification program, including testing provisions governing: (a) When, where, how, by whom, and how often testing is to be done; (b) what flocks are to be subjected to testing; (c) how and by whom results of testing are to be recorded; (d) by whom and to whom the results of the testing are to be reported; and (e) how, by whom, and for what purposes such results will be utilized;

(2) The scrapie control and eradication program, including provisions governing: (a) When, where, how, by whom, and how often testing is to be done; (b) what flocks are to be subjected to testing; (c) requirements of flock cleanup plans, including forms, execution, contents, duration, amendments, and enforcement; (d) how and by whom results of testing are to be recorded; (e) by whom and to whom the results of the testing are to be reported; (f) how, by whom, and for what purposes such results will be utilized; and (g) assignment of and requirements for titles for status of sheep or goat flocks and the suspension, expiration, and cancellation of such titles;

(3) Surveillance in flocks and at slaughter establishments and concentration points, including provisions governing: (a) When, where, how, by whom, and how often testing is to be done; (b) what sheep or goats and flocks are to be subjected to testing; (c) how and by whom results of testing are to be recorded and reported; and (d) the use of the results of testing by the department;

(4) The issuance and release of quarantines and the requirements regarding the handling, movement, and disposition of animals under quarantine;

(5) The cleaning and disinfecting of affected premises, including provisions governing: (a) The materials to be used; (b) the procedures to be used; and (c) when such procedures are to be performed;

(6) The testing of animals to detect scrapie, including provisions governing: (a) Which tests are to be deemed official tests; (b) by whom the testing is to be administered; (c) how the testing is to be conducted; (d) the reaction tolerances to be recognized; and (e) the classification of results as to negative, suspect, or positive. These rules and regulations shall be consistent with the best available scientific information relative to the control and eradication of scrapie;

(7) The identification of premises and animals subject to the act, including provisions governing: (a) Exposed and infected animals; (b) source flocks; (c) animals to be tested; (d) type of identification; and (e) animals requiring identification as required for compliance with 9 C.F.R. parts 54 and 79;

(8) The administration of the scrapie control and eradication program subject to the availability of funds;

(9) The assessment and collection of costs for services provided and expenses, not to exceed actual costs, incurred under the act;

(10) The preparation, maintenance, handling, filing, and disposition of records and reports by persons subject to the act concerning the testing or movement of animals;

(11) Program activities and cleanup testing under the act on which state funds, if appropriated and available, shall be used by the department and limitations on use of such state funds for testing and other activities under the act;

(12) Prohibitions and movement conditions of animals in interstate and intrastate movement;

(13) Requirements for change of ownership to include (a) testing, (b) identification, and (c) records;

(14) Activities required for flocks deemed by officials to be included in an APHIS indemnification process, as provided in 9 C.F.R. part 54, including eligibility, application, owner certification statements, amount of indemnity payments, procedure for destruction of animals, and flock plans and postexposure management and monitoring plans; and

(15) Any other areas deemed necessary by the department to effectively control and eradicate scrapie.

**Source:** Laws 2003, LB 158, § 48.

#### **54-2749 Designated scrapie epidemiologist.**

The department shall select and appoint, in conjunction with APHIS, a designated scrapie epidemiologist.

**Source:** Laws 2003, LB 158, § 49.

#### **54-2750 Enforcement of act; Attorney General or county attorney; duties.**

(1) To insure compliance with the Scrapie Control and Eradication Act, the department may apply for a temporary restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated under the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) The Attorney General or the county attorney of the county in which violations of the act or the rules and regulations are occurring or are about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under subsection (1) of this section to be instituted and

pursued without delay and shall prosecute such violations under section 54-2761 without delay.

**Source:** Laws 2003, LB 158, § 50.

**54-2751 Access to premises.**

In administering the Scrapie Control and Eradication Act, the agents and employees of the department shall have access to any premises where animals may be for purposes of the scrapie control and eradication program or when the department has reasonable cause to believe that infected or exposed animals are present on the premises.

**Source:** Laws 2003, LB 158, § 51.

**54-2752 Records and reports; requirements.**

(1) Any person subject to the Scrapie Control and Eradication Act shall keep records and reports on file for five years pertaining to testing and identification and the movement of animals infected with or exposed to, or suspected of being infected with or exposed to, scrapie. Such person shall keep on file any other records and make any reports the department deems necessary to enforce the act.

(2) Any person subject to the act shall, at all reasonable times, provide access to all records and reports to the department and its representatives for the purpose of examining and copying such records and reports necessary to enforce the act.

**Source:** Laws 2003, LB 158, § 52.

**54-2753 Testing or identification; owner; duties.**

When testing or identification is to be performed pursuant to the Scrapie Control and Eradication Act, the owner of the animals shall be responsible for gathering, confining, and restraining the animals for testing and for providing the necessary facilities and assistance.

**Source:** Laws 2003, LB 158, § 53.

**54-2754 Buyer; seller; prohibited acts.**

(1) It is unlawful for a buyer to purchase animals for feeding, breeding, or both from a seller who has not complied with the Scrapie Control and Eradication Act and the rules and regulations adopted and promulgated pursuant thereto or to import such animals into the state if the seller has not complied with the Scrapie Control and Eradication Act or Animal Importation Act and the rules and regulations adopted and promulgated pursuant to such acts.

(2) It is unlawful for a seller to sell or import animals if the seller is not in compliance with such acts and rules and regulations.

**Source:** Laws 2003, LB 158, § 54.

**Cross References**

**Animal Importation Act**, see section 54-784.01.

**54-2755 Diversion of animals; prohibited acts.**

Whenever animals are required or designated pursuant to the Scrapie Control and Eradication Act or the rules and regulations adopted and promulgated pursuant thereto to move to a particular destination, it is unlawful to divert the animals from such destination without having first obtained permission from the department.

**Source:** Laws 2003, LB 158, § 55.

**54-2756 Assessment and collection of costs.**

The department may assess and collect costs for services provided and expenses incurred pursuant to its responsibilities under the Scrapie Control and Eradication Act and the rules and regulations adopted and promulgated pursuant thereto. All costs assessed and collected pursuant to this section shall be remitted to the State Treasurer for credit to the Scrapie Control Cash Fund.

**Source:** Laws 2003, LB 158, § 56.

**54-2757 Scrapie Control Cash Fund; created; use; investment.**

The Scrapie Control Cash Fund is created. The fund shall consist of money appropriated by the Legislature and gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The fund shall be utilized for the purpose of carrying out the Scrapie Control and Eradication 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 2003, LB 158, § 57.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**54-2758 State funds; use; limitations.**

(1) If funds are appropriated, the department may provide state funds for certain activities or any portion thereof in connection with the implementation of the Scrapie Control and Eradication Act to or on behalf of flock owners if funds for any activities or any portion thereof have been appropriated and are available. If funds are appropriated, the department shall develop statewide priorities for the expenditure of state funds available for scrapie control and eradication program activities.

(2) Part of such state funds may be used by the department to pay a portion of the cost of testing done by or for accredited veterinarians if such work is approved by the department. All of such testing shall be performed by or under the direct supervision of the accredited veterinarian, except that nothing in this subsection shall restrict an employee of the state or federal government in the performance of such employee's duties under the act or federal law.

(3) In administering the act and program activities pursuant thereto, the department shall not pay for (a) testing done for change of ownership at private treaty or at concentration points, (b) costs of gathering, confining, and restraining animals subjected to testing or costs of providing necessary facilities and assistance, and (c) the cost of testing to qualify or maintain flock certification.

**Source:** Laws 2003, LB 158, § 58.

**54-2759 Conformity with federal requirements.**

In administering the Scrapie Control and Eradication Act and conducting scrapie control and eradication program activities authorized by the act, the department shall, as far as reasonably practical, conform its program activities to the federal program requirements as provided in 9 C.F.R. parts 54 and 79.

**Source:** Laws 2003, LB 158, § 59.

**54-2760 Departmental actions; costs; liability.**

The department is not liable for actual or incidental costs incurred by any person due to departmental actions in enforcing the Scrapie Control and Eradication Act.

**Source:** Laws 2003, LB 158, § 60.

**54-2761 Violations; penalty.**

Any person who violates the Scrapie Control and Eradication Act or any rules and regulations adopted and promulgated pursuant thereto is guilty of a Class IV misdemeanor for the first offense and a Class II misdemeanor for each subsequent offense.

**Source:** Laws 2003, LB 158, § 61.

**ARTICLE 28****LIVESTOCK PRODUCTION**

## Section

54-2801. Legislative findings.

54-2802. Director of Agriculture; duties; designation of livestock friendly county; process; county board; powers.

**54-2801 Legislative findings.**

The Legislature finds that livestock production has traditionally served a significant role in the economic vitality of rural areas of the state and in the state's overall economy and that the growth and vitality of the state's livestock sector are critical to the continued prosperity of the state and its citizens. The Legislature further finds that trends in livestock production suggest a need to identify and address factors that affect the viability and expansion of livestock production. Those factors include the impact of livestock production on the state's economy and its communities, all applicable regulatory agencies, and the latest technology available to enhance the livestock industry. It is the intent of the Legislature to seek reasonable means to nurture and support the livestock sector of this state.

**Source:** Laws 2003, LB 754, § 1.

**54-2802 Director of Agriculture; duties; designation of livestock friendly county; process; county board; powers.**

(1) The Director of Agriculture shall establish a process, including criteria and standards, to recognize and assist efforts of counties to maintain or expand their livestock sector. A county that meets the criteria may apply to the director to be designated a livestock friendly county. A county may remove itself from the process at any time. Such criteria and standards may include, but are not limited to, the following factors: Consideration of the diversity of activities

currently underway or being initiated by counties; a formal expression of interest by a county board, by a duly enacted resolution following a public hearing, in developing the livestock production and processing sectors of such county's economy; an assurance that such county intends to work with all other governmental jurisdictions within its boundaries in implementing livestock development within the county; flexible and individual treatment allowing each county to design its own development program according to its own timetable; and a commitment to compliance with the Livestock Waste Management Act.

(2) The designation of any county or counties as a livestock friendly county shall not be an indication nor shall it suggest that any county that does not seek or obtain such a designation is not friendly to livestock production.

(3) In order to assist any county with information and technology, the Department of Agriculture shall establish a resource data base to provide, upon written request of the county zoning authority or county board, information sources that may be useful to the county in evaluating and crafting livestock facility conditional use permits that meet the objectives of the county and the livestock producer applicant.

(4) The Department of Agriculture shall adopt and promulgate rules and regulations to carry out this section.

(5) Nothing in this section shall prohibit or prevent any county board from adopting a resolution that designates the county a livestock friendly county.

**Source:** Laws 2003, LB 754, § 2.

**Cross References**

**Livestock Waste Management Act**, see section 54-2416.



**MILITIA**

**CHAPTER 55**  
**MILITIA**

Article.

1. Military Code. 55-101 to 55-181.
2. Nebraska State Guard. 55-201 to 55-219.
3. Nebraska Armory Board. Repealed.
4. Nebraska Code of Military Justice. 55-401 to 55-480.
5. Family Military Leave Act. 55-501 to 55-507.

**ARTICLE 1**

**MILITARY CODE**

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## MILITIA

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#### **55-101 Military code; how cited.**

Sections 55-101 to 55-181 shall be known and may be cited as the Military Code.

**Source:** Laws 1929, c. 189, § 1, p. 657; C.S.1929, § 55-105; R.S.1943, § 55-101; Laws 1961, c. 272, § 1, p. 806; Laws 1969, c. 459, § 1, p. 1581; Laws 1971, LB 19, § 1; Laws 1991, LB 313, § 1; Laws 2003, LB 69, § 2; Laws 2010, LB550, § 1.

#### **55-102 Military code; contents.**

All acts of the Congress of the United States providing for the administration, control, equipment, government, and organization of the armed forces of the United States, together with the rules and regulations promulgated thereunder, now in effect and hereinafter enacted or promulgated may, by appropriate rules and regulations, be adopted by the Governor for the operation and regulation of the military forces and militia of the state insofar as the same are not inconsistent with rights reserved to this state under the constitution of the state and provisions of this code.

**Source:** Laws 1929, c. 189, § 55, p. 673; C.S.1929, § 55-174; R.S.1943, § 55-102; Laws 1953, c. 188, § 1, p. 592.

#### **Cross References**

"This code", see section 55-101.

#### **55-103 Military code; legislative intent.**

The intent of this code is to conform to all constitutional acts and regulations of the United States affecting the same subjects, and all acts of the State of Nebraska shall be construed to effect this purpose.

**Source:** Laws 1929, c. 189, § 2, p. 657; C.S.1929, § 55-107; R.S.1943, § 55-103; Laws 1953, c. 188, § 2, p. 593.

#### **Cross References**

"This code", see section 55-101.

#### **55-104 Military code; definitions.**

As used in Chapter 55, article 1, unless the context otherwise requires:

(1) The term military forces shall mean the National Guard, also called the Nebraska National Guard and also hereinafter referred to as the Army National Guard and the Air National Guard, and in addition thereto the militia when called into active service of this state;

(2) The words active service of the state shall mean service on behalf of this state, in case of public disaster, war, riot, invasion, insurrection, resistance of process, or in case of imminent danger of the occurrence of any of such events, whenever called upon in aid of civil authorities, at encampments whether ordered by state or federal authority, at periods of drill and any other training or service required under state or federal law, regulations or orders, or upon any other duty requiring the entire time of the organization or person; *Provided*, that in no event will active service of the state include in the service of the United States, as defined in this section;

(3) The words in the service of the United States and not in the service of the United States shall mean and be the same as such terms are used in 10 U.S.C.; and

(4) For the purposes of this code, an act is in the line of duty if it is performed pursuant to competent orders or commonly accepted military practices, is not proximately caused by the member's intentional misconduct or gross neglect and occurs during a period of authorized duty or training.

**Source:** Laws 1929, c. 189, § 3, p. 657; C.S.1929, § 55-108; R.S.1943, § 55-104; Laws 1953, c. 188, § 3, p. 593; Laws 1969, c. 459, § 2, p. 1581.

#### Cross References

"This code", see section 55-101.

Active duty for emergency military duty in this section does not include the "additional leave of absence" authorization contemplated in section 55-160. *King v. School Dist. of Omaha*, 197 Neb. 303, 248 N.W.2d 752 (1976).

#### 55-105 Militia; classes, defined.

The militia of this state shall be divided into two classes, the active and the reserve militia. The active militia shall consist of the organized and uniformed military forces of the state, which shall be known as the Nebraska National Guard, which includes the Army National Guard and the Air National Guard. The reserve militia shall consist of all those liable to service in the militia, but not serving in the National Guard of this state.

**Source:** Laws 1909, c. 90, § 3, p. 365; R.S.1913, § 3902; C.S.1922, § 3300; C.S.1929, § 55-104; R.S.1943, § 55-107; Laws 1953, c. 188, § 5, p. 595; R.R.S.1943, § 55-107; Laws 1969, c. 459, § 3, p. 1582.

In preparing for and holding annual encampment, Nebraska National Guard is a state governmental agency within meaning of workmen's compensation law, and is liable to employee for compensation for injuries. *Nebraska National Guard v. Morgan*, 112 Neb. 432, 199 N.W. 557 (1924).

#### 55-106 Militia; persons subject to duty; exemptions.

All able-bodied citizens and able-bodied persons of foreign birth who have been admitted for permanent residence, who are more than seventeen and less than sixty years of age, and who are residents of this state shall constitute the militia, subject to the following exemptions: (1) Persons exempt by the laws of the United States; (2) members of any regularly organized fire or police department of any city or village and retired firefighters who have served their full term in any fire company; but no member of the active militia shall be relieved from duty by joining any such fire company or department; (3) judges, justices, and clerks of courts of record; registers of deeds; sheriffs; ministers of the gospel; officers and assistants of hospitals, prisons, and jails; and (4)

persons with physical or mental disabilities, persons addicted to the use of narcotic drugs or alcohol, and persons convicted of treason and sedition. All such exempted persons, except those enumerated in subdivisions (1) and (4) of this section, shall be available for military duty in case of war, insurrection, invasion, disaster, or imminent danger thereof.

**Source:** Laws 1909, c. 90, § 1, p. 364; R.S.1913, § 3899; C.S.1922, § 3297; C.S.1929, § 55-101; R.S.1943, § 55-106; Laws 1953, c. 188, § 4, p. 594; R.R.S.1943, § 55-106; Laws 1969, c. 459, § 4, p. 1582; Laws 1974, LB 983, § 1; Laws 1986, LB 1177, § 25.

**Cross References**

Volunteer firefighters exempt during time of peace, see section 35-101.

**55-107 National Guard Reserve.**

An inactive National Guard may be organized and maintained under such rules and regulations as may be prescribed in accordance with the acts of the Congress of the United States.

**Source:** Laws 1929, c. 189, § 8, p. 659; C.S.1929, § 55-113; R.S.1943, § 55-111; Laws 1953, c. 188, § 8, p. 596; R.R.S.1943, § 55-111; Laws 1969, c. 459, § 5, p. 1583.

**55-108 National Guard; organization; federal regulations.**

The organization of the National Guard, including the composition of all units thereof, shall be such as is or may hereafter be prescribed for this state by the United States or by regulations of the Department of the Army and Department of the Air Force.

**Source:** Laws 1929, c. 189, § 6, p. 659; C.S.1929, § 55-111; R.S.1943, § 55-109; Laws 1953, c. 188, § 7, p. 595; R.R.S.1943, § 55-109; Laws 1969, c. 459, § 6, p. 1583.

**55-109 National Guard; units; location.**

The location of units, including headquarters, shall be fixed by the Governor on the recommendation of the Adjutant General.

**Source:** Laws 1929, c. 189, § 7, p. 659; C.S.1929, § 55-112; R.S.1943, § 55-110; Laws 1969, c. 459, § 7, p. 1583.

**55-110 National Guard; uniform; arms; equipment.**

The National Guard of Nebraska shall be uniformed, armed and equipped as provided by the laws or regulations of the United States. Such uniforms, arms and equipment shall be procured and issued by the proper officers as the needs of the service may require and shall be accounted for as the regulations may prescribe.

**Source:** Laws 1929, c. 189, § 17, p. 661; C.S.1929, § 55-122; R.S.1943, § 55-112; Laws 1969, c. 459, § 8, p. 1584.

**55-111 National Guard; units; inspection.**

Inspections of all units and equipment of the National Guard shall be made as required by United States law or regulation. The Adjutant General may make or order such additional inspections as he shall determine necessary.

**Source:** Laws 1929, c. 189, § 24, p. 663; C.S.1929, § 55-130; R.S.1943, § 55-113; Laws 1969, c. 459, § 9, p. 1584.

**55-112 Military property; custody and care; violation; penalty.**

All public property, except when in use in the performance of military duty, shall be kept in armories, or other properly designated places of deposit. It shall be unlawful for any person charged with the care and safety of such public property to allow the same out of his custody except as above specified, and any member of the Nebraska National Guard who shall fail to return any property of the state or the United States to the armory or other place of deposit, when notified by the commanding officer so to do, or who shall wear or use the property of the state or the United States, except under orders of an officer, shall be fined in any sum not exceeding fifty dollars, to be prosecuted and collected as in other cases of misdemeanor.

**Source:** Laws 1909, c. 90, § 34, p. 377; R.S.1913, § 3934; C.S.1922, § 3334; C.S.1929, § 55-161; R.S.1943, § 55-128; Laws 1969, c. 459, § 10, p. 1584.

It was Adjutant General's duty to enter into lease reasonably necessary to provide National Guard armory in which to keep military property. Omaha Armory Building Co. v. Johnson, 119 Neb. 29, 226 N.W. 911 (1929).

**55-113 National Guard; drills; encampments; maneuvers.**

Each organization shall assemble for drill and instruction, and participate in encampments, maneuvers and other exercises at such periods as may be prescribed by the Governor in accordance with the requirements of the laws or regulations of the United States.

**Source:** Laws 1929, c. 189, § 23, p. 663; C.S.1929, § 55-129; R.S.1943, § 55-153; Laws 1969, c. 459, § 11, p. 1584.

**55-114 National Guard; annual encampment; attendance.**

The Nebraska National Guard shall encamp for instruction not less than fifteen days annually at such time, place, or places as may be ordered by the Governor. No member of the Nebraska National Guard will be excused from attendance except upon an order of the Adjutant General.

**Source:** Laws 1909, c. 90, § 40, p. 379; R.S.1913, § 3940; C.S.1922, § 3340; C.S.1929, § 55-167; R.S.1943, § 55-154; Laws 1953, c. 188, § 24, p. 601; R.R.S.1943, § 55-154; Laws 1969, c. 459, § 12, p. 1585.

Carpenter employed by Nebraska National Guard in preparation for encampment was employee of state governmental agency under workmen's compensation law, when injured in course of employment. Nebraska National Guard v. Morgan, 112 Neb. 432, 199 N.W. 557 (1924).

**55-115 Militia; commander in chief; powers.**

The Governor, as commander in chief of the militia, may employ the militia or any part of it in the defense or relief of the state, or any part of its inhabitants or territories, and shall have all the powers necessary to carry into effect the provisions of this code.

**Source:** Laws 1909, c. 90, § 5, p. 366; R.S.1913, § 3904; C.S.1922, § 3302; C.S.1929, § 55-106; R.S.1943, § 55-105; Laws 1969, c. 459, § 13, p. 1585.

## Cross References

"This code", see section 55-101.

**55-116 Militia; state of insurrection; power of Governor to proclaim.**

Whenever any portion of the militia is employed in aid of the civil authority, the Governor, if in his judgment the maintenance of law and order will thereby be promoted, may by proclamation declare the county or city in which the troops are serving, or any specified portion thereof, to be in a state of insurrection.

**Source:** Laws 1909, c. 90, § 17, p. 372; R.S.1913, § 3916; C.S.1922, § 3325; C.S.1929, § 55-152; R.S.1943, § 55-182; Laws 1969, c. 459, § 14, p. 1585.

Governor may make use of National Guard to suppress insurrection and his declaration of the existence of a state of insurrection is conclusive. United States ex rel. Seymour v. Fischer, 280 F. 208 (D. Neb. 1922).

**55-117 Militia; National Guard; induction into actual service; occasions.**

The Nebraska National Guard shall be liable at all times to be ordered into active service, and shall be first called out by the Governor on all occasions for military service within the state, in time of war, invasions, riot, rebellion, insurrection, disaster, or reasonable apprehension thereof, or upon the requisition of the President of the United States. In case the National Guard is insufficient in number or is not available, the Governor may by proclamation order the enrollment for active service of such additional portion of the militia as he may deem necessary to meet the emergency or to comply with the requisition of the President of the United States, designating the same by draft, if a sufficient number shall not volunteer, and may organize the same in the manner herein provided for organizing the Nebraska National Guard. When so ordered out for service, the militia shall be subject to the same regulations and render the same service as required of the Nebraska National Guard, and receive the same compensation as that prescribed at the time of said service for the army of the United States. In any situation where the National Guard is ordered to duty for any of the purposes listed in this section it shall be the duty, the responsibility, and the obligation of the Governor through the Adjutant General to exercise such control as he deems essential for the purpose of quelling any riot, rebellion or insurrection, and for such purposes any local police authorities shall be subject to his control and direction.

**Source:** Laws 1909, c. 90, § 16, p. 371; R.S.1913, § 3915; C.S.1922, § 3324; C.S.1929, § 55-149; R.S.1943, § 55-180; Laws 1967, c. 615, § 1, p. 2063; R.R.S.1943, § 55-180; Laws 1969, c. 459, § 15, p. 1585; Laws 1974, LB 983, § 2.

National Guard, though subject to call by federal government, is essentially a state institution, and is a governmental agency under Workmen's Compensation Act. Nebraska National Guard v. Morgan, 112 Neb. 432, 199 N.W. 557 (1924).

Where proclamation of Governor recites a condition of lawlessness and disorder beyond control of civil authorities, it is equivalent to a declaration of existence of insurrection. United States ex rel. Seymour v. Fischer, 280 F. 208 (D. Neb. 1922).

**55-118 Militia; draft for service; apportionment.**

In case of a draft, the Governor shall apportion it equitably among the several counties, taking care that the apportionment shall equitably be made among the several townships or precincts of the county, in such manner as he may prescribe. He shall in case of any such draft appoint a time and place of

assembly, and shall have such other and further power as may be necessary to carry into effect the provisions of this code relative to any such draft.

**Source:** Laws 1909, c. 90, § 16, p. 371; R.S.1913, § 3915; C.S.1922, § 3324; C.S.1929, § 55-151; R.S.1943, § 55-181; Laws 1969, c. 459, § 16, p. 1586.

**Cross References**

"This code", see section 55-101.

**55-119 Militia; rules and regulations.**

The Governor, as commander in chief, is hereby authorized and empowered to make such rules and regulations and to promulgate all orders which he in his sole discretion shall determine desirable or necessary for the carrying into effect of the provisions of this code. When so promulgated by the Governor they shall have the same force and effect as the provisions of this code. The rules and regulations in force at the time of the passage of this code, and not inconsistent herewith, shall remain in force until new rules and regulations are approved and promulgated.

**Source:** Laws 1929, c. 189, § 54, p. 672; C.S.1929, § 55-173; R.S.1943, § 55-138; Laws 1953, c. 188, § 16, p. 598; R.R.S.1943, § 55-138; Laws 1969, c. 459, § 17, p. 1586.

**Cross References**

"This code", see section 55-101.

**55-120 National Guard; Military Department; officers; personnel; rank.**

The Military Department shall consist of the Adjutant General in the minimum grade of lieutenant colonel, one deputy adjutant general, chief of staff of the Military Department, or deputy director with a minimum grade of colonel, one assistant director for Nebraska Emergency Management Agency affairs, and such other officers and enlisted personnel in the number and grade as prescribed by the United States Department of the Army and Department of the Air Force personnel documents provided to the National Guard or as otherwise authorized.

**Source:** Laws 1917, c. 205, § 3, p. 483; Laws 1919, c. 121, § 1, p. 288; C.S.1922, § 3304; Laws 1929, c. 189, § 19, p. 661; C.S.1929, § 55-124; R.S.1943, § 55-139; Laws 1953, c. 188, § 17, p. 598; Laws 1963, c. 321, § 2, p. 975; R.R.S.1943, § 55-139; Laws 1969, c. 459, § 18, p. 1587; Laws 1974, LB 983, § 3; Laws 1996, LB 43, § 10; Laws 2010, LB550, § 2.

Nebraska National Guard is a state governmental agency when preparing for and holding annual encampment. Nebraska National Guard v. Morgan, 112 Neb. 432, 199 N.W. 557 (1924).

**55-121 Adjutant General; qualifications; salary; sources for payment; performance of federal duties; effect.**

The Adjutant General shall be appointed by the Governor from the active or retired commissioned officers of the National Guard of this state. Such Adjutant General shall be or have been a commissioned officer who has actively served in the National Guard of this state for at least five years, shall have attained at least the grade of lieutenant colonel, and shall be able to become eligible for

promotion to general officer. If a retired officer is appointed, he or she shall not have been retired for more than two years at the time he or she is considered for appointment. He or she shall hold his or her office as provided in section 55-136. He or she shall receive for his or her services such salary as the Governor shall direct, payable biweekly, except that such salary shall not exceed the annual pay and allowances of regular military officers of equal rank. If funds made available by the federal government are in excess of the amount payable as directed by the Governor, the excess shall be used to reduce the amount required to be paid by the state. Due to the interrelated nature of the Adjutant General's state and federal duties, the Adjutant General shall not be required to take paid or unpaid leave or leaves of absence to perform his or her federal duties, whether or not under federal orders. The Adjutant General shall continue to receive his or her salary during all such periods. The Adjutant General shall only be required to take leave or leaves of absence during those times when he or she is absent and performing neither his or her state nor federal duties as Adjutant General. This section shall not apply if the Adjutant General is called to active duty of the United States under 10 U.S.C.

**Source:** Laws 1917, c. 205, § 4, p. 485; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 834; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-141; Laws 1947, c. 196, § 1, p. 639; Laws 1951, c. 182, § 1, p. 685; Laws 1961, c. 273, § 1, p. 807; Laws 1965, c. 341, § 2, p. 972; R.R.S.1943, § 55-141; Laws 1969, c. 459, § 19, p. 1587; Laws 1974, LB 983, § 4; Laws 2004, LB 963, § 1; Laws 2010, LB550, § 3.

#### **55-122 Adjutant General; powers and duties.**

The Adjutant General shall be in control of the military forces of the state and subordinate only to the Governor in matters pertaining to such forces. He shall issue and transmit all orders of the Governor with reference to the militia or military organization of the state, and shall keep a record of all officers commissioned by the Governor and all general and special regulations, and of all such matters as pertain to the organization of the state militia and Nebraska National Guard. He shall have charge of, and receive and issue all ordnance and ordnance stores, clothing, camp, and garrison equipment, and other public property pertaining to the militia or National Guard of the state, and shall provide transportation and subsistence, when necessary, under authority of the Governor. He shall audit all claims and accounts against the state except as otherwise provided by law. He shall have charge of and carefully preserve the colors, flags, guidons, and military trophies belonging to the state, and shall not allow the same to be loaned out or removed from their proper place of deposit. He shall furnish at the expense of the state all proper blank books, forms, and such military instruction books as shall be approved by the Governor.

**Source:** Laws 1917, c. 205, § 4, p. 484; Laws 1919, c. 121, § 2, p. 289; Laws 1921, c. 234, § 1, p. 832; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-140; Laws 1953, c. 188, § 18, p. 599; R.R.S.1943, § 55-140; Laws 1969, c. 459, § 20, p. 1587.

#### **Cross References**

**Nebraska Emergency Management Agency**, administration of, see section 81-829.31.

It was Adjutant General's duty to enter into lease reasonably necessary to provide National Guard armory for which Legislature appropriated funds. *Omaha Armory Building Co. v. Johnson*, 119 Neb. 29, 226 N.W. 911 (1929).

**55-122.01 Adjutant General; military ceremonies and honors; duties; provide flag; when.**

The Adjutant General shall conduct military ceremonies and honors in accordance with laws, regulations, or customs of the appropriate branch of the service. When an American flag is not provided by other sources, the Adjutant General shall provide an American flag for presentation during the funeral service honors ceremony for an active Nebraska National Guard member or for an honorably discharged Nebraska National Guard member who completed at least twenty years of service.

**Source:** Laws 1991, LB 313, § 2.

**55-123 Adjutant General; disbursing officer; bond or insurance.**

The Adjutant General shall be the disbursing officer, unless otherwise ordered by the Governor, for the allotment to be made by the Secretary of the Army and the Secretary of the Air Force under the provisions of the laws of the United States. He or she shall give such bonds to the United States as may be required by the Secretary of the Army and Secretary of the Air Force, respectively, for the faithful accounting and safekeeping and payment of public money coming into his or her hands or entrusted to him or her for disbursement. To satisfy state bonding requirements, the Adjutant General shall be bonded or insured as required by section 11-201.

**Source:** Laws 1917, c. 205, § 4, p. 485; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 834; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-142; Laws 1953, c. 188, § 19, p. 599; R.R.S.1943, § 55-142; Laws 1969, c. 459, § 21, p. 1588; Laws 1978, LB 653, § 15; Laws 2004, LB 884, § 27.

**55-124 Adjutant General; absence or entry into active service; acting Adjutant General; appointment; powers; compensation.**

Whenever the Adjutant General shall be absent from the state on active service in the armed forces of the United States for more than thirty days, including attendance at service schools, his term of office shall not expire, and the Governor may appoint an acting Adjutant General for the period of such absence. The acting Adjutant General shall be chosen from among the officers or former officers of the active National Guard and shall have the same powers and duties as the Adjutant General. He shall be compensated for his services at the same rate provided by law for the pay of the Adjutant General, and during the period in office of such acting Adjutant General, the Adjutant General shall not be entitled to and shall not be paid any salary or other compensation by the state.

**Source:** Laws 1951, c. 181, § 1, p. 684; R.R.S.1943, § 55-141.01; Laws 1969, c. 459, § 22, p. 1588.

**55-125 Adjutant General; assistants; qualifications.**

(1) The Adjutant General shall appoint a deputy adjutant general, a chief of staff of the Military Department, or a deputy director. The officer shall hold the minimum grade of colonel as provided in section 55-120. No person shall be eligible for such appointment and service unless he or she is an active member

of the Nebraska National Guard. He or she shall have had at least four years of commissioned service in the Nebraska National Guard immediately prior to appointment and shall have attained at least the grade of lieutenant colonel and be eligible for promotion to colonel prior to his or her appointment as deputy adjutant general, chief of staff of the Military Department, or deputy director.

(2) The chief of the National Guard Bureau shall appoint a United States property and fiscal officer. The officer shall hold the minimum grade of colonel. The Governor shall nominate one or more officers for the position of United States property and fiscal officer after consultation with the Adjutant General. All nominees shall have attained at least the grade of lieutenant colonel and be eligible for promotion to colonel prior to his or her nomination. The United States property and fiscal officer may appoint, with the approval of the Adjutant General, one or more assistant United States property and fiscal officers, each with the minimum grade of captain. The United States property and fiscal officer and each assistant United States property and fiscal officer shall be appointed from among the active officers of the Nebraska National Guard and shall have been commissioned officers in the Nebraska National Guard for a period of at least four years immediately prior to appointment.

(3) The Adjutant General shall appoint all additional officers, clerks, and caretakers as may be required.

**Source:** Laws 1917, c. 205, § 4, p. 485; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 833; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-143; Laws 1953, c. 188, § 20, p. 600; Laws 1963, c. 321, § 3, p. 976; R.R.S.1943, § 55-143; Laws 1969, c. 459, § 23, p. 1589; Laws 1974, LB 983, § 5; Laws 1976, LB 614, § 1; Laws 2004, LB 963, § 2; Laws 2010, LB550, § 4.

**55-126 Adjutant General; assistants; duties; bond or insurance; salary.**

The deputy adjutant general, chief of staff of the Military Department, or deputy director shall aid the Adjutant General by the performance of such duties as may be assigned by the Adjutant General. In case of absence or inability of the Adjutant General, the deputy adjutant general, chief of staff of the Military Department, or deputy director shall perform all or such portion of the duties of the Adjutant General as the latter may expressly delegate to him or her. In the case of absence of both the Adjutant General and the deputy adjutant general, chief of staff of the Military Department, or deputy director, the Adjutant General may delegate the authority to perform the duties of the Adjutant General to any active officer of the Nebraska military who shall hold at least the rank of colonel. The deputy adjutant general, chief of staff of the Military Department, or deputy director shall be bonded or insured as required by section 11-201. The deputy adjutant general, chief of staff of the Military Department, or deputy director shall receive such salary as the Adjutant General shall direct, payable biweekly. Such salary shall not exceed the annual pay and allowances of regular military officers of equal rank, except that when funds made available by the federal government are in excess of the amount payable as directed by the Adjutant General, the excess shall be used to reduce the amount required to be paid by the State of Nebraska.

**Source:** Laws 1917, c. 205, § 4, p. 486; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 834; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-144; Laws 1947, c. 196, § 2, p. 639;

Laws 1951, c. 182, § 2, p. 685; Laws 1963, c. 321, § 4, p. 976; R.R.S.1943, § 55-144; Laws 1969, c. 459, § 24, p. 1589; Laws 1978, LB 653, § 16; Laws 1993, LB 170, § 1; Laws 2004, LB 884, § 28; Laws 2004, LB 963, § 3; Laws 2010, LB550, § 5.

**55-127 United States property and fiscal officer; duties; bond or insurance.**

The United States property and fiscal officer shall perform such duties as may be assigned to him or her by the Adjutant General. He or she shall make such reports and returns to the Department of the Army and the Air Force or the President of the United States as may be required by law or regulations. He or she shall give such bond to the United States as may be required by the Secretary of the Army and Secretary of the Air Force, respectively, for the faithful accounting, safekeeping, and payment of public money coming into his or her hands or entrusted to him or her for disbursement. To satisfy state bonding requirements, he or she shall be bonded or insured as required by section 11-201.

**Source:** Laws 1917, c. 205, § 4, p. 486; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 834; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-145; Laws 1953, c. 188, § 21, p. 600; Laws 1963, c. 321, § 5, p. 977; R.R.S.1943, § 55-145; Laws 1969, c. 459, § 25, p. 1590; Laws 1978, LB 653, § 17; Laws 2004, LB 884, § 29.

**55-128 Adjutant General; seal.**

The Adjutant General shall provide a seal, which shall be the seal of his office, and shall be delivered by him to his successor.

**Source:** Laws 1917, c. 205, § 4, p. 485; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 834; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-147; Laws 1969, c. 459, § 26, p. 1590.

**55-129 Adjutant General; reports.**

The Adjutant General shall make reports at such times and as to such matters as the Governor may require. He or she shall make such reports and returns to the Department of the Army and Air Force or the President of the United States as may be required by laws or regulations.

**Source:** Laws 1917, c. 205, § 4, p. 485; Laws 1919, c. 121, § 2, p. 289; Laws 1921, c. 234, § 1, p. 833; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-148; Laws 1953, c. 188, § 23, p. 601; Laws 1955, c. 231, § 11, p. 722; R.R.S.1943, § 55-148; Laws 1969, c. 459, § 27, p. 1590; Laws 1981, LB 545, § 16.

**55-130 Repealed. Laws 1981, LB 545, § 52.**

**55-131 Adjutant General; property; receipt as trustee; control; disposition; Military Department Cash Fund; created; investment.**

The Military Department Cash Fund is created. The fund shall be administered by the Adjutant General. The fund shall consist of all nonfederal revenue received by the National Guard pursuant to this section. The Adjutant General is hereby authorized to accept by devise, gift, or otherwise and hold, as trustee, for the benefit and use of the National Guard or any part thereof any property,

real or personal; to invest and reinvest the property; to collect, receive, and recover the rents, incomes, and issues from the property; and to expend them as provided by the terms of the devise or gift, or if not so provided, to expend them for the benefit and use of the National Guard as he or she in his or her discretion shall determine, subject to the approval of the Governor. Except as otherwise provided by law, all other money received by the National Guard and derived from any other source shall be remitted to the State Treasurer for credit to the Military Department Cash Fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Military Department 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 1929, c. 189, § 20, p. 662; C.S.1929, § 55-126; R.S.1943, § 55-150; Laws 1965, c. 342, § 1, p. 973; R.R.S.1943, § 55-150; Laws 1969, c. 459, § 29, p. 1591; Laws 1969, c. 584, § 55, p. 2379; Laws 1995, LB 7, § 61; Laws 2006, LB 787, § 9; Laws 2007, LB322, § 9; Laws 2009, First Spec. Sess., LB3, § 31.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

#### **55-131.01 Repealed. Laws 1988, LB 793, § 7.**

#### **55-132 Adjutant General; armories; rifle ranges; control; management; rental.**

The Adjutant General shall be the director of state armories and of the National Guard rifle ranges. He shall provide grounds, armories, and other buildings, for the purpose of drill and for the safekeeping of all federal and state property of the United States or of this state, and lease, in the name of the State of Nebraska, suitable property and buildings therefor, and cause the same to be paid for from money appropriated for National Guard support, when in his judgment it is for the best interests of the state so to do. He shall provide for the management, care and maintenance of such grounds, armories, buildings and National Guard rifle ranges. He may adopt and prescribe such rules and regulations respecting the same as he in his sole discretion shall determine to be necessary or desirable. He may permit, by order, revocable at his pleasure, the use of armories for the regular meetings or functions of patriotic societies or recognized military service organizations or for other meetings of a public nature, at such times and under such circumstances as not to interfere with the use of such armories for military purposes by the units quartered therein, subject to such rules and regulations as he in his sole discretion may determine necessary or desirable. For such use of armories or facilities he may exact such rent as may be necessary to meet the expense of such meeting, clean and maintain the premises, or pay for extra help required.

**Source:** Laws 1929, c. 189, § 22, p. 662; C.S.1929, § 55-128; R.S.1943, § 55-151; Laws 1961, c. 274, § 1, p. 808; R.R.S.1943, § 55-151; Laws 1969, c. 459, § 30, p. 1591.

#### **55-133 Adjutant General; armories and equipment; assignment; military emergency vehicles; designation.**

(1) The Adjutant General shall assign to each organization an armory and such other equipment as may be necessary to comply with the requirements of United States laws or regulations for National Guard units allotted to the State of Nebraska.

(2)(a) The Adjutant General may designate any publicly owned military vehicles of the National Guard described in subdivision (b) of this subsection as military emergency vehicles. Military emergency vehicles shall be operated as emergency vehicles only when responding to a public disaster, war, riot, invasion, insurrection, or resistance of process or in case of imminent danger of the occurrence of any of such events. The Adjutant General shall develop and enforce standard operating procedures for military emergency vehicles.

(b) Vehicles eligible for designation as military emergency vehicles shall be limited to vehicles assigned to:

(i) The Civil Support Team, or any successor unit; and

(ii) The chemical, biological, radiological, nuclear, and high-yield explosives enhanced response force package, commonly known as the CERFP unit, or any successor unit.

**Source:** Laws 1929, c. 189, § 21, p. 662; C.S.1929, § 55-127; R.S.1943, § 55-152; Laws 1969, c. 459, § 31, p. 1592; Laws 2008, LB196, § 1.

#### **55-134 National Guard; composition; discrimination prohibited.**

The Nebraska National Guard shall consist of the regularly enlisted personnel between the ages of seventeen and sixty years organized, armed, and equipped as hereinafter provided, of warrant officers between the ages of eighteen and sixty-two years, and of commissioned officers between the ages of eighteen and sixty-four years. The number of officers and enlisted personnel of the National Guard shall be determined from time to time and organized so as to at least meet the minimum requirements of the National Guard organizations allotted to this state. No discrimination shall be made in the enlistment of an individual, advancement in grade, or appointment of officers on account of race, color, creed, or sex.

**Source:** Laws 1929, c. 189, § 5, p. 658; C.S.1929, § 55-110; Laws 1935, c. 121, § 1, p. 439; C.S.Supp.,1941, § 55-110; R.S.1943, § 55-108; Laws 1945, c. 133, § 1, p. 423; Laws 1953, c. 188, § 6, p. 595; R.R.S.1943, § 55-108; Laws 1969, c. 459, § 32, p. 1592; Laws 1979, LB 80, § 106; Laws 1984, LB 934, § 1.

#### **55-135 National Guard; personnel; number; grade; service.**

The number and grade of officers and enlisted personnel shall be as prescribed by the United States Department of the Army and the Department of the Air Force personnel documents provided to the National Guard or as otherwise authorized, but in case of war, invasion, insurrection, riot, or imminent danger, the Governor may temporarily increase them to meet such emergencies. All officers shall hold their commissions until separated by reason of resignation, disability, or pursuant to applicable regulations issued by the Department of the Army or the Department of the Air Force. Vacancies among officers shall be

filled by appointment, subject to such regulations relating thereto as now or may hereafter be promulgated by the United States Government.

**Source:** Laws 1929, c. 189, § 9, p. 659; C.S.1929, § 55-114; Laws 1935, c. 121, § 2, p. 439; C.S.Supp.,1941, § 55-114; R.S.1943, § 55-114; Laws 1945, c. 133, § 2, p. 423; R.R.S.1943, § 55-114; Laws 1969, c. 459, § 33, p. 1593; Laws 1978, LB 570, § 1; Laws 1984, LB 934, § 2; Laws 2010, LB550, § 6.

**55-136 National Guard; officers; qualifications; service; discharge.**

Staff officers, including officers of the pay, inspection, subsistence, medical, and Adjutant General's department, shall have had previous military experience and shall hold their positions until they have reached the age of sixty-four years unless retired prior to that time by reason of resignation, disability, or pursuant to applicable regulations issued by the Department of the Army or the Department of the Air Force. Vacancies among such officers shall be filled by appointment by the Governor or the Adjutant General. All commissioned officers shall be entitled to an honorable discharge in writing at the expiration of their term of office on properly accounting for all property for which they are responsible.

**Source:** Laws 1917, c. 205, § 16, p. 488; Laws 1919, c. 121, § 4, p. 291; Laws 1921, c. 234, § 2, p. 835; C.S.1922, § 3320; C.S.1929, § 55-140; Laws 1935, c. 121, § 3, p. 440; C.S.Supp.,1941, § 55-140; Laws 1943, c. 127, § 1, p. 430; R.S.1943, § 55-115; Laws 1969, c. 459, § 34, p. 1593; Laws 1978, LB 570, § 2; Laws 1993, LB 170, § 2.

**55-137 National Guard; officers; commissions.**

Any person appointed and commissioned an officer of the National Guard is required to pass such tests as to his physical, moral and professional fitness as shall be prescribed by the United States. The examination to determine such qualifications for commissions shall be as prescribed by the United States. Officers shall be commissioned by the Governor, and the commission shall designate the arm, staff corps or department, and, in the case of line officers, the unit to which they are assigned.

**Source:** Laws 1929, c. 189, § 11, p. 659; C.S.1929, § 55-116; R.S.1943, § 55-116; Laws 1969, c. 459, § 35, p. 1593.

**55-138 National Guard; officers; selection; separation.**

The system of selecting and separating officers of the Nebraska National Guard will be prescribed in regulations issued by the Department of the Army or Department of the Air Force.

**Source:** Laws 1917, c. 205, § 15, p. 488; Laws 1919, c. 121, § 3, p. 291; C.S.1922, § 3319; C.S.1929, § 55-139; R.S.1943, § 55-117; Laws 1953, c. 188, § 9, p. 596; R.R.S.1943, § 55-117; Laws 1969, c. 459, § 36, p. 1594; Laws 1978, LB 570, § 3.

**55-139 National Guard; officers; powers and duties.**

In addition to the powers and duties prescribed in this code, all officers of the National Guard shall have the same powers and perform the same duties as

officers of similar grade and rank in the Army and Air Force of the United States insofar as may be authorized by the laws or regulations of the United States.

**Source:** Laws 1929, c. 189, § 15, p. 661; C.S.1929, § 55-120; R.S.1943, § 55-118; Laws 1953, c. 188, § 10, p. 596; R.R.S.1943, § 55-118; Laws 1969, c. 459, § 37, p. 1594.

Cross References

"This code", see section 55-101.

**55-139.01 National Guard; peace officer; powers.**

While in the active service of the state or on orders under 32 U.S.C., as a member of the militia of this state or another state, by direction or request of the Governor, members of the National Guard are peace officers and conservators of the peace with the power to keep the same, to prevent crime, to arrest any person liable thereto, or to execute process of law. They may call any person to their aid and, when necessary, may summon the power of the state. The authority to perform peace officer duties will be established within the official order to duty and may be limited by the Governor, in writing, as necessitated by the mission.

**Source:** Laws 2010, LB550, § 7.

**55-140 National Guard; oaths; commissioned officers may administer.**

All commissioned officers of the Nebraska National Guard shall be authorized and empowered to administer oaths and affirmations necessary for the administration of military business.

**Source:** Laws 1909, c. 90, § 63, p. 384; R.S.1913, § 3962; C.S.1922, § 3360; C.S.1929, § 55-179; R.S.1943, § 55-119; Laws 1969, c. 459, § 38, p. 1594; Laws 1993, LB 170, § 3.

**55-141 Militia; commissioned officers; power of arrest.**

Any commissioned officer of the military forces shall have the ordinary powers of a peace officer to arrest and detain any member of the military forces of the State of Nebraska for the commission of any crime punishable under the laws of the state while in any active service of the state. The arresting officer may release the offender to the civil authorities for prosecution.

**Source:** Laws 1909, c. 90, § 70, p. 386; R.S.1913, § 3968; C.S.1922, § 3366; C.S.1929, § 55-184; R.S.1943, § 55-120; Laws 1969, c. 459, § 39, p. 1594.

**55-141.01 Transferred to section 55-124.**

**55-142 Violations; penalty.**

Any person who (1) trespasses upon any campground, armory, airport or any other place devoted to military duty; (2) unlawfully molests, insults, abuses or obstructs any member of the Nebraska National Guard while in the performance of his military duty; (3) interrupts or disturbs the orderly discharge of military duty; or (4) disturbs or prevents the passage of troops going to or returning from any duty shall be guilty of a Class II misdemeanor.

Upon probable cause, any person suspected of violating this section may be detained by or at the direction of the commanding officer of the troops or of the place concerned.

The Adjutant General may cause any person so detained in accordance with the provisions of this section to be released to the civil authorities for prosecution.

**Source:** Laws 1969, c. 459, § 40, p. 1594; Laws 1977, LB 39, § 50.

**55-143 National Guard; officers; fitness; determination.**

At any time the moral character, capacity, and general fitness for the service of any National Guard officer may be determined by a board as provided by the United States. Commissions of officers of the National Guard may be vacated upon resignation, upon absence without leave for three months, upon recommendation of a board pursuant to sentence of a court-martial, or upon separation based upon the causes set forth in section 55-136. Officers of the guard rendered surplus by the disbandment of their organization shall be disposed of as provided by the United States. Officers may, upon their own application, be placed in the reserve as may be authorized by the United States.

**Source:** Laws 1929, c. 189, § 12, p. 660; C.S.1929, § 55-117; R.S.1943, § 55-122; Laws 1969, c. 459, § 41, p. 1595; Laws 1978, LB 570, § 4; Laws 1993, LB 170, § 4.

**55-144 National Guard; officers; resignation.**

Commissioned officers and warrant officers may resign in such manner and under such circumstances as may be prescribed by regulations of the United States Government.

**Source:** Laws 1929, c. 189, § 10, p. 659; C.S.1929, § 55-115; R.S.1943, § 55-123; Laws 1969, c. 459, § 42, p. 1595.

**55-144.01 Repealed. Laws 1959, c. 266, § 1.**

**55-145 National Guard; officers; resignations; acceptance; limitations.**

Resignations of all commissioned officers and warrant officers will be forwarded to the Adjutant General, through their immediate commanding officers, for the action of the Governor, who may accept and grant an honorable discharge; *Provided*, the officer shall not be honorably discharged until he has satisfactorily accounted for all property he may be responsible for, nor while under charges for the commission of any offense.

**Source:** Laws 1909, c. 90, § 47, p. 381; R.S.1913, § 3946; C.S.1922, § 3345; C.S.1929, § 55-172; R.S.1943, § 55-124; Laws 1969, c. 459, § 43, p. 1595.

**55-146 National Guard; personnel; ordered to active duty; limitations.**

Officers and enlisted personnel of the National Guard who are active or retired may be ordered to active service of the state by the Governor or the Adjutant General: (1) During times of disaster declared by the Governor; (2) in any emergency when the lives or the property of the people of this state are endangered; and (3) at any time for advice, counsel, duties, or service to the Governor or Adjutant General. The length of service of any individual ordered

to active service of the state for disasters or emergencies shall be determined by the Adjutant General. The length of service for any individual ordered to active service of the state for advice, counsel, duties, or service to the Governor or Adjutant General shall not exceed fifteen continuous days for any one mission or project, and no more than fifteen individuals shall be ordered to such duty for any one mission or project.

**Source:** Laws 1955, c. 213, § 1, p. 598; Laws 1963, c. 321, § 1, p. 975; Laws 1965, c. 341, § 1, p. 971; R.R.S.1943, § 55-121.01; Laws 1969, c. 459, § 44, p. 1596; Laws 1984, LB 934, § 3; Laws 1990, LB 930, § 1.

**55-147 National Guard; officers; retired at higher grade, when.**

The Governor shall have the power, on good cause shown, to retire any officer in the next higher grade than that held by the officer during his active military service in the National Guard.

**Source:** Laws 1955, c. 213, § 2, p. 598; R.R.S.1943, § 55-121.02; Laws 1969, c. 459, § 45, p. 1596.

**55-148 National Guard; officers; retirement; right of retired officers to wear uniform and insignia.**

Commissions of National Guard officers shall be vacated as provided by the laws or regulations of the United States. Any commissioned officer of the National Guard who resigns or is retired and who shall have served as such officer for a period of not less than ten years, and any commissioned officer of the National Guard who has been honorably discharged from the Army of the United States after serving therein for a period of ninety days or more during any war and who shall have served as such officer of the National Guard for a period of not less than five years, and any commissioned officer of the National Guard who has become, or who shall hereafter become, disabled and thereby incapable of performing the duties of his office, may, upon his retirement upon his own request in writing, stating the grounds therefor, and by order of the Governor, have his name placed on a roll in the office of the Adjutant General to be known as the roll of retired officers, and shall thereby be entitled to wear, when not in conflict with the laws or regulations of the United States, on state or other occasions of ceremony, the uniform of the rank last held by him. The Governor may, by general order, provide a suitable mark of distinction for all officers and enlisted men who have served in the National Guard.

**Source:** Laws 1929, c. 189, § 13, p. 660; C.S.1929, § 55-118; R.S.1943, § 55-125; Laws 1969, c. 459, § 46, p. 1596.

**55-149 National Guard; arms; supplies; issuance.**

Arms, accoutrements, ammunition, supplies and stores shall be issued to the proper officers of each organization upon requisition as prescribed by the laws or regulations of the United States.

**Source:** Laws 1929, c. 189, § 18, p. 661; C.S.1929, § 55-123; R.S.1943, § 55-126; Laws 1969, c. 459, § 47, p. 1597.

**55-150 National Guard; officers; bond or insurance; amount; conditions.**

Commanders of organizations and units and all other officers who are responsible for public military property shall execute and deliver to the Adjutant General a bond, in such sum as the Governor may direct, not exceeding five thousand dollars, payable to the State of Nebraska, with sufficient sureties, to be approved by the Governor, conditioned for the proper care and use of such public property, and the return of same, in good order, ordinary wear and unavoidable loss and damage excepted; and in case of such loss or damage, the bond shall require the officer to immediately furnish the Adjutant General with properly attested affidavits, setting forth all the facts attending such loss or damage. Officers who are employees, as defined by section 81-1302, of the Military Department shall be bonded or insured as required by section 11-201.

**Source:** Laws 1909, c. 90, § 33, p. 376; R.S.1913, § 3933; C.S.1922, § 3333; C.S.1929, § 55-160; R.S.1943, § 55-127; Laws 1969, c. 459, § 48, p. 1597; Laws 1978, LB 653, § 18; Laws 2004, LB 884, § 30.

**55-151 National Guard; enlistments; reenlistments; how made; qualifications.**

No enlistment shall be allowed other than of able-bodied citizens of the United States and able-bodied persons of foreign birth who have been admitted to the United States for permanent residence. Such citizens or persons are required to be between the ages of seventeen and sixty years. All enlistments, reenlistments, and extensions of enlistments in the National Guard shall be in the manner and form, and for such periods as may be authorized by the laws of the United States, and regulations of the Secretary of the Army and the Secretary of the Air Force relating thereto, and shall be made by signing enlistment papers according to the form prescribed by the Adjutant General, and taking the prescribed oath or affirmation, which may be administered by any commissioned officer.

**Source:** Laws 1917, c. 205, § 7, p. 487; C.S.1922, § 3311; Laws 1929, c. 189, § 25, p. 663; C.S.1929, § 55-131; R.S.1943, § 55-129; Laws 1953, c. 188, § 12, p. 597; Laws 1963, c. 322, § 1, p. 978; R.R.S.1943, § 55-129; Laws 1969, c. 459, § 49, p. 1597.

**55-152 National Guard; federal service; termination; enlistments unaffected.**

Upon the termination of any emergency for which the National Guard has been drafted or called into the service of the United States, all persons so drafted or called, upon being discharged from the Army or Air Force of the United States, shall continue to serve in the Nebraska National Guard until the dates upon which their enlistments entered into prior to their draft or call into service would have expired if uninterrupted.

**Source:** Laws 1929, c. 189, § 14, p. 661; C.S.1929, § 55-119; R.S.1943, § 55-130; Laws 1953, c. 188, § 13, p. 597; R.R.S.1943, § 55-130; Laws 1969, c. 459, § 50, p. 1598; Laws 1993, LB 170, § 5.

**55-153 National Guard; continuous service, defined.**

Service by any person in the armed forces of the United States, or in national emergency, time of war, insurrection, or rebellion, shall be considered as continuous service in the National Guard for any and all purposes regarding privileges and exemptions provided by law for members of the National Guard

by enlistment or commission; *Provided*, that the continuous service for an officer shall include only the time he was commissioned as such.

**Source:** Laws 1929, c. 189, § 28, p. 664; C.S.1929, § 55-134; R.S.1943, § 55-131; Laws 1953, c. 188, § 14, p. 597; R.R.S.1943, § 55-131; Laws 1969, c. 459, § 51, p. 1598.

**55-154 Militia; enlistments; length.**

Enlistments in the militia called out by proclamation of the Governor shall be for the term specified in such proclamation.

**Source:** Laws 1909, c. 90, § 21, p. 373; R.S.1913, § 3920; C.S.1922, § 3328; C.S.1929, § 55-155; R.S.1943, § 55-132; Laws 1969, c. 459, § 52, p. 1598.

**55-155 National Guard; enlisted personnel; discharge.**

An enlisted person discharged from service in the National Guard shall receive a discharge in writing in such form and with such classification as is or shall be prescribed by the laws or regulations of the United States. In time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as the United States may prescribe.

**Source:** Laws 1929, c. 189, § 26, p. 663; C.S.1929, § 55-132; R.S.1943, § 55-133; Laws 1969, c. 459, § 53, p. 1598; Laws 1984, LB 934, § 4.

**55-156 National Guard; dishonorable discharge; effect; posting.**

A dishonorable discharge from service in the Nebraska National Guard shall operate as a complete expulsion from the guard, a forfeiture of all exemptions and privileges acquired through membership therein, and disqualification for any military service under the state. The names of all persons dishonorably discharged shall be published in orders by the Adjutant General quarterly.

**Source:** Laws 1929, c. 189, § 27, p. 663; C.S.1929, § 55-133; R.S.1943, § 55-134; Laws 1969, c. 459, § 54, p. 1599.

**55-157 Militia; active duty; personnel; compensation; health insurance reimbursement.**

(1) When an active or retired officer or enlisted person of the National Guard is ordered to active service of the state by the Governor or Adjutant General, he or she shall receive compensation as provided in this subsection. For service during a disaster or emergency an officer or enlisted person shall be entitled to the same pay, subsistence, and quarters allowance as officers and enlisted personnel of corresponding grades of the Army and Air Force of the United States. For advice, counsel, duties, or service to the Governor or Adjutant General, an officer or enlisted person may, at the discretion of the Adjutant General, be in a pay or nonpay status. If in a pay status, the officer or enlisted person shall be entitled to the same pay, subsistence, and quarters allowance as officers and enlisted personnel of corresponding grades of the Army and Air Force of the United States.

(2) For any period of active service of the state in excess of thirty consecutive days, performed at the order of the Governor or Adjutant General or at the request of the federal government, a state, or other agency or entity, an officer

or enlisted person shall be entitled to reimbursement of one hundred percent of the cost of his or her privately purchased health insurance or up to one hundred two percent of the cost of his or her employer-provided health insurance. The officer or enlisted person shall provide evidence of payment and shall be reimbursed to the extent that evidence of payment can be provided. The reimbursement for health insurance shall be treated as an allowance but may be paid separately once received by the State of Nebraska from the federal government, a state, or other agency or entity requesting the services of the officer or enlisted person. The State of Nebraska will not pay or advance the cost of such health insurance reimbursement for the federal government, a state, or other agency or entity. The State of Nebraska is exempt from the requirement under this subsection to reimburse officers and enlisted persons for their health insurance costs.

**Source:** Laws 1909, c. 90, § 44, p. 380; R.S.1913, § 3943; C.S.1922, § 3343; C.S.1929, § 55-170; R.S.1943, § 55-184; Laws 1953, c. 188, § 33, p. 606; R.R.S.1943, § 55-184; Laws 1969, c. 459, § 55, p. 1599; Laws 1984, LB 934, § 5; Laws 1990, LB 930, § 2; Laws 2004, LB 963, § 4.

**55-157.01 Repealed. Laws 1976, LB 596, § 1.**

**55-157.02 Recruiting; strength maintenance; expenditure of funds; Adjutant General; supervise.**

Recruiting and strength maintenance activities of the Military Department may include, but shall not be limited to, (1) provision to members of the National Guard of suitable awards, honorariums, or other proper recognition for successful recruiting efforts, (2) provision for the financial support of official National Guard functions, the purpose of which is to provide information in regard to and create interest in the National Guard among potential recruits and their families, (3) the preparation and dissemination of informational material in regard to the National Guard, and (4) advertising in public media for recruiting purposes, and all necessary expenses in connection therewith. The Adjutant General shall supervise the expenditure of such funds for the purposes enumerated.

**Source:** Laws 1974, LB 983, § 8.

**55-157.03 Incentive payments; purpose; restrictions.**

The Adjutant General may authorize a payment to encourage individuals to enlist or reenlist in units of the Nebraska National Guard whenever the strength level of such units is so low as to adversely affect the ability of such units to meet their state or federal mission, if the sum of such payments does not exceed the amount appropriated for this purpose. The Adjutant General may devise and change a formula to distribute incentive payments to members of the Nebraska Army National Guard and the Air National Guard, so as to encourage enlistments, reenlistments, or both, subject to the following restrictions. The payments shall be restricted to enlisted persons who have less than twelve years of total military service. The payments shall not exceed the rate of one hundred dollars per year of service but may be provided in advance of service, except

that not more than three hundred dollars shall be paid in advance of performed service to any one individual at any time.

**Source:** Laws 1978, LB 564, § 4.

**55-158 Compensation; payment.**

Whenever a member of the military forces of the State of Nebraska is entitled to compensation as provided in section 55-157, the Adjutant General shall certify the amount of compensation to be paid and direct that the warrant shall be charged against the state appropriated funds of the military department.

**Source:** Laws 1969, c. 459, § 56, p. 1599.

**55-159 Injury or death while on active duty; workers' compensation benefits; procedure; exceptions.**

A member of the military forces of the State of Nebraska who incurs a personal injury which is caused by accident or occupational disease while in the active service of this state ordered by competent authority, which injury arises out of and in the course of his or her employment in active service, shall be entitled to workers' compensation benefits in accordance with the definitions and terms of the Nebraska Workers' Compensation Act. If such member incurs death under the same conditions, the dependents of the deceased, if any, shall be entitled to workers' compensation benefits as provided in the Nebraska Workers' Compensation Act. Any dispute arising under this section shall be resolved under the provisions established by the Nebraska Workers' Compensation Act. No workers' compensation benefits shall be paid under this section in any case to the extent that any benefits for injury or death are paid or payable under the provisions of 32 U.S.C.

**Source:** Laws 1969, c. 459, § 57, p. 1599; Laws 1974, LB 983, § 6; Laws 1986, LB 811, § 139.

**Cross References**

Nebraska Workers' Compensation Act, see section 48-1,110.

**55-160 Military leave of absence without loss of pay; limitations.**

(1) All employees, including elected officials of the State of Nebraska, or any political subdivision thereof, who are members of the National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, and Coast Guard Reserve, shall be entitled to a military leave of absence from their respective duties, without loss of pay, when employed with or without pay under the orders or authorization of competent authority in the active service of the state or of the United States. Members who normally work or are normally scheduled to work one hundred twenty hours or more in three consecutive weeks shall receive a military leave of absence of one hundred twenty hours each calendar year. Members who normally work or are normally scheduled to work less than one hundred twenty hours in three consecutive weeks shall receive a military leave of absence each calendar year equal to the number of hours they normally work or would normally be scheduled to work, whichever is greater, in three consecutive weeks. Such military leave of absence may be taken in hourly increments and shall be in addition to the regular annual leave of the persons named in this section.

(2) When the Governor of this state declares that a state of emergency exists and any of the persons named in this section are ordered to active service of the state, a state of emergency leave of absence will be granted until such member is released from active service of the state by competent authority. A military leave of absence shall not be used during a state of emergency declared by the Governor. Other forms of leave may be granted. During a state of emergency leave of absence because of the call of the Governor, any official or employee subject to this section shall receive his or her normal salary or compensation minus the state active duty base pay he or she receives in active service of the state. Governmental officers serving a term of office shall receive their compensation as provided by law.

**Source:** Laws 1947, c. 198, § 1, p. 642; Laws 1953, c. 188, § 26, p. 602; R.R.S.1943, § 55-156.01; Laws 1969, c. 459, § 58, p. 1600; Laws 2002, LB 722, § 3.

Under former law, the term "workday" for purposes of military leave means any 24-hour period in which work is done. *Hall v. City of Omaha*, 266 Neb. 127, 663 N.W.2d 97 (2003).

A claim for relief made pursuant to this section is not preempted by the Railway Labor Act, 45 U.S.C. section 151 et seq. This section is inapplicable to private sector employment

relationships. *Ferguson v. Union Pacific R.R. Co.*, 258 Neb. 78, 601 N.W.2d 907 (1999).

State employee on paid emergency military duty entitled to receive portion of regular employment salary as equals income loss on active duty. *King v. School Dist. of Omaha*, 197 Neb. 303, 248 N.W.2d 752 (1976).

### **55-161 Military leave of absence; rights of officer or employee.**

(1) The parts of the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Chapter 43, listed in subdivisions (a) through (j) of this subsection or any other parts referred to by such parts, in existence and effective as of January 1, 2001, are adopted as Nebraska law. This section shall be applicable to all persons employed in the State of Nebraska and shall include all officers and permanent employees, including teachers employed on a one-year contract basis and elected officials, of the state or of any of its agencies or political subdivisions. The Legislature hereby adopts:

- (a) Section 4301(a) — Purposes;
- (b) Section 4302 — Relation to other law and plans or agreements;
- (c) Section 4303(2),(4),(7) through (13),(15), and (16) and those portions of subparagraph (3) not relating to employment in a foreign country — Definitions;
- (d) Section 4304 — Character of service;
- (e) Section 4311 — Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited;
- (f) Section 4312 — Reemployment rights of persons who serve in the uniformed services;
- (g) Section 4313 with the exception of that portion of subparagraph (a) dealing with reemployment of federal employees — Reemployment positions;
- (h) Section 4316 — Rights, benefits, and obligations of persons absent from employment for service in a uniformed service;
- (i) Section 4317 — Health plans; and
- (j) Section 4318 — Employee pension benefit plans.

(2) This section applies to all members performing duty in active service of the state.

(3) The proper appointing authority or employer may make a temporary appointment to fill any vacancy created by the absence of an officer or employee pursuant to this section. Such officer or employee shall not be discharged from his or her former or new position without justifiable cause within one year after reinstatement.

(4) The Commissioner of Labor shall enforce this section.

(5) The Adjutant General shall perform duties assigned to the Secretary of Defense, Secretary of Veterans Affairs, or Secretary of Labor in the portions of 38 U.S.C. Chapter 43 adopted under this section.

**Source:** Laws 1951, c. 183, § 1, p. 686; Laws 1953, c. 189, § 1, p. 609; R.R.S.1943, § 55-156.02; Laws 1969, c. 459, § 59, p. 1600; Laws 1969, c. 751, § 8, p. 2828; Laws 1972, LB 1510, § 1; Laws 2002, LB 722, § 4.

**55-161.01 Officers and employees of state; violation of rights; Commissioner of Labor; investigate; order; filing of action; order.**

Any person who feels that his or her employment rights under the provisions of section 55-161 have been violated may file complaint with respect thereto with the Commissioner of Labor. Such complaint shall not be subject to formal requirements but shall be sufficient if it identifies the parties involved and the right or rights alleged to have been violated. The commissioner shall promptly investigate each such complaint and if he or she finds that the allegations thereof are true he or she shall issue his or her order to the offending party directing the granting to complainant of all his or her rights under section 55-161, including the granting of backpay from the date the violation occurred. If such order has not been complied with within ten days after its mailing, by registered or certified mail, the commissioner may file suit in the district court for the county in which the alleged violation occurred for a writ of mandamus ordering the granting of the rights wrongfully denied together with backpay from the date the violation occurred. Such suit shall be determined by the court as expeditiously as practicable. The court shall enter such order as the evidence shows to be appropriate, including, in cases of flagrant violations of rights, the removal from office or employment of the person or persons responsible therefor when such removal is permitted by the Constitution of the State of Nebraska. In any such suit or in any appeal from the decision of the district court, the commissioner may employ private counsel with the written authorization required by subdivision (5) of section 84-205. A reasonable fee for such counsel shall be allowed by the court in any case in which a decision favorable to the commissioner is rendered.

**Source:** Laws 1972, LB 1510, § 2; Laws 1997, LB 758, § 5.

**55-161.02 Officers and employees of state; employer; granting of rights of veteran; effect.**

The employer shall not incur any liability to any person whose employment is terminated, or whose seniority, status, or other employment rights are curtailed as the result of the granting to a veteran of all the rights assured him under the provisions of section 55-161.

**Source:** Laws 1972, LB 1510, § 3.

**55-162 Repealed. Laws 2002, LB 722, § 9.**

**55-163 Repealed. Laws 2002, LB 722, § 9.****55-164 Military leave of absence; damages for noncompliance.**

If any employer fails to comply with any of the provisions of section 55-160 or 55-161, the employee may, at his or her election, bring an action at law for damages for such noncompliance. The employee may also apply to the courts for such equitable relief as may be just and proper under the circumstances.

**Source:** Laws 1957, c. 238, § 3, p. 799; R.R.S.1943, § 55-193; Laws 1969, c. 459, § 62, p. 1602; Laws 2002, LB 722, § 5.

**55-165 Military leave of absence; violation; penalty.**

Any person, firm, or organization violating section 55-160 or 55-161 shall be guilty of a Class IV misdemeanor and, in addition thereto, shall restore to the employee all rights of which he or she has been illegally deprived.

**Source:** Laws 1957, c. 238, § 4, p. 799; R.R.S.1943, § 55-194; Laws 1969, c. 459, § 63, p. 1602; Laws 1977, LB 39, § 51; Laws 2002, LB 722, § 6.

**55-166 National Guard; armed forces of United States; member; discharge by employer; violation; penalty.**

Any person, firm, or organization, who discharges an employee because of his membership in the National Guard of this state or his fulfillment of military duty in the active service of the state or of the United States, shall be guilty of a Class IV misdemeanor, and, in addition thereto, shall restore the employee to a position of like seniority, status, and pay.

**Source:** Laws 1955, c. 213, § 3, p. 599; R.R.S.1943, § 55-190; Laws 1969, c. 459, § 64, p. 1603; Laws 1977, LB 39, § 52.

**55-167 Member of military forces; active service; exempt from arrest on civil process.**

No member of the military forces of the State of Nebraska shall be arrested, or served with any summons, order, warrant, or other civil process after having been ordered to active service of the state or while going to, or attending any place to which he is required to go for active service of the state; but nothing herein shall prevent his arrest for a felony or misdemeanor committed while not in the line of duty.

**Source:** Laws 1969, c. 459, § 65, p. 1603.

**55-168 Militia; active service; civil and criminal liability; immunity.**

Members of the military forces ordered into the active service of the state by any proper authority shall not be liable, civilly or criminally, for any act or acts done by them while in the line of duty.

**Source:** Laws 1909, c. 90, § 15, p. 371; R.S.1913, § 3914; C.S.1922, § 3323; Laws 1929, c. 189, § 41, p. 668; C.S.1929, § 55-150; R.S.1943, § 55-183; Laws 1969, c. 459, § 66, p. 1603.

**55-169 Militia; action or proceeding against member on active service; bond; conditions.**

Any person bringing an action or proceeding against any member of the military forces of the State of Nebraska for any act done when in active service of the state shall furnish, at the filing of the suit, security for payment of costs in such amount and in such form as the judge of the court in which such action or proceeding was initiated may determine, including attorney's fees, likely to accrue in such action or proceeding. If the plaintiff fails to prevail in such action or proceeding, judgment will be entered against him and his sureties on the bond for the defendant's attorney's fees and costs of the action.

**Source:** Laws 1969, c. 459, § 67, p. 1603.

**55-170 Militia; action or proceeding against member on active service; change of venue.**

In any action or proceeding against a member of the military forces of the State of Nebraska for any act done when in active service of the state, such member, on appropriate motion, shall be entitled to have the venue changed to the nearest county in the adjoining judicial district; and in any suit against two or more members of the Nebraska National Guard, each of them shall be entitled to severance.

**Source:** Laws 1969, c. 459, § 68, p. 1603.

**55-171 Militia; action or proceeding against member on active service; legal counsel; expense.**

If a civil or criminal suit or proceeding is commenced in any court by any person against a member of the military forces of the State of Nebraska for any act done when in the active service of this state the defendant may have counsel of his own selection at his individual expense, or competent legal counsel shall be provided at the expense of the state, for all stages of the proceedings.

Any legal counsel provided at the expense of the state shall be the Attorney General or a member of his staff or a practicing attorney designated by him. Compensation of counsel at the expense of the state shall be charged against military department funds.

**Source:** Laws 1969, c. 459, § 69, p. 1604.

**55-172 Militia; action or proceeding against member on active service; service of copy on Adjutant General; procedure.**

Any person bringing an action or proceeding against any member of the military forces of the State of Nebraska for any act done when in the active service of the state shall serve upon the Adjutant General a copy of any pleading, complaint, or information and the Adjutant General shall be entitled to be heard in such action or proceeding.

**Source:** Laws 1969, c. 459, § 70, p. 1604.

**55-173 National Guard; Nebraska State Guard; labor service; jury service; exemptions.**

The officers and enlisted men of the Nebraska National Guard and Nebraska State Guard shall be exempt from (1) working on roads and highways, and (2)

sitting on any grand or petit jury within this state while they are active members thereof.

**Source:** Laws 1909, c. 90, § 64, p. 385; R.S.1913, § 3963; C.S.1922, § 3361; C.S.1929, § 55-180; R.S.1943, § 55-187; Laws 1945, c. 134, § 1, p. 424; R.R.S.1943, § 55-187; Laws 1969, c. 459, § 71, p. 1604.

**Cross References**

For other provisions for exemption from jury service, see section 25-1601.

**55-174 National Guard; military duty; members not exempt from firefighting service.**

No member of the Nebraska National Guard shall be exempt or relieved from duty by membership or service in any fire department or district.

**Source:** Laws 1909, c. 90, § 65, p. 385; R.S.1913, § 3900; C.S.1922, § 3298; C.S.1929, § 55-102; R.S.1943, § 55-135; Laws 1969, c. 459, § 72, p. 1604.

**55-175 National Guard; members in uniform; failure to admit or serve; penalty.**

An owner, manager or employee of a hotel, restaurant, place of amusement or other establishment or place of business open to the public shall not refuse to admit or serve in the same manner and to the same extent as members of the general public are admitted and served a member of the National Guard wearing the prescribed uniform.

A person violating this section shall be guilty of a Class II misdemeanor.

**Source:** Laws 1969, c. 459, § 73, p. 1605; Laws 1977, LB 39, § 53.

**55-176 Transferred to section 28-1481.**

**55-177 Transferred to section 28-1482.**

**55-178 National Guard; payrolls; certification; transmission.**

Payrolls for services shall be forwarded in duplicate to the Adjutant General within ten days after such services, by brigade, regimental, and company commanders, with their certificates and oaths that the persons therein named have performed the duties and are entitled to the pay therein specified. Within ten days after the receipt of such payrolls, the Adjutant General shall, if approved by the Governor and himself, forward one of the payrolls to the Director of Administrative Services.

**Source:** Laws 1909, c. 90, § 60, p. 384; R.S.1913, § 3959; C.S.1922, § 3357; C.S.1929, § 55-176; R.S.1943, § 55-185; Laws 1969, c. 460, § 2, p. 1608; Laws 1969, c. 459, § 76, p. 1605.

**55-179 National Guard; vouchers; payrolls; payment; warrants.**

The Director of Administrative Services is hereby authorized and required on presentation of the proper vouchers and payrolls to draw his warrant on the

state General Fund and against the appropriation made by the Legislature for the support and maintenance of the National Guard.

**Source:** Laws 1909, c. 90, § 61, p. 384; R.S.1913, § 3960; C.S.1922, § 3358; C.S.1929, § 55-177; R.S.1943, § 55-186; Laws 1969, c. 459, § 77, p. 1606.

Under former law Auditor of Public Accounts was required to issue warrant for rental of armory leased by Adjutant General, for which appropriation was made. Omaha Armory Building Co. v. Johnson, 119 Neb. 29, 226 N.W. 911 (1929).

**55-180 National Guard; encampment; commanding officer; powers; duties.**

The commanding officer of any encampment or training assembly may cause those under his command to perform any camp or field duties he may require. He may put under arrest during such encampment or training assembly any member of his command who may disobey a superior officer, or be guilty of disorderly or unmilitary conduct, or any other person who may trespass upon the encampment grounds or training assembly, or molest the orderly discharge of duty by members of his command.

**Source:** Laws 1909, c. 90, § 41, p. 379; R.S.1913, § 3941; C.S.1922, § 3341; C.S.1929, § 55-168; R.S.1943, § 55-155; Laws 1969, c. 459, § 78, p. 1606.

**55-181 Department; contract with Nebraska Wing of Civil Air Patrol; purposes; funding agreement.**

The Military Department may contract with the Nebraska Wing of the Civil Air Patrol, the civilian auxiliary of the United States Air Force, for the following purposes:

- (1) To encourage and aid American citizens in the contribution of their efforts, services, and resources in the development of aviation and the maintenance of aerospace supremacy;
- (2) To encourage and develop, by example, the voluntary contribution of private citizens to the public welfare;
- (3) To provide aviation and aerospace education and training;
- (4) To foster and encourage civil aviation in local communities throughout the state; and
- (5) To assist in meeting emergencies within the state.

The Department of Aeronautics and the Military Department shall enter into an agreement that will continue the funding of the contract under this section from the Department of Aeronautics Cash Fund in an amount equal to the appropriation by the Legislature for such purpose.

**Source:** Laws 1976, LB 847, § 1; R.S.1943, (1997), § 3-125.01; Laws 2003, LB 69, § 1.

**ARTICLE 2**

**NEBRASKA STATE GUARD**

Section

- 55-201. Nebraska State Guard; when called into service; organization.  
 55-202. Rules and regulations; acceptance of gratuities; conditions.  
 55-203. Commissions; enlistments; qualifications.  
 55-204. Commissions; conviction of felony; effect; fingerprints.  
 55-205. Enlistment; term; oath.

## Section

- 55-206. Officers; oath.
- 55-207. Members; compensation.
- 55-208. Equipment; facilities.
- 55-209. Repealed. Laws 1969, c. 459, § 82.
- 55-210. Repealed. Laws 1969, c. 459, § 82.
- 55-211. Repealed. Laws 1969, c. 459, § 82.
- 55-212. Service within state; exceptions.
- 55-213. Fugitive; apprehension in another state; duty.
- 55-214. Fugitive to this state; capture authorized.
- 55-215. Fugitive to this state; apprehension; surrender to local authorities.
- 55-216. Fugitive to this state; sections, how construed.
- 55-217. Federal service; treatment of guard members.
- 55-218. Civil organizations; not eligible for enlistment.
- 55-219. Act, how cited.

**55-201 Nebraska State Guard; when called into service; organization.**

Whenever any part of the National Guard of the State of Nebraska is in active federal service, whenever the President of the United States shall declare a national emergency, or whenever the Governor shall declare an emergency, the Governor is hereby authorized to organize and maintain within this state during such periods, under such regulations as the Secretaries of the Army and Air Force of the United States may prescribe for the organization, standards of training, instruction, and discipline, such military forces as the Governor may deem necessary to defend this state. Such forces shall be composed of officers commissioned or assigned by the Governor, and such able-bodied citizens of the state as shall volunteer for service therein, supplemented, if necessary, by men of the reserve militia enrolled by draft or otherwise as provided by law. Such forces shall be additional to and distinct from the National Guard and shall be known as the Nebraska State Guard. Such forces shall be uniformed.

**Source:** Laws 1941, c. 116, § 1, p. 447; C.S.Supp.,1941, § 55-401; Laws 1943, c. 126, § 1, p. 427; R.S.1943, § 55-201; Laws 1951, c. 184, § 1, p. 687; Laws 1953, c. 188, § 34, p. 607; Laws 1961, c. 275, § 1, p. 809.

**55-202 Rules and regulations; acceptance of gratuities; conditions.**

The Governor is hereby authorized to prescribe rules and regulations, not inconsistent with the provisions of sections 55-201 to 55-219, governing the enlistment, organization, administration, equipment, maintenance, training and discipline of such forces; *Provided*, such rules and regulations, insofar as he deems practicable and desirable, shall conform to existing law, governing and pertaining to the National Guard and the rules and regulations promulgated thereunder, and shall prohibit the acceptance of gifts, donations, gratuities or anything of value by such forces, except upon application to and authorization by the Adjutant General, or by any member of such forces from any individual, firm, association or corporation by reason of such membership. All applications for authority to make or offer a gift, donation, gratuity or anything of value to the forces shall become a permanent record of the Adjutant General's department and shall be open to public inspection.

**Source:** Laws 1941, c. 116, § 2, p. 447; C.S.Supp.,1941, § 55-402; Laws 1943, c. 126, § 2, p. 428; R.S.1943, § 55-202.

**55-203 Commissions; enlistments; qualifications.**

No person shall be appointed or enlisted in such forces who is not a citizen of the United States or who has been expelled or dishonorably discharged from any military or naval organization of this state or of another state or of the United States.

**Source:** Laws 1941, c. 116, § 9, p. 449; C.S.Supp.,1941, § 55-409; R.S. 1943, § 55-203; Laws 1969, c. 459, § 79, p. 1606.

**55-204 Commissions; conviction of felony; effect; fingerprints.**

No one may be appointed as an officer who has been convicted of a felony. Fingerprints of all officers shall be taken.

**Source:** Laws 1941, c. 116, § 1, p. 447; C.S.Supp.,1941, § 55-401; Laws 1943, c. 126, § 1, p. 428; R.S.1943, § 55-204; Laws 1969, c. 459, § 80, p. 1607.

**55-205 Enlistment; term; oath.**

No person shall be enlisted for more than three years, but such enlistment may be renewed. The oath, to be taken upon enlistment in such forces, shall be substantially in the form prescribed for enlisted men of the National Guard, substituting the words Nebraska State Guard where necessary.

**Source:** Laws 1941, c. 116, § 11, p. 450; C.S.Supp.,1941, § 55-411; Laws 1943, c. 126, § 5, p. 429; R.S.1943, § 55-205.

**55-206 Officers; oath.**

The oath to be taken by officers commissioned in such forces shall be substantially in the form prescribed for officers of the National Guard, substituting the words Nebraska State Guard where necessary.

**Source:** Laws 1941, c. 116, § 10, p. 450; C.S.Supp.,1941, § 55-410; R.S.1943, § 55-206.

**55-207 Members; compensation.**

When called into the active service of the state, such forces shall receive pay, allowances, and benefits at the same rates prescribed by law for members of the National Guard. While in training at home station or engaged in other inactive service, such forces shall receive no compensation from the state.

**Source:** Laws 1941, c. 116, § 3, p. 448; C.S.Supp.,1941, § 55-403; Laws 1943, c. 126, § 3, p. 428; R.S.1943, § 55-207; Laws 1953, c. 188, § 35, p. 607; R.R.S.1943, § 55-207; Laws 1969, c. 459, § 81, p. 1607.

**55-208 Equipment; facilities.**

The Governor is hereby authorized to requisition or purchase from the Department of the Army or Department of the Air Force for the use of the armed forces of this state such arms, ammunition, clothing, and equipment as are necessary and authorized by the Department of the Army or Department of the Air Force under regulations; and to make available to such forces the facilities of state armories and their equipment and such other state premises and property as may be available. Where state facilities are not available,

grounds, armories, and other buildings may be leased and maintained in the manner provided by law for the Nebraska National Guard.

**Source:** Laws 1941, c. 116, § 4, p. 448; C.S.Supp.,1941, § 55-404; Laws 1943, c. 126, § 4, p. 428; R.S.1943, § 55-208; Laws 1953, c. 188, § 36, p. 607.

**55-209 Repealed. Laws 1969, c. 459, § 82.**

**55-210 Repealed. Laws 1969, c. 459, § 82.**

**55-211 Repealed. Laws 1969, c. 459, § 82.**

**55-212 Service within state; exceptions.**

Such forces are not required to serve outside the boundaries of this state except (1) upon the request of the Governor of another state, in which case the Governor of this state may, in his discretion, order any portion or all of such forces to assist the military or police forces of such other state who are actually engaged in defending such other state; and such forces may be recalled by the Governor at his discretion; and (2) any organization, unit or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this state into another state until they are apprehended or captured by such organization, unit or detachment, or until the military or police forces of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; *Provided*, such other state shall have given authority by law for such pursuit by such forces of this state.

**Source:** Laws 1941, c. 116, § 5, p. 448; C.S.Supp.,1941, § 55-405; R.S. 1943, § 55-212.

**55-213 Fugitive; apprehension in another state; duty.**

Any such person who shall be apprehended or captured in such other state by an organization, unit or detachment of the forces of this state shall, without unnecessary delay, be surrendered to the military or police forces of the state in which he is taken or to the United States; but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

**Source:** Laws 1941, c. 116, § 5, p. 449; C.S.Supp.,1941, § 55-405; R.S. 1943, § 55-213.

**55-214 Fugitive to this state; capture authorized.**

Any military forces or organization, unit or detachment thereof, of another state who are in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces, may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons, and are hereby authorized to arrest or capture such persons within this state while in fresh pursuit.

**Source:** Laws 1941, c. 116, § 6, p. 449; C.S.Supp.,1941, § 55-406; R.S. 1943, § 55-214.

**55-215 Fugitive to this state; apprehension; surrender to local authorities.**

Any such person who shall be captured or arrested by the military forces of such other state while in this state, shall without unnecessary delay be surrendered to the military or police forces of this state to be dealt with according to law.

**Source:** Laws 1941, c. 116, § 6, p. 449; C.S.Supp.,1941, § 55-406; R.S. 1943, § 55-215.

**55-216 Fugitive to this state; sections, how construed.**

Nothing in sections 55-214 and 55-215 shall be construed so as to make unlawful any arrest in this state which would otherwise be lawful. Nothing contained in said sections shall be deemed to repeal, modify or conflict with any of the provisions of present or future laws of this state with relation to the fresh pursuit of criminals.

**Source:** Laws 1941, c. 116, § 6, p. 449; C.S.Supp.,1941, § 55-406; R.S. 1943, § 55-216.

**55-217 Federal service; treatment of guard members.**

Nothing in sections 55-201 to 55-219 shall be construed as authorizing such forces, or any part thereof, to be called, ordered or in any manner drafted as such, into the military service of the United States, but no person shall by reason of his enlistment or commission in any forces be exempted from military service under any law of the United States.

**Source:** Laws 1941, c. 116, § 7, p. 449; C.S.Supp.,1941, § 55-407; R.S. 1943, § 55-217.

**55-218 Civil organizations; not eligible for enlistment.**

No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league, or other combination of persons or civil group, shall be enlisted in such forces as an organization or unit.

**Source:** Laws 1941, c. 116, § 8, p. 449; C.S.Supp.,1941, § 55-408; R.S. 1943, § 55-218.

**55-219 Act, how cited.**

Sections 55-201 to 55-219 may be cited as the State Guard Act.

**Source:** Laws 1941, c. 116, § 14, p. 450; C.S.Supp.,1941, § 55-414; R.S.1943, § 55-219.

**ARTICLE 3****NEBRASKA ARMORY BOARD**

## Section

- 55-301. Repealed. Laws 1971, LB 94, § 2.
- 55-302. Repealed. Laws 1971, LB 94, § 2.
- 55-303. Repealed. Laws 1971, LB 94, § 2.
- 55-304. Repealed. Laws 1971, LB 94, § 2.
- 55-305. Repealed. Laws 1971, LB 94, § 2.
- 55-306. Repealed. Laws 1971, LB 94, § 2.

**55-301 Repealed. Laws 1971, LB 94, § 2.**

**55-302 Repealed. Laws 1971, LB 94, § 2.**

**55-303 Repealed. Laws 1971, LB 94, § 2.**

**55-304 Repealed. Laws 1971, LB 94, § 2.**

**55-305 Repealed. Laws 1971, LB 94, § 2.**

**55-306 Repealed. Laws 1971, LB 94, § 2.**

#### ARTICLE 4

### NEBRASKA CODE OF MILITARY JUSTICE

#### Section

- 55-401. Code, how cited.
- 55-402. Terms, defined.
- 55-403. Code; persons subject to.
- 55-404. Fraudulent discharge; deserters; trial by court-martial.
- 55-405. Officer dismissed by order of Governor; trial by court-martial; convening a court-martial; powers; exceptions.
- 55-406. Code; applicability.
- 55-407. State Judge Advocate; appointment.
- 55-408. Staff Judge Advocates; duties; restrictions.
- 55-409. Apprehension of persons.
- 55-410. Apprehension of deserters.
- 55-411. Imposition of restraint.
- 55-412. Restraint of persons charged with offenses.
- 55-413. Confinement and imprisonment other than in guardhouse.
- 55-414. Reports and receiving of prisoners.
- 55-415. Manual for Courts-Martial, United States; applicability.
- 55-416. Commanding officer's nonjudicial punishment.
- 55-417. Court-martial, defined; jurisdiction.
- 55-418. Court-martial; jurisdiction.
- 55-419. Court-martial; jurisdiction; not exclusive.
- 55-420. Court-martial; who may convene.
- 55-421. Court-martial; members; eligibility.
- 55-422. Court-martial; military judge; qualifications.
- 55-423. Court-martial; trial counsel; defense counsel; detail.
- 55-424. Court-martial; reports; interpreters; detail.
- 55-425. Court-martial; absent members; new members; disability of military judge; effect.
- 55-426. Court-martial; pretrial; trial; procedures applicable.
- 55-427. Statute of limitations.
- 55-428. Witness; failure to appear; procedure.
- 55-429. Cruel and unusual punishment, prohibited.
- 55-430. Punishment; limitation.
- 55-431. Sentences; effective date.
- 55-432. Confinement; execution.
- 55-433. Sentences; reduction in grade.
- 55-434. Court-martial; error of law; effect.
- 55-435. Court-martial; record; action on.
- 55-436. Court-martial; records; reference.
- 55-437. Reconsideration; revision.
- 55-438. Rehearing.
- 55-439. Approval by the convening authority.
- 55-440. Disposition of records after review by the convening authority.
- 55-441. Court of Military Review; members; qualifications; appointment.
- 55-442. Court of Military Review; compensation.
- 55-443. Court of Military Review; powers.
- 55-444. Counsel for appellant; appointment.
- 55-445. Review of cases; procedure.

**§ 55-401****MILITIA**

## Section

- 55-446. Sentence; execution.
- 55-447. Petition for new trial.
- 55-448. Principal, defined.
- 55-449. Restoration of rights, privileges, property.
- 55-450. Accessory after the fact, defined.
- 55-451. Conviction of lesser offense; when.
- 55-452. Attempt to commit an offense.
- 55-453. Conspiracy.
- 55-454. Solicitation for violation of code.
- 55-455. Fraudulent enlistment, appointment, or separation.
- 55-456. Unlawful enlistment, appointment, or separation.
- 55-457. Desertion.
- 55-458. Absence without leave.
- 55-459. Missing movement.
- 55-460. Contempt toward officials.
- 55-461. Disrespect toward superior commissioned officer.
- 55-462. Superior commissioned officer; assaulting; willfully disobeying.
- 55-463. Warrant officer, noncommissioned officer; insubordination.
- 55-464. Failure to obey order or resolution.
- 55-465. Cruelty; maltreatment.
- 55-466. Mutiny; sedition.
- 55-467. Resistance; breach of arrest; escape.
- 55-468. Seizure of abandoned property.
- 55-469. Military property of United States; loss, damage, destruction, or wrongful disposition.
- 55-470. Drunk or reckless driving.
- 55-471. Alcoholic liquor; drugs; consumption on duty.
- 55-472. Misbehavior of sentinel.
- 55-473. Malingering.
- 55-474. Riot or breach of peace.
- 55-475. Provoking speeches or gestures.
- 55-476. Perjury.
- 55-477. Conduct unbecoming an officer and a gentleman.
- 55-478. Obtaining property unlawfully.
- 55-479. Forgery.
- 55-480. Disorders and prejudice of good order and discipline.

**55-401 Code, how cited.**

Sections 55-401 to 55-480 shall be known as the Nebraska Code of Military Justice.

**Source:** Laws 1969, c. 458, § 1, p. 1553.

**55-402 Terms, defined.**

As used in sections 55-401 to 55-480, unless the context otherwise requires:

(1) Military forces shall mean the National Guard, also called the Nebraska National Guard and also hereinafter referred to as the Army National Guard and Air National Guard, and in addition thereto, the militia when called into active service of this state;

(2) Officer shall mean a commissioned officer including a commissioned warrant officer;

(3) Superior officer shall mean an officer superior in rank or command;

(4) Enlisted person shall mean any person who is serving in an enlisted grade in any military force;

(5) Accuser shall mean a person who signs and swears to charges, to any person who directs that charges nominally be signed and sworn by another,

and to any other person who has an interest other than an official interest in prosecution of the accused;

(6) Military judge shall mean an official of court-martial detailed in accordance with section 55-422; and

(7) Code shall mean the provisions of sections 55-401 to 55-480.

**Source:** Laws 1969, c. 458, § 2, p. 1553.

**55-403 Code; persons subject to.**

The following persons are subject to this code: All members of the military forces of Nebraska not in the active service of the United States and who are under orders to be in the active service of the state as defined by section 55-104.

**Source:** Laws 1969, c. 458, § 3, p. 1554.

**55-404 Fraudulent discharge; deserters; trial by court-martial.**

(1) All persons discharged from the military forces of Nebraska subsequently charged with having fraudulently obtained such discharge shall, subject to the provisions of section 55-426, be subject to trial by court-martial on such charge and shall after apprehension be subject to this code while in the custody of the military forces for such trial. Upon conviction of such charge they shall be subject to trial by court-martial for all offenses under this code committed prior to the fraudulent discharge.

(2) Any person who has deserted from the military forces shall not be relieved from amenability to the jurisdiction of this code by virtue of a separation from any subsequent period of service.

**Source:** Laws 1969, c. 458, § 4, p. 1554.

**55-405 Officer dismissed by order of Governor; trial by court-martial; convening a court-martial; powers; exceptions.**

(1) When any officer, dismissed by order of the Governor, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the Governor, as soon as practicable, shall convene a court-martial to try such officer on the charges on which he was dismissed. A court-martial so convened shall have jurisdiction to try the dismissed officer on such charges, and he shall be held to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include the dismissal, the Adjutant General shall substitute for the dismissal ordered by the Governor a form of discharge authorized for administrative issuance.

(2) If the Governor fails to convene a court-martial within six months from the presentation of an application for trial under this section, the Adjutant General shall substitute for the dismissal ordered by the Governor a form of discharge authorized for administrative issuance.

(3) Where a discharge is substituted for a dismissal under the authority of this section, the Governor alone may reappoint the officer to such commissioned rank and precedence as in the opinion of the Governor such former officer would have attained had he not been dismissed. The reappointment of such a

former officer shall be without regard to position vacancy and shall affect the promotion status of other officers only insofar as the Governor may direct. All time between the dismissal and such reappointment shall be considered as actual service for all purposes, including the right to receive pay and allowance.

(4) When an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the Governor, there shall not be a right to trial under this section.

**Source:** Laws 1969, c. 458, § 5, p. 1554.

**55-406 Code; applicability.**

This code shall be applicable in all places where military forces are present with any personnel who are on orders to be in the active service of the state.

**Source:** Laws 1969, c. 458, § 6, p. 1555.

**55-407 State Judge Advocate; appointment.**

The Adjutant General shall appoint as State Judge Advocate one of the Senior Staff Judge Advocates from either the Army National Guard or the Air National Guard.

**Source:** Laws 1969, c. 458, § 7, p. 1555.

**55-408 Staff Judge Advocates; duties; restrictions.**

(1) Convening authorities shall at all times communicate directly with their Staff Judge Advocates in matters relating to the administration of military justice; and the Staff Judge Advocate of any command is authorized to communicate directly with the State Judge Advocate.

(2) No person who has acted as a member, military judge, trial counsel, assistant trial counsel, defense counsel, or investigating officer in any case shall subsequently act as a Staff Judge Advocate to any reviewing authority upon the same case.

**Source:** Laws 1969, c. 458, § 8, p. 1555.

**55-409 Apprehension of persons.**

(1) Apprehension is the taking into custody of a person.

(2) Any person authorized under regulations governing the armed forces to apprehend persons subject to this code or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(3) All officers, warrant officers, and noncommissioned officers shall have authority to quell all quarrels, frays, and disorders among persons subject to this code and to apprehend persons subject to this code who take part in the same.

**Source:** Laws 1969, c. 458, § 9, p. 1556.

**55-410 Apprehension of deserters.**

It shall be lawful for any civil officer having authority to apprehend offenders under the laws of the State of Nebraska summarily to apprehend a deserter

from the Nebraska National Guard or a member of the military forces absent without leave and deliver him into the custody of the Nebraska National Guard.

**Source:** Laws 1969, c. 458, § 10, p. 1556.

**55-411 Imposition of restraint.**

(1) Arrest is the restraint of a person by an order not imposed as a punishment for an offense directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(2) An enlisted person may be ordered into arrest or confinement by any officer by an order, oral or written, delivered in person or through other persons subject to this code. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted persons of his command or subject to his authority into arrest or confinement.

(3) An officer or warrant officer may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another officer. The authority to order such persons into arrest or confinement may not be delegated.

(4) No person shall be ordered into arrest or confinement except for probable cause.

(5) Nothing in this section shall be construed to limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

**Source:** Laws 1969, c. 458, § 11, p. 1556.

**55-412 Restraint of persons charged with offenses.**

Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

**Source:** Laws 1969, c. 458, § 12, p. 1557.

**55-413 Confinement and imprisonment other than in guardhouse.**

Confinement and imprisonment other than in guardhouse, whether prior to, during or after trial by a military court, shall be executed in jails, penitentiaries or prisons designated by the Governor or by the Adjutant General for that purpose.

**Source:** Laws 1969, c. 458, § 13, p. 1557.

**55-414 Reports and receiving of prisoners.**

(1) No provost marshal, commander of a guard, warden, keeper or officer of a city or county jail or any other jail, penitentiary or prison designated by the Governor or the Adjutant General under section 55-413 shall refuse to receive or keep any prisoner committed to his charge by an officer of the military forces, when the committing officer furnishes a statement signed by him, of the offense charged against the prisoner.

(2) Every commander of a guard, warden, keeper or officer of a city or county jail or any other jail, penitentiary or prison designated by the Governor

or the Adjutant General under section 55-413 to whose charge a prisoner is committed shall, within twenty-four hours after such commitment or as soon as he is relieved from guard, report to the commanding officer the name of such prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

**Source:** Laws 1969, c. 458, § 14, p. 1557.

**55-415 Manual for Courts-Martial, United States; applicability.**

Insofar as it is not inconsistent with the provisions of this code, the Manual for Courts-Martial, United States, as established from time to time by Executive order of the President of the United States shall be in force and effect and apply to the military forces of Nebraska.

**Source:** Laws 1969, c. 458, § 15, p. 1557.

**55-416 Commanding officer's nonjudicial punishment.**

(1) Under such regulations as the Governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of sections 55-401 to 55-480 to an accused who demands trial by court-martial, but punishment may not be imposed upon any member of the military forces under this section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder.

(2) Subject to subsection (1) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(a) Upon officers of his command:

(i) Restriction to certain specified limits, with or without suspension from duty, for not more than ten consecutive days; or

(ii) If imposed by a general officer in command, arrest in quarters for not more than fourteen consecutive days; forfeiture of not more than one-half of one month's pay per month for two months; restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days; or detention of not more than one-half of one month's pay per month for three months; and

(b) Upon other personnel of his command:

(i) Correctional custody for not more than seven consecutive days;

(ii) Forfeiture of not more than seven days' pay;

(iii) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(iv) Extra duties, including fatigue or other duties, for not more than ten consecutive days;

(v) Restriction to certain specified limits, with or without suspension from duty, for not more than ten consecutive days;

(vi) Detention of not more than fourteen days' pay; or

(vii) If imposed by an officer of the grade of major or above, correctional custody for not more than fourteen consecutive days; forfeiture of not more than one-half of one month's pay per month for two months; reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades; extra duties, including fatigue or other duties, for not more than fourteen consecutive days; restrictions to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days; or detention of not more than one-half of one month's pay per month for three months.

Detention of pay shall be for a stated period, but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, correctional custody is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(3) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (2)(b) of this section as the Governor may specifically prescribe by regulation.

(4) The officer who imposes the punishment authorized in subsection (2) of this section, or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (2) of this section, whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating:

(a) Arrest in quarters to restriction;

(b) Confinement on bread and water or diminished rations to correctional custody;

(c) Correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; or

(d) Extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be

greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(5) A person punished under this section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (4) of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

- (a) Arrest in quarters for more than seven days;
- (b) Correctional custody for more than seven days;
- (c) Forfeiture of more than seven days' pay;
- (d) Reduction of one or more pay grades from the fourth or a higher pay grade;
- (e) Extra duties for more than ten days;
- (f) Restriction for more than ten days; or
- (g) Detention of more than fourteen days' pay, the authority who is to act on the appeal shall refer the case to a judge advocate for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (2) of this section.

(6) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) The Governor may, by regulation, prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

(8) Any punishment authorized by this section which is measured in terms of days shall, when served in a status other than annual field training, be construed to mean consecutive active service days.

**Source:** Laws 1969, c. 458, § 16, p. 1557.

**55-417 Court-martial, defined; jurisdiction.**

There shall be general, special, and summary courts-martial constituted like similar courts of the Army and Air Force of the United States. The jurisdiction of the courts-martial shall be as follows:

(1) General court-martial: Except as otherwise provided by law, a general court-martial may try any person subject to the Nebraska Code of Military Justice;

(2) Special court-martial: Except as otherwise provided by law, a special court-martial may try any person subject to the code when the punishment for the offense does not include a dishonorable discharge; and

(3) Summary court-martial: Except as otherwise provided by law, a summary court-martial may try any person subject to the code and it may adjudge any punishment not forbidden by the code except dishonorable discharge or bad-conduct discharge, confinement for more than one month, hard labor without confinement for more than forty-five days, or forfeiture of more than two-thirds of one month's pay.

**Source:** Laws 1969, c. 458, § 17, p. 1561; Laws 1993, LB 170, § 6.

**55-418 Court-martial; jurisdiction.**

A court-martial as defined in sections 55-401 to 55-480 shall have jurisdiction to try persons subject to this code for any offense defined and made punishable by sections 55-401 to 55-480 and may, under such limitations and regulations as the Governor may prescribe, adjudge any of the following penalties:

- (1) Confinement at hard labor for not more than six months;
- (2) Hard labor without confinement for not more than three months;
- (3) Forfeitures or detentions of pay not exceeding two-thirds pay per month for six months;
- (4) Bad conduct discharge;
- (5) Dishonorable discharge;
- (6) Reprimand; or
- (7) Reduction of noncommissioned officers to the ranks, and to combine any two or more of such punishments in the sentence imposed.

**Source:** Laws 1969, c. 458, § 18, p. 1562.

**55-419 Court-martial; jurisdiction; not exclusive.**

The jurisdiction of a court-martial is limited to the trial of persons accused of military offenses as described in sections 55-401 to 55-480. Persons subject to sections 55-401 to 55-480 who are accused of offenses cognizable by the civil courts of this state or any other state where the military forces are present in that state may, upon accusation, be promptly surrendered to civil authorities for disposition, urgencies of the service considered. If the person subject to sections 55-401 to 55-480 is accused of both a military offense under sections 55-401 to 55-480 and a civil offense by the civil authorities, he shall be released to the civil authorities if the crime for which he is accused by the civil authorities carries a penalty in excess of the maximum penalty provided by sections 55-401 to 55-480.

**Source:** Laws 1969, c. 458, § 19, p. 1562.

**55-420 Court-martial; who may convene.**

A court-martial may be convened by:

- (1) The Governor of Nebraska; or
- (2) Any other commanding officer in any of the military forces who is of the rank of major or above.

If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

**Source:** Laws 1969, c. 458, § 20, p. 1562.

**55-421 Court-martial; members; eligibility.**

(1) Any commissioned officer is eligible to serve on any court-martial for the trial of any person who may lawfully be brought before such court for trial.

(2) Any warrant officer is eligible to serve on a court-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such court for trial.

(3)(a) Any enlisted member, who is not a member of the same unit as the accused, is eligible to serve on a court-martial for the trial of any enlisted member of an armed force who may lawfully be brought before such court for trial, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such request, the accused may not be tried by a court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be assembled and the trial held without them, but the assembling authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(b) In this section, the word unit means any regularly organized body as defined by the Governor, but in no case may it be a body larger than a company, squadron, or body corresponding to one of them.

(4)(a) When it can be avoided, no member of the military forces may be tried by a court-martial any member of which is junior to him in rank or grade.

(b) When convening a court-martial, the convening authority shall detail as members thereof such members of the military forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of the military forces is eligible to serve as a member of a court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

**Source:** Laws 1969, c. 458, § 21, p. 1563.

**55-422 Court-martial; military judge; qualifications.**

(1) The authority convening a court-martial shall detail a military judge thereto. A military judge shall preside over each open session of the court-martial to which he had been detailed.

(2) A military judge shall be a commissioned officer of the National Guard or a retired officer of the reserve components of the armed forces of the United States who is a member of the bar of the Supreme Court of Nebraska and who is certified to be qualified for such duty by the State Judge Advocate. The State Judge Advocate may recommend to the Adjutant General that he order to active duty retired personnel of the United States Armed Forces who are qualified to act as a military judge.

(3) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigation officer or a counsel in the same case.

(4) Neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness or efficiency of a military judge which relates to his performance of duty as such. A commissioned officer who is certified to be qualified for duty as a military judge of a court-martial may perform such duties only when he is assigned and directly responsible to the State Judge Advocate and may perform duties of a judicial or nonjudicial nature other than those relating to his primary duty as a military judge of a court-martial when such duties are assigned to him by or with the approval of the State Judge Advocate. The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

**Source:** Laws 1969, c. 458, § 22, p. 1564.

**55-423 Court-martial; trial counsel; defense counsel; detail.**

(1) For each court-martial the authority convening the court shall detail trial counsel and defense counsel, and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(2) Trial counsel or defense counsel detailed for a court-martial:

(a) Must be a judge advocate of the military forces, who is a graduate of an accredited law school and a member of the bar of the Supreme Court of Nebraska, or must be a member of the bar of a federal court or of the highest court of a state; and

(b) Must be certified as competent to perform such duties by the State Judge Advocate.

**Source:** Laws 1969, c. 458, § 23, p. 1565.

**55-424 Court-martial; reports; interpreters; detail.**

Under such regulations as the Governor may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission. Any person appointed to interpret for deaf and hard of hearing persons shall be a licensed interpreter as defined in section 20-151.

**Source:** Laws 1969, c. 458, § 24, p. 1565; Laws 2002, LB 22, § 13.

**55-425 Court-martial; absent members; new members; disability of military judge; effect.**

(1) No member of a court-martial may be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

(2) Whenever a court-martial other than a court-martial composed of a military judge only is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(3) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 55-426, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

**Source:** Laws 1969, c. 458, § 25, p. 1565.

**55-426 Court-martial; pretrial; trial; procedures applicable.**

The pretrial and trial procedures before a court-martial shall be in accordance with the procedures set forth in the Uniform Code of Military Justice of the United States, 10 U.S.C. chapter 47, for courts-martial as the same may be from time to time amended and according to regulations prescribed by the President of the United States as contemplated by such code except as to matters which are specifically covered in the Nebraska Code of Military Justice.

**Source:** Laws 1969, c. 458, § 26, p. 1566; Laws 1993, LB 170, § 7.

**55-427 Statute of limitations.**

A person charged with any offense is not liable to be tried by court-martial or punished under section 55-416 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction as set forth in sections 55-401 to 55-480.

**Source:** Laws 1969, c. 458, § 27, p. 1566.

**55-428 Witness; failure to appear; procedure.**

(1) Any person not subject to sections 55-401 to 55-480 who:

(a) Has been duly subpoenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board;

(b) Has been duly paid or tendered the fees of a witness at the rates allowed to witnesses attending the district courts of the State of Nebraska and mileage at the rate provided in section 81-1176 for state employees; and

(c) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce, is guilty of a Class II misdemeanor.

(2) The Attorney General of Nebraska, upon the certification of the facts to him or her by the military court, commission, or board shall file an information against and prosecute any person violating this section.

(3) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

**Source:** Laws 1969, c. 458, § 28, p. 1566; Laws 1977, LB 39, § 55; Laws 1981, LB 204, § 97.

**55-429 Cruel and unusual punishment, prohibited.**

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

**Source:** Laws 1969, c. 458, § 29, p. 1567.

**55-430 Punishment; limitation.**

The punishment which a court-martial may direct for an offense may not exceed such limits as the Governor may prescribe for that offense.

**Source:** Laws 1969, c. 458, § 30, p. 1567.

**55-431 Sentences; effective date.**

(1) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(2) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(3) All other sentences of courts-martial are effective on the date ordered executed.

(4) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising court-martial jurisdiction over the command to which the accused is currently assigned.

**Source:** Laws 1969, c. 458, § 31, p. 1567.

**55-432 Confinement; execution.**

Under such instructions as the Governor may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement as provided in section 55-413. Persons so confined in a penal or correctional institution not under the control of one of

the military forces are subject to the same discipline and treatment as persons confined or committed by the courts of the State of Nebraska.

**Source:** Laws 1969, c. 458, § 32, p. 1568.

**55-433 Sentences; reduction in grade.**

(1) Unless otherwise provided in regulations to be prescribed by the Governor, a court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes:

- (a) A dishonorable or bad conduct discharge;
- (b) Confinement; or

(c) Hard labor without confinement, reduces that member to pay grade E-1, effective on the date of that approval.

(2) If the sentence of a member who is reduced in pay grade under subdivision (a) of subsection (1) of this section is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (1) of this section, the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

**Source:** Laws 1969, c. 458, § 33, p. 1568.

**55-434 Court-martial; error of law; effect.**

(1) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(2) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

**Source:** Laws 1969, c. 458, § 34, p. 1569.

**55-435 Court-martial; record; action on.**

After a trial by court-martial the record shall be forwarded to the convening authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising court-martial jurisdiction.

**Source:** Laws 1969, c. 458, § 35, p. 1569.

**55-436 Court-martial; records; reference.**

The convening authority shall refer the record of each court-martial to his Staff Judge Advocate or legal officer, who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction and shall be forwarded with the record to the State Judge Advocate.

**Source:** Laws 1969, c. 458, § 36, p. 1569.

**55-437 Reconsideration; revision.**

(1) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(2) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

(a) For reconsideration of a finding of not guilty of any specification, or a ruling which amounts to a finding of not guilty;

(b) For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this code; or

(c) For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

**Source:** Laws 1969, c. 458, § 37, p. 1569.

#### **55-438 Rehearing.**

(1) If the convening authority disapproves the findings and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(2) Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

**Source:** Laws 1969, c. 458, § 38, p. 1570.

#### **55-439 Approval by the convening authority.**

In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence.

**Source:** Laws 1969, c. 458, § 39, p. 1570.

#### **55-440 Disposition of records after review by the convening authority.**

When the convening authority has taken final action in a court-martial case, he shall send the entire record, including his action thereon and the opinion or opinions of the Staff Judge Advocate or legal officer, to the State Judge Advocate.

**Source:** Laws 1969, c. 458, § 40, p. 1571.

**55-441 Court of Military Review; members; qualifications; appointment.**

The Adjutant General, upon the recommendation of the State Judge Advocate, shall appoint a Court of Military Review consisting of three members each to serve for a term of five years. The members shall be either civilians or commissioned officers of the military forces who are admitted to the bar of the Supreme Court of Nebraska, except that any commissioned officer of the military forces who because of his position as a judge advocate could have a conflict in a review of any proceedings may not be appointed.

**Source:** Laws 1969, c. 458, § 41, p. 1571.

**55-442 Court of Military Review; compensation.**

Members of the Court of Military Review shall be paid the sum of fifty dollars per day when sitting and in addition shall be reimbursed for all expenses incurred as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1969, c. 458, § 42, p. 1571; Laws 1981, LB 204, § 98.

**55-443 Court of Military Review; powers.**

(1) The State Judge Advocate shall refer to the Court of Military Review the complete record of every case of trial by general or special court-martial within thirty days after receiving the record. The referral of the record in summary courts-martial shall be according to the manual for courts-martial adopted pursuant to section 55-426.

(2) In a case referred to it, the Court of Military Review may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(3) If the Court of Military Review sets aside the findings and sentence, it may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(4) The State Judge Advocate shall, unless there is to be further action by the Governor, instruct the convening authority to take action in accordance with the decision of the Court of Military Review. If the Court of Military Review has ordered a rehearing but the convening authority finds a rehearing impracticable, he or she may dismiss the charges.

(5) The State Judge Advocate shall prescribe uniform rules of procedure for the Court of Military Review.

(6) No judge of a Court of Military Review shall be eligible to review the record of any trial if such judge (a) served as investigating officer in the case, (b) served as a member of the court-martial before which such trial was conducted, or (c) served as military judge, trial or defense counsel, or reviewing officer of such trial.

**Source:** Laws 1969, c. 458, § 43, p. 1571; Laws 1993, LB 170, § 8.

**55-444 Counsel for appellant; appointment.**

In every case coming before the Court of Military Review, the Court of Appeals, or the Nebraska Supreme Court under the Nebraska Code of Military Justice, the State Judge Advocate shall appoint counsel to represent the accused and such counsel shall be qualified under section 55-423, except that the accused shall have the right to be represented before the Court of Military Review by civilian counsel if provided by the accused.

**Source:** Laws 1969, c. 458, § 44, p. 1572; Laws 1992, LB 360, § 29.

**55-445 Review of cases; procedure.**

(1) The accused in cases reviewed by the Court of Military Review shall have thirty days from the time when he or she is notified of the decision of the Court of Military Review to petition the Court of Appeals for a review. Upon petition of the accused and for good cause shown, the appellate court may grant a review of the record. The appellate court shall act upon such petition within ninety days from receipt thereof.

(2) Upon filing the petition in the appellate court, the accused shall on the same date file a notice of his or her intention to appeal with the Court of Military Review, and the Court of Military Review shall within fifteen days forward the complete transcript of the case to the appellate court.

(3) In any case reviewed by it, the appellate court may act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the Court of Military Review. In a case reviewed upon the petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The appellate court shall take action only with respect to matters of law.

(4) If the appellate court sets aside the findings and sentence, it may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(5) After it has acted on a case, the appellate court may direct the State Judge Advocate to return the record to the Court of Military Review for further review in accordance with the decision of the appellate court. Otherwise, unless there is to be further action by the Governor, the State Judge Advocate shall instruct the convening authority to take action in accordance with that decision. If the appellate court has ordered a rehearing but the convening authority finds a rehearing impracticable, the State Judge Advocate may dismiss the charges.

**Source:** Laws 1969, c. 458, § 45, p. 1572; Laws 1991, LB 732, § 119; Laws 1992, LB 360, § 30.

**55-446 Sentence; execution.**

No court-martial sentence may be executed until approved by the Governor. The Governor shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him.

**Source:** Laws 1969, c. 458, § 46, p. 1573.

**55-447 Petition for new trial.**

At any time within one year after approval by the convening authority of a court-martial sentence, the accused may petition the State Judge Advocate for a new trial on the ground of newly discovered evidence or fraud on the court. The State Judge Advocate shall refer the petition to the court-martial which last heard the case which shall review the petition and the record and report to the convening authority its recommendation for grant or denial of new trial. If a new trial is recommended, the convening authority shall order a rehearing as provided in section 55-438. Upon filing of the petition for new trial, any proceedings pending upon appeal or review of sentence shall be dismissed.

**Source:** Laws 1969, c. 458, § 47, p. 1573.

**55-448 Principal, defined.**

Any person punishable under this code who:

(1) Commits an offense punishable by the provisions of this code, or aids, abets, counsels, commands, or procures its commission; or

(2) Causes an act to be done which if directly performed by him would be punishable by this code, is a principal.

**Source:** Laws 1969, c. 458, § 48, p. 1574.

**55-449 Restoration of rights, privileges, property.**

All rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

**Source:** Laws 1969, c. 458, § 49, p. 1574.

**55-450 Accessory after the fact, defined.**

Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 50, p. 1574.

**55-451 Conviction of lesser offense; when.**

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

**Source:** Laws 1969, c. 458, § 51, p. 1574.

**55-452 Attempt to commit an offense.**

(1) An act done with specific intent to commit an offense under sections 55-401 to 55-480, amounting to more than mere preparation and tending, even though failing, to effect its commission is an attempt to commit that offense.

(2) Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(3) Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

**Source:** Laws 1969, c. 458, § 52, p. 1574.

**55-453 Conspiracy.**

Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 53, p. 1574.

**55-454 Solicitation for violation of code.**

Any person subject to this code who solicits or advises another or others to desert in violation of section 55-457 or mutiny in violation of section 55-466 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 54, p. 1575.

**55-455 Fraudulent enlistment, appointment, or separation.**

Any person who:

(1) Procures his own enlistment or appointment in the military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his own separation from the military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 55, p. 1575.

**55-456 Unlawful enlistment, appointment, or separation.**

Any person subject to this code who effects an enlistment or appointment in or a separation from the military forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 56, p. 1575.

**55-457 Desertion.**

(1) Any member of the military forces who:

(a) Without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently; or

(b) Quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service, is guilty of desertion.

(2) Any commissioned officer of the military forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties

without leave and with intent to remain away therefrom permanently is guilty of desertion.

(3) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 57, p. 1575.

**55-458 Absence without leave.**

Any member of the military forces who, without authority:

(1) Fails to go to his appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 58, p. 1576.

**55-459 Missing movement.**

Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 59, p. 1576.

**55-460 Contempt toward officials.**

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury of the United States, or the Governor or Legislature of any state, territory, commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 60, p. 1576.

**55-461 Disrespect toward superior commissioned officer.**

Any person subject to this code who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 61, p. 1576.

**55-462 Superior commissioned officer; assaulting; willfully disobeying.**

Any person subject to this code who:

(1) Strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) Willfully disobeys a lawful command of his superior commissioned officer, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 62, p. 1576.

**55-463 Warrant officer, noncommissioned officer; insubordination.**

Any warrant officer or enlisted member who:

(1) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of his office;

(2) Willfully disobeys the lawful order of a warrant officer or noncommissioned officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of his office, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 63, p. 1577.

**55-464 Failure to obey order or resolution.**

Any person subject to this code who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the military forces, which it is his duty to obey, fails to obey the order; or

(3) Is derelict in the performance of his duties, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 64, p. 1577.

**55-465 Cruelty; maltreatment.**

Any person subject to this code who is guilty of cruelty toward or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 65, p. 1577.

**55-466 Mutiny; sedition.**

(1) Any person subject to this code who:

(a) With intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(b) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition; or

(c) Fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(2) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 66, p. 1577.

**55-467 Resistance; breach of arrest; escape.**

Any person subject to this code who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 67, p. 1578.

**55-468 Seizure of abandoned property.**

(1) All persons subject to this code shall give notice and turn over to the proper authority without delay all abandoned property in their possession, custody or control.

(2) Any person subject to this code who:

- (a) Fails to carry out the duties prescribed in subsection (1) of this section; or
- (b) Engages in looting or pillaging, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 68, p. 1578.

**55-469 Military property of United States; loss, damage, destruction, or wrongful disposition.**

Any person subject to this code who, without proper authority:

- (1) Sells or otherwise disposes of;
- (2) Willfully or through neglect damages, destroys, or loses; or
- (3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of, any military property of the United States or the State of Nebraska shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 69, p. 1578.

**55-470 Drunk or reckless driving.**

Any person subject to this code who operates any vehicle while under the influence of alcoholic liquor or any drug, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 70, p. 1578.

**55-471 Alcoholic liquor; drugs; consumption on duty.**

Any person subject to this code who is found under the influence of alcoholic liquor or any drug while on duty, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 71, p. 1579.

**55-472 Misbehavior of sentinel.**

Any sentinel or lookout who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 72, p. 1579.

**55-473 Malingering.**

Any person subject to this code who for the purpose of avoiding work, duty or service:

- (1) Feigns illness, physical disablement, mental lapse or derangement; or
- (2) Intentionally inflicts self-injury, shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 73, p. 1579.

**55-474 Riot or breach of peace.**

Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 74, p. 1579.

**55-475 Provoking speeches or gestures.**

Any person subject to this code who uses provoking or reproachful words or gestures toward any other person subject to this code shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 75, p. 1579.

**55-476 Perjury.**

Any person subject to this code who in a judicial proceeding or in a court of justice willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 76, p. 1579.

**55-477 Conduct unbecoming an officer and a gentleman.**

Any commissioned officer or cadet, who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 77, p. 1579.

**55-478 Obtaining property unlawfully.**

Any person subject to this code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind with intent permanently or temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of larceny. Any person found guilty of larceny shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 78, p. 1579.

**55-479 Forgery.**

Any person subject to this code who, with intent to defraud:

(1) Falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) Utters, offers, issues, or transfers such a writing, known by him to be so made or altered, is guilty of forgery and shall be punished as a court-martial may direct.

**Source:** Laws 1969, c. 458, § 79, p. 1580.

**55-480 Disorders and prejudice of good order and discipline.**

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces and crimes and offenses not capital, of which persons subject to this code may be guilty, shall be taken

cognizance of by a court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

**Source:** Laws 1969, c. 458, § 80, p. 1580.

### ARTICLE 5

## FAMILY MILITARY LEAVE ACT

#### Section

55-501. Act, how cited.

55-502. Terms, defined.

55-503. Family military leave authorized; conditions.

55-504. Employee exercising right to family military leave; rights; continuation of benefits.

55-505. Loss of certain employee benefits prohibited; act; how construed.

55-506. Employer; actions prohibited.

55-507. Civil action authorized; remedies authorized.

#### **55-501 Act, how cited.**

Sections 55-501 to 55-507 shall be known and may be cited as the Family Military Leave Act.

**Source:** Laws 2007, LB497, § 1.

#### **55-502 Terms, defined.**

For purposes of the Family Military Leave Act:

(1) Employee means any person who may be permitted, required, or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment. Employee does include an independent contractor. Employee includes an employee of a covered employer who has been employed by the same employer for at least twelve months and has been employed for at least one thousand two hundred fifty hours of service during the twelve-month period immediately preceding the commencement of the leave;

(2) Employee benefits means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance, and pensions, regardless of whether benefits are provided by a policy or practice of an employer;

(3) Employer means (a) any individual, legal representative, partnership, limited liability company, corporation, association, business trust, or other business entity and (b) the State of Nebraska and political subdivisions; and

(4) Family military leave means leave requested by an employee who is the spouse or parent of a person called to military service lasting one hundred seventy-nine days or longer with the state or United States pursuant to the orders of the Governor or the President of the United States.

**Source:** Laws 2007, LB497, § 2.

#### **55-503 Family military leave authorized; conditions.**

(1) Any employer that employs between fifteen and fifty employees shall provide up to fifteen days of unpaid family military leave to an employee during the time federal or state deployment orders are in effect, subject to the conditions set forth in this section.

(2) An employer that employs more than fifty employees shall provide up to thirty days of unpaid family military leave to an employee during the time federal or state deployment orders are in effect, subject to the conditions set forth in this section.

(3) The employee shall give at least fourteen days' notice of the intended date upon which the family military leave will commence if leave will consist of five or more consecutive work days. Where able, the employee shall consult with the employer to schedule the leave so as to not unduly disrupt the operations of the employer. Employees taking family military leave for less than five consecutive days shall give the employer advanced notice as is practicable. The employer may require certification from the proper military authority to verify the employee's eligibility for the family military leave requested.

**Source:** Laws 2007, LB497, § 3.

**55-504 Employee exercising right to family military leave; rights; continuation of benefits.**

(1) Any employee who exercises the right to family military leave under the Family Military Leave Act, upon expiration of the leave, shall be entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment. This section does not apply if the employer proves that the employee was not restored because of conditions unrelated to the employee's exercise of rights under the act.

(2) During any family military leave taken under the act, the employer shall make it possible for employees to continue their benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

**Source:** Laws 2007, LB497, § 4.

**55-505 Loss of certain employee benefits prohibited; act; how construed.**

(1) Taking family military leave under the Family Military Leave Act shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

(2) Nothing in the act shall be construed to affect an employer's obligation to comply with any collective-bargaining agreement or employee benefit plan that provides greater leave rights to employees than the rights provided under the act.

(3) The family military leave rights provided under the act shall not be diminished by any collective-bargaining agreement or employee benefit plan.

(4) Nothing in the act shall be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered under the act.

**Source:** Laws 2007, LB497, § 5.

**55-506 Employer; actions prohibited.**

(1) An employer shall not interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under the Family Military Leave Act.

(2) An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee who exercises any right provided under the act.

(3) An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee for opposing any practice made unlawful by the act.

**Source:** Laws 2007, LB497, § 6.

**55-507 Civil action authorized; remedies authorized.**

A civil action may be brought in the district court having jurisdiction by an employee to enforce the Family Military Leave Act. The district court may enjoin any act or practice that violates or may violate the Family Military Leave Act and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce the act.

**Source:** Laws 2007, LB497, § 7.

## CHAPTER 56

### MILLDAMS

Article.

1. Acquisition of Dams and Sites. 56-101 to 56-127.
2. Toll Mills. Repealed.

#### ARTICLE 1

#### ACQUISITION OF DAMS AND SITES

Section

- 56-101. Dams and sites; acquisition; eminent domain; procedure.
- 56-102. Repealed. Laws 1951, c. 101, § 127.
- 56-103. Repealed. Laws 1951, c. 101, § 127.
- 56-104. Repealed. Laws 1951, c. 101, § 127.
- 56-105. Repealed. Laws 1951, c. 101, § 127.
- 56-106. Repealed. Laws 1951, c. 101, § 127.
- 56-107. Repealed. Laws 1951, c. 101, § 127.
- 56-108. Repealed. Laws 1951, c. 101, § 127.
- 56-109. Repealed. Laws 1951, c. 101, § 127.
- 56-110. Repealed. Laws 1951, c. 101, § 127.
- 56-111. Repealed. Laws 1951, c. 101, § 127.
- 56-112. Repealed. Laws 1951, c. 101, § 127.
- 56-113. Repealed. Laws 1951, c. 101, § 127.
- 56-114. Repealed. Laws 1951, c. 101, § 127.
- 56-115. Damages from stagnant or overflow water; procedure.
- 56-116. Repealed. Laws 1951, c. 101, § 127.
- 56-117. Repealed. Laws 1951, c. 101, § 127.
- 56-118. Repealed. Laws 1951, c. 101, § 127.
- 56-119. Repealed. Laws 1951, c. 101, § 127.
- 56-120. Repealed. Laws 1951, c. 101, § 127.
- 56-121. Repealed. Laws 1951, c. 101, § 127.
- 56-122. Repealed. Laws 1951, c. 101, § 127.
- 56-123. Repealed. Laws 1951, c. 101, § 127.
- 56-124. Milldams; repairs; right of entry on adjoining lands.
- 56-125. Milldams; repairs; damage to adjoining owner; recovery for.
- 56-126. Mill owner; damages for injury to property; recovery for.
- 56-127. Milldam sites; acquisition by municipal corporation; when allowed; procedure.

#### **56-101 Dams and sites; acquisition; eminent domain; procedure.**

The power of eminent domain may be exercised by (1) any person who desires to erect a dam across any watercourse for the purpose of building a water grist, saw, carding, or fulling mill or of erecting any machinery to be propelled by water and who is the owner of the lands, on which he or she desires to build such mill or erect such machinery, on one side of such watercourse and not of the lands of the opposite side against or upon which he or she would abut the dam; (2) any person who is the owner of the lands on which he or she desires to erect any such mill or machinery on both sides of such watercourse; or (3) any person who erected such mill and milldam on his or her own lands. Any such person shall first obtain a permit from the Department of Natural Resources to use the waters of such watercourse for

such purposes. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** G.S.1873, c. 44, § 1, p. 472; Laws 1911, c. 82, § 1, p. 336; R.S.1913, § 3974; C.S.1922, § 3377; C.S.1929, § 56-101; R.S. 1943, § 56-101; Laws 1951, c. 101, § 101, p. 494; Laws 2000, LB 900, § 244.

**Cross References**

**Eminent domain**, other provisions conferring power of, see sections 46-246 and 46-247.  
**Water use applications to Department of Natural Resources**, see sections 46-233 to 46-243.

- 1. Acquisition of rights
- 2. Easement
- 3. Abandonment of rights
- 4. Procedure to assess damages
- 5. Injunction
- 6. Miscellaneous

**1. Acquisition of rights**

Parol license to enter land and construct dam or ditches is irrevocable after licensee has acted upon it by expenditure of money and labor, and used it for years without objection. *Arterburn v. Beard*, 86 Neb. 733, 126 N.W. 379 (1910).

Miller may acquire right of flowage by uninterrupted, continuous, and adverse possession and user. *Gross v. Jones*, 85 Neb. 77, 122 N.W. 681 (1909).

Right of flowage becomes appurtenant to mill. *Johnson v. Sherman County Irr., Water-Power & Improvement Co.*, 63 Neb. 510, 88 N.W. 676 (1902).

Millowner cannot raise dam so as to back water against milldam above him. *Stumbo v. Seeley*, 23 Neb. 212, 36 N.W. 487 (1888).

**2. Easement**

Mill race, dam, and water are easements, and pass as appurtenances to mill property under sheriff's deed in foreclosure. *Johnson v. Sherman County Irr., Water-Power & Improvement Co.*, 71 Neb. 452, 98 N.W. 1096 (1904).

Mill race and dam are easements of school lands and sale of mill upon adjacent land carries these easements as appurtenances. *Hoover v. Hale*, 56 Neb. 67, 76 N.W. 457 (1898).

**3. Abandonment of rights**

Rights acquired under this section are not granted in perpetuity, but may be lost by abandonment or nonuser. *Gross v. Jones*, 85 Neb. 77, 122 N.W. 681 (1909).

**4. Procedure to assess damages**

Proceeding may be instituted by either the erector of dam or landowner to assess the damages, and when brought, it is

carried on as an ordinary action, including right to dismiss without prejudice. *Blue River Power Co. v. Hronik*, 116 Neb. 405, 217 N.W. 604 (1928).

**5. Injunction**

Injunction should issue only temporarily against owner of mill site until, by proper proceedings, right can be acquired to build dam. *Gross v. Jones*, 85 Neb. 77, 122 N.W. 681 (1909).

Owner of mill and dam, who lowers water in such manner as to injure or destroy ice privileges of owner of land bordering on pond, is liable in damages but injunction will not be granted. *Eidemiller Ice Co. v. Guthrie*, 42 Neb. 238, 60 N.W. 717 (1894).

Where ad quod damnum proceedings are comprised by owner leasing part of land, lessee acquired vested right in stream and water, and lessor may be enjoined from interfering. *Culver v. Garbe*, 27 Neb. 312, 43 N.W. 237 (1889).

After a party has erected a mill and is operating same, landowner cannot maintain action to enjoin where proceedings to assess damages are pending. *Nosser v. Seeley*, 10 Neb. 460, 6 N.W. 755 (1880).

**6. Miscellaneous**

On application by riparian owner solely to procure record of prior appropriation of water, Department of Roads and Irrigation was not authorized to fix height of dam that applicant may erect. *Black Bros. Flour Mills v. Umphenour*, 111 Neb. 218, 196 N.W. 123 (1923).

Common-law rules in force except as modified by statute. *Slattery v. Harley*, 58 Neb. 575, 79 N.W. 151 (1899).

Object of this act is to utilize water power of state, not create monopolies, and should be reasonably construed. *Seeley v. Bridges*, 13 Neb. 547, 14 N.W. 524 (1882).

**56-102 Repealed. Laws 1951, c. 101, § 127.**

**56-103 Repealed. Laws 1951, c. 101, § 127.**

**56-104 Repealed. Laws 1951, c. 101, § 127.**

**56-105 Repealed. Laws 1951, c. 101, § 127.**

**56-106 Repealed. Laws 1951, c. 101, § 127.**

**56-107 Repealed. Laws 1951, c. 101, § 127.**

**56-108 Repealed. Laws 1951, c. 101, § 127.**

**56-109 Repealed. Laws 1951, c. 101, § 127.**

**56-110 Repealed. Laws 1951, c. 101, § 127.**

**56-111 Repealed. Laws 1951, c. 101, § 127.**

**56-112 Repealed. Laws 1951, c. 101, § 127.**

**56-113 Repealed. Laws 1951, c. 101, § 127.**

**56-114 Repealed. Laws 1951, c. 101, § 127.**

**56-115 Damages from stagnant or overflow water; procedure.**

Where any person may have built a mill or other dam whereby the water of any river, creek, run, or spring may be rendered stagnant, or any lands may be overflowed or injured thereby, any person or any number of persons interested therein, or who may be damaged by the stagnation or overflowing of such water, or otherwise, may have the damages sustained, ascertained, and determined in the manner set forth in sections 76-704 to 76-724.

**Source:** G.S.1873, c. 44, § 4, p. 476; R.S.1913, § 3988; C.S.1922, § 3391; C.S.1929, § 56-115; R.S.1943, § 56-115; Laws 1951, c. 101, § 102, p. 495.

Witnesses cannot give opinion on what effect dam had in causing river to fill with silt. *Kendrick v. Furman*, 80 Neb. 797, 115 N.W. 541 (1908).

Landowner may abandon ad quod damnum proceedings and proceed as in an ordinary case for damages. *O'Conner v. Fields*, 79 Neb. 840, 113 N.W. 528 (1907).

In a proceeding by landowner claiming to have been damaged by erection and maintenance of milldam, owner of mill may traverse both the petition and inquest as to their allegations and

findings of damage. *Newcomb v. Royce*, 42 Neb. 323, 60 N.W. 552 (1894).

Remedy herein provided for indemnity is cumulative. *Kyner v. Upstill*, 29 Neb. 768, 46 N.W. 281 (1890).

Proceedings under this section need not be commenced by all persons whose property may be injured by the erection of a dam, and petition need not set out the names of all landowners above and below the dam. *Pierce Mill Co. v. Koltermann*, 26 Neb. 722, 42 N.W. 877 (1889).

**56-116 Repealed. Laws 1951, c. 101, § 127.**

**56-117 Repealed. Laws 1951, c. 101, § 127.**

**56-118 Repealed. Laws 1951, c. 101, § 127.**

**56-119 Repealed. Laws 1951, c. 101, § 127.**

**56-120 Repealed. Laws 1951, c. 101, § 127.**

**56-121 Repealed. Laws 1951, c. 101, § 127.**

**56-122 Repealed. Laws 1951, c. 101, § 127.**

**56-123 Repealed. Laws 1951, c. 101, § 127.**

**56-124 Milldams; repairs; right of entry on adjoining lands.**

When the water backed up by any milldam belonging to any mill or machinery is about to break through or over the banks of the stream, or to wash a channel so as to turn the water of such stream, or any part thereof, out of its bed or ordinary channel, whereby such mill or machinery will be injured or affected, the owner or occupier of such mill or machinery, if he does not own such bank or banks or the lands lying contiguous thereto, may, if necessary, enter thereon, and erect and keep in repair such embankments, fortifications, and other works as shall be requisite to prevent such water from breaking through or over the bank or banks of such stream, or washing a channel as

aforesaid, such owner or occupier committing thereon no unnecessary waste or damage.

**Source:** G.S.1873, c. 44, § 24, p. 478; R.S.1913, § 3997; C.S.1922, § 3400; C.S.1929, § 56-124; R.S.1943, § 56-124.

**56-125 Milldams; repairs; damage to adjoining owner; recovery for.**

Nothing contained in section 56-124 shall be construed to bar the owner of such bank or banks, or lands lying contiguous thereto, from recovering the amount of any injury which he may have actually and in fact sustained by the erection or repair of such embankment, fortification or other works.

**Source:** G.S.1873, c. 44, § 25, p. 478; R.S.1913, § 3998; C.S.1922, § 3401; C.S.1929, § 56-125; R.S.1943, § 56-125.

**56-126 Mill owner; damages for injury to property; recovery for.**

If any person shall injure, destroy or remove any such embankment, fortification or other works, the owner or occupier of such mill or machinery may recover of such person all damages which he may sustain by reason of such injury, destruction or removal.

**Source:** G.S.1873, c. 44, § 26, p. 478; R.S.1913, § 3999; C.S.1922, § 3402; C.S.1929, § 56-126; R.S.1943, § 56-126.

**56-127 Milldam sites; acquisition by municipal corporation; when allowed; procedure.**

Any city, village, or municipality shall have the power to acquire by eminent domain any milldam site, when it shall become necessary, for any public purpose; *Provided*, no milldam site shall be appropriated by any city, village, or municipality that is in use for water power purposes. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** Laws 1911, c. 83, § 1, p. 337; R.S.1913, § 4000; C.S.1922, § 3403; C.S.1929, § 56-127; R.S.1943, § 56-127; Laws 1951, c. 101, § 103, p. 495.

**ARTICLE 2  
TOLL MILLS**

Section

- 56-201. Repealed. Laws 1980, LB 741, § 1.
- 56-202. Repealed. Laws 1980, LB 741, § 1.
- 56-203. Repealed. Laws 1980, LB 741, § 1.
- 56-204. Repealed. Laws 1980, LB 741, § 1.
- 56-205. Repealed. Laws 1980, LB 741, § 1.
- 56-206. Repealed. Laws 1980, LB 741, § 1.
- 56-207. Repealed. Laws 1980, LB 741, § 1.

**56-201 Repealed. Laws 1980, LB 741, § 1.**

**56-202 Repealed. Laws 1980, LB 741, § 1.**

**56-203 Repealed. Laws 1980, LB 741, § 1.**

**56-204 Repealed. Laws 1980, LB 741, § 1.**

**56-205 Repealed. Laws 1980, LB 741, § 1.**

**56-206 Repealed. Laws 1980, LB 741, § 1.**

**56-207 Repealed. Laws 1980, LB 741, § 1.**



## CHAPTER 57

### MINERALS, OIL, AND GAS

#### Article.

1. State and County Aid to Development. 57-101 to 57-107.
2. Oil, Gas, and Mineral Interests. 57-201 to 57-239.
3. Oil Field Equipment Lien. 57-301 to 57-304.
4. Easements for Oil and Gas Pipelines. 57-401, 57-402.
5. Liquefied Petroleum Gas. 57-501 to 57-517.
6. Underground Storage of Natural Gas. 57-601 to 57-609.
7. Oil and Gas Severance Tax. 57-701 to 57-719.
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9. Oil and Gas Conservation. 57-901 to 57-923.
10. Process on Oil and Gas Explorers. 57-1001, 57-1002.
11. Eminent Domain for Pipelines. 57-1101 to 57-1106.
12. Uranium Severance Tax. 57-1201 to 57-1214.
13. Natural Gas Utility Service Areas. Transferred.

#### ARTICLE 1

#### STATE AND COUNTY AID TO DEVELOPMENT

#### Section

- 57-101. Coal and iron development; state aid; conditions.
- 57-102. Repealed. Laws 1949, c. 175, § 4.
- 57-102.01. Repealed. Laws 1951, c. 190, § 1.
- 57-102.02. Repealed. Laws 1951, c. 190, § 1.
- 57-102.03. Repealed. Laws 1951, c. 190, § 1.
- 57-103. Repealed. Laws 1951, c. 190, § 1.
- 57-104. Prospectors; specimens preserved.
- 57-105. Former discoveries; no aid given.
- 57-106. Coal development; county aid; petition; election; bonds; limit.
- 57-107. Bonds; election; issuance; payment; laws applicable.

#### **57-101 Coal and iron development; state aid; conditions.**

When it shall be made apparent to the Governor of Nebraska, by affidavit or otherwise, by the owner or owners thereof, that a vein of coal, not less than twenty-six inches in thickness, and of sufficient capacity to pay to mine, and within such distance from the surface that it can be worked by modern methods, has been discovered, or a vein or veins of good iron ore eighteen inches thick, it shall be the duty of the Governor to appoint a suitable person to examine the same, whose duty it shall be to report the probable extent and capacity of the vein or veins, all expense for such examination to be paid by the owner or owners of the mine. The report being satisfactory to the Governor, he shall direct the Director of Administrative Services to draw an order on the State Treasurer for the sum of four thousand dollars, to be paid to the owner or owners of such mine of coal, and of two thousand dollars to be paid for a vein of iron ore eighteen inches thick. If the vein of coal discovered should be three feet thick and of the required capacity, the sum to be paid shall be five thousand dollars. Such orders shall be paid out of the General Fund of the state treasury, as above directed.

**Source:** Laws 1903, c. 63, § 1, p. 359; R.S.1913, § 4008; C.S.1922, § 3411; C.S.1929, § 57-101; R.S.1943, § 57-101; Laws 1969, c. 461, § 1, p. 1610.

Before bounties can be paid, there must be a specific appropriation made for same. State ex rel. Norfolk Beet-Sugar Co. v. Moore, 50 Neb. 88, 69 N.W. 373 (1896).

**57-102 Repealed. Laws 1949, c. 175, § 4.**

**57-102.01 Repealed. Laws 1951, c. 190, § 1.**

**57-102.02 Repealed. Laws 1951, c. 190, § 1.**

**57-102.03 Repealed. Laws 1951, c. 190, § 1.**

**57-103 Repealed. Laws 1951, c. 190, § 1.**

**57-104 Prospectors; specimens preserved.**

It shall be the duty of the persons prospecting for coal, any mineral, ore, crude oil, or gas, carefully to preserve specimens from each stratum through which the shafts are sunk, or borings are made; and to deposit the same, properly labeled, in care of the proper department of the state for the future use of the commonwealth.

**Source:** Laws 1903, c. 63, § 4, p. 361; R.S.1913, § 4011; C.S.1922, § 3414; C.S.1929, § 57-104; R.S.1943, § 57-104; Laws 1978, LB 661, § 1; Laws 1980, LB 709, § 1.

**57-105 Former discoveries; no aid given.**

The provisions of sections 57-101 to 57-105 shall not apply to any veins of coal or iron ore already discovered nor to any oil wells or gas wells already producing, nor shall the provisions of said sections apply to the discovery of the same vein of coal or iron ore, or oil pool or gas field already discovered, nor shall any reward specified under the terms of said sections be paid for a second discovery of the same veins, pools or fields within the limits of the same county.

**Source:** Laws 1903, c. 63, § 5, p. 361; R.S.1913, § 4012; C.S.1922, § 3415; C.S.1929, § 57-105; R.S.1943, § 57-105.

**57-106 Coal development; county aid; petition; election; bonds; limit.**

The county board of each county in this state is hereby authorized and required to submit to the legal voters thereof, on presentation of a petition of twenty resident freeholders of the county, the proposition to issue bonds, not exceeding twenty thousand dollars, the proceeds of which shall be applied to defray the expenses of boring and prospecting for coal in the county under the direction of the county board thereof; and such board is hereby authorized to issue the bonds for such purposes, in case the vote shall be favorable to the proposition; *Provided, however*, the county board may, in its discretion, refuse to submit such inquiry to a vote of the people until the next general election after the presentation of such petition.

**Source:** G.S.1873, c. 13, § 1, p. 249; R.S.1913, § 4013; C.S.1922, § 3416; C.S.1929, § 57-106; R.S.1943, § 57-106.

**57-107 Bonds; election; issuance; payment; laws applicable.**

So far as applicable sections 10-401 to 10-405 shall govern the proceedings to submit such proposition, issue bonds, and provide for payment of the same;

*Provided*, section 57-106 shall not apply to the counties of Burt, Washington and Sarpy.

**Source:** G.S.1873, c. 13, § 2, p. 250; R.S.1913, § 4014; C.S.1922, § 3417; C.S.1929, § 57-107; R.S.1943, § 57-107.

## ARTICLE 2

### OIL, GAS, AND MINERAL INTERESTS

#### Cross References

Foreign corporations, oil leases, rights of, see section 76-404.

#### Section

- 57-201. Oil, gas, and mineral leases; forfeiture; duty of lessee to surrender.
- 57-202. Forfeited lease; failure to surrender; notice by landowner; form.
- 57-203. Forfeited lease; failure to surrender; publication of notice; landowner's affidavit; contents.
- 57-204. Lease; claim of nonforfeiture by lessee; notice to register of deeds; effect; effect of failure to give notice.
- 57-205. Forfeited lease; lessee's failure to execute surrender; remedy of lessor.
- 57-206. Lease; discharge by entry on margin of record; procedure.
- 57-207. Lease; discharge by endorsement on indenture; procedure.
- 57-208. Lease; filing with register of deeds; effect; contingent extension provision; affidavit of happening of contingency; filing; effect.
- 57-209. Lease; discharge of record; demand; requisite for action by landowner, when.
- 57-210. Oil or gas lease; authority of executor, administrator, guardian, conservator, or trustee to execute; ratification of unauthorized or defective lease; how obtained.
- 57-211. Lease; authority of executor, administrator, guardian, conservator, or trustee to execute; how obtained; petition; contents.
- 57-212. Lease; authority of executor, administrator, guardian, conservator, or trustee to execute; notice; hearing; procedure; order.
- 57-212.01. Lease; authority of executor, administrator, guardian, or trustee to execute; petition; unknown owners, heirs, devisees, or legatees; procedure.
- 57-213. Repealed. Laws 1951, c. 192, § 3.
- 57-214. Repealed. Laws 1959, c. 262, § 22.
- 57-215. Repealed. Laws 1959, c. 262, § 22.
- 57-216. Repealed. Laws 1959, c. 262, § 22.
- 57-217. Repealed. Laws 1959, c. 262, § 22.
- 57-218. Oil and gas leases; authority to issue.
- 57-219. Oil and gas leases; annual delay rentals; royalties.
- 57-220. Oil and gas leases; sale at public auction; notice.
- 57-221. Oil and gas leases; pooling of acreage authorized; allocation of production.
- 57-222. Oil and gas leases; life tenant; trustee for remaindermen; appointment.
- 57-223. Oil and gas leases; trustee for remaindermen; execute when authorized by court; procedure.
- 57-224. Oil and gas leases; trustee for remaindermen; invest income from royalties.
- 57-225. Repealed. Laws 1959, c. 262, § 22.
- 57-226. Repealed. Laws 1959, c. 262, § 22.
- 57-227. Mineral and royalty interests; separate interests; effect of foreclosure of lien for taxes.
- 57-228. Mineral interest; severed; termination; suit in equity; defendants.
- 57-229. Mineral interests; severed; abandonment; extension; procedure.
- 57-230. Mineral interests; severed; abandoned; judgment.
- 57-231. Mineral interests; severed; limitation of action.
- 57-232. Repealed. Laws 1971, LB 636, § 2.
- 57-233. Repealed. Laws 1971, LB 636, § 2.
- 57-234. Fractional interests in oil, gas, or hydrocarbon units or fields; taxation; violations; penalty.
- 57-235. Terms, defined.
- 57-236. Mineral interests; severed; placed on tax list; application; contents.

Section

- 57-237. Mineral interest; separate listing; application; when.
- 57-238. Mineral interest; separate listing; appeal.
- 57-239. Tax Commissioner; rules and regulations; prescribe forms.

**57-201 Oil, gas, and mineral leases; forfeiture; duty of lessee to surrender.**

When any oil, gas, or other mineral lease heretofore or hereafter given on land situated in any county of Nebraska, and recorded therein, shall become forfeited, it shall be the duty of the lessee, his successors or assigns, within thirty days after the date of the forfeiture, to have such lease surrendered in writing, such surrender to be signed and acknowledged by the party making the same and placed on record in the county where the leased land is situated without cost to the owner thereof.

**Source:** Laws 1925, c. 133, § 1, p. 349; C.S.1929, § 57-201; R.S.1943, § 57-201; Laws 1955, c. 214, § 1, p. 600.

Statute outlines steps to terminate lease. Long v. Magnolia Petroleum Co., 166 Neb. 410, 89 N.W.2d 245 (1958). Failure to drill or pay rentals makes statute operative on recorded leases. Valentine Oil Co. v. Powers, 157 Neb. 87, 59 N.W.2d 160 (1953).

**57-202 Forfeited lease; failure to surrender; notice by landowner; form.**

If the lessee, his or her successors or assigns, shall fail or neglect to execute and record such surrender within the time provided for, then the owner of the land may serve upon the lessee, his or her successors or assigns, in person or by either registered or certified letter, at his or her last-known address, or by publication for one week in a newspaper of general circulation in the county where the land is situated, a notice in writing in substantially the following form:

To .....: I, the undersigned, owner of the following described land situated in ..... County, Nebraska, to wit: (description of land), upon which a lease, dated ..... day of ..... 20...., was given to ..... do hereby notify you that the terms of the lease have been broken by the owner thereof; that I hereby elect to declare and do declare the lease forfeited and void and that, unless you do, within ten days from this date, notify the register of deeds of such county as provided by law that the lease has not been forfeited, I will file with the register of deeds an affidavit of forfeiture as provided by law; and I hereby demand that you execute or have executed a proper surrender of the lease and that you cause the same to be recorded in the office of the register of deeds of such county, within ten days from this date. Dated this ..... day of ..... 20....

**Source:** Laws 1925, c. 133, § 1, p. 349; C.S.1929, § 57-201; R.S.1943, § 57-202; Laws 1955, c. 214, § 2, p. 600; Laws 1957, c. 242, § 46, p. 858; Laws 2004, LB 813, § 26.

**57-203 Forfeited lease; failure to surrender; publication of notice; landowner's affidavit; contents.**

The owner of the land may, after ten days from the date of service, registration, or publication of the notice, provided for by section 57-202, file with the register of deeds of the county where the land is situated an affidavit setting forth (1) that the affiant is the owner of the land; (2) that the lessee, his successors or assigns, have failed and neglected to comply with the terms of the lease, reciting the facts constituting such failure; (3) that the same has been

forfeited and is void; and (4) a copy of the notice served and the manner and time of the service thereof.

**Source:** Laws 1925, c. 133, § 1, p. 350; C.S.1929, § 57-201; R.S.1943, § 57-203; Laws 1955, c. 214, § 3, p. 601; Laws 1963, c. 324, § 1, p. 982.

**57-204 Lease; claim of nonforfeiture by lessee; notice to register of deeds; effect; effect of failure to give notice.**

(1) If the lessee, his successors or assigns, shall, within twenty days after the filing of the affidavit referred to in section 57-203, give notice in writing to the register of deeds of the county where the land is located that the lease has not been forfeited and that the lessee, his successors or assigns, still claim that the lease is in full force and effect, then such affidavit shall not be recorded but the register of deeds shall notify the owner of the land of the action of the lessee, his successors or assigns, and the owner of the land shall be entitled to the remedies now provided by law for the cancellation of such disputed lease.

(2) If the lessee, his successors or assigns, shall not notify the register of deeds, as provided in subsection (1) of this section, the register of deeds shall record the affidavit, referred to in section 57-203, and thereafter the record of the lease shall not be notice to the public of the existence of the lease or of any interest therein or rights thereunder, and the record shall not be received in evidence in any court of the state on behalf of the lessee, his successors or assigns, against the lessor, his successors or assigns.

**Source:** Laws 1925, c. 133, § 1, p. 350; C.S.1929, § 57-201; R.S.1943, § 57-204; Laws 1955, c. 214, § 4, p. 602.

Nature of the action is for cancellation of a disputed lease. Long v. Magnolia Petroleum Co., 166 Neb. 410, 89 N.W.2d 245 (1958).

**57-205 Forfeited lease; lessee's failure to execute surrender; remedy of lessor.**

Should the owner of such lease neglect or refuse to execute a surrender as provided in section 57-201, then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such surrender, and he may also recover in such action of the lessee, his successors or assigns, the sum of one hundred dollars as damages, and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and any additional damages that the evidence in the case will warrant. In all such actions, writs of attachment may issue as in other cases.

**Source:** Laws 1925, c. 133, § 2, p. 351; C.S.1929, § 57-202; R.S.1943, § 57-205.

Remedy providing for cancellation of lease is in equity. Long v. Magnolia Petroleum Co., 166 Neb. 410, 89 N.W.2d 245 (1958).

**57-206 Lease; discharge by entry on margin of record; procedure.**

Any oil and gas or mining lease that has been or may hereafter be recorded in the office of the register of deeds of any county may be discharged and canceled of record by an entry on the margin of the record thereof signed by the lessee or his assigns of record, or his duly authorized attorney in fact or personal

representative, or, if a corporation, by its duly authorized officers, surrendering all of his or its right, title and interest in and to such lease in the presence of the register of deeds or his deputy, who shall subscribe the same as witness.

**Source:** Laws 1925, c. 133, § 3, p. 351; C.S.1929, § 57-203; R.S.1943, § 57-206.

**57-207 Lease; discharge by endorsement on indenture; procedure.**

Any oil and gas or mining lease that has been or may hereafter be recorded in the office of the register of deeds of any county may be discharged and canceled by an endorsement made on the original lease signed by the lessee or his duly authorized attorney in fact, assignee of record or personal representative or, if a corporation, by its duly authorized officers, surrendering his or its right, title and interest in and to such lease, which endorsement may be entered on the margin of the record thereof, and shall have the same force and effect as the entry on the margin of the record as provided in section 57-206.

**Source:** Laws 1925, c. 133, § 4, p. 351; C.S.1929, § 57-204; R.S.1943, § 57-207.

**57-208 Lease; filing with register of deeds; effect; contingent extension provision; affidavit of happening of contingency; filing; effect.**

When an oil, gas or mineral lease is given on land situated within the State of Nebraska, the recording thereof in the office of the register of deeds of the county in which the land is located shall impart notice to the public of the validity and continuance of such lease for the definite term therein expressed, but no longer; *Provided*, that if such lease contains the statement of any contingency upon the happening of which the term of any such lease may be extended, such as and as much longer as oil and gas or either is produced in paying quantities, the owner of such lease may at any time before the expiration of the definite term of the lease file with the register of deeds an affidavit setting forth the description of the lease, that the affiant is the owner thereof and the facts showing that the required contingency has happened. This affidavit shall be recorded in full by the register of deeds, and such record together with that of the lease shall be due notice to the public of the existence and continuing validity of such lease, until the same shall be forfeited, canceled, set aside or surrendered according to law.

**Source:** Laws 1925, c. 133, § 5, p. 352; C.S.1929, § 57-205; R.S.1943, § 57-208.

Failure to file an affidavit of production, as required by this section, did not affect the contractual relations between the landowner and the plaintiffs.

Section 57-208 is intended to give notice to the public, including prospective purchasers. *Superior Oil Co. v. Devon Corp.*, 604 F.2d 1063 (8th Cir. 1979).

**57-209 Lease; discharge of record; demand; requisite for action by landowner, when.**

At least twenty days before bringing the action provided for in section 57-205, the owner of the leased land, either by himself or by his agent or attorney, shall demand of the holder of the lease, if such demand by ordinary diligence can be made in this state, that such lease be discharged of record. Such demand may be either written or oral. When written, a letterpress carbon or written copy thereof, when shown to be such, may be used as evidence in any court with the same force and effect as the original.

**Source:** Laws 1925, c. 133, § 6, p. 352; C.S.1929, § 57-206; R.S.1943, § 57-209.

**57-210 Oil or gas lease; authority of executor, administrator, guardian, conservator, or trustee to execute; ratification of unauthorized or defective lease; how obtained.**

Proceedings may be had in the county court of the county in which an estate or trust is being administered or proceedings for guardianship or conservatorship are being had or in the county court of the county in which real estate is situated, for authority to lease any interest in real estate, or any part thereof, of any deceased person, beneficiary of a trust, minor, incompetent, or person unfit by reason of infirmities of age or physical disability or to ratify any prior unauthorized or defective lease executed by any executor, administrator, guardian, conservator, or trustee. If it shall appear to the court or judge thereof sitting in chambers within the district to be for the advantage of the estate of any decedent, beneficiary of a trust, minor, incompetent person, or person unfit by reason of infirmities of age or physical disability to make a lease, ratification agreement, or contract for the exploration and development or pooling or unitization of the real property of the estate or trust, or any part thereof, for oil, gas, or other hydrocarbons, the court or judge, as often as occasion therefor shall arise in the administration of any estate or trust, or in the course of any guardianship matter, or in the course of administration by a conservator, may on a petition, notice, and hearing, as provided in sections 57-211 and 57-212, authorize, empower, and direct the executor, administrator, trustee, conservator, or the guardian of such minor or incompetent person to lease such real estate or any part thereof or enter into pooling or unitization contracts.

**Source:** Laws 1939, c. 69, § 1, p. 281; C.S.Supp.,1941, § 57-210; R.S. 1943, § 57-210; Laws 1947, c. 199, § 1, p. 643; Laws 1951, c. 191, § 1, p. 701; Laws 1953, c. 190, § 1, p. 611; Laws 1955, c. 215, § 1, p. 603; Laws 1959, c. 259, § 1, p. 895; Laws 1967, c. 350, § 1, p. 928; Laws 1972, LB 1032, § 262.

**57-211 Lease; authority of executor, administrator, guardian, conservator, or trustee to execute; how obtained; petition; contents.**

The petition for such lease shall show (1) the advantage that may accrue to the estate or trust being administered or guardianship or conservatorship proceedings being had from making such proposed lease or entering into such pooling or unitization contract; (2) a general description of the property to be leased; (3) the term, rental, and general conditions of the proposed lease or pooling or unitization contract; and (4) the names of the (a) legatees and devisees, if any, or the heirs of the deceased, (b) beneficiaries of the trust, (c) minor, (d) incompetent person, or (e) a person unfit by reason of infirmities of age or physical disability, so far as known to the petitioner.

**Source:** Laws 1939, c. 69, § 2, p. 281; C.S.Supp.,1941, § 57-211; R.S. 1943, § 57-211; Laws 1951, c. 191, § 2, p. 701; Laws 1955, c. 215, § 2, p. 604; Laws 1967, c. 350, § 2, p. 929.

**57-212 Lease; authority of executor, administrator, guardian, conservator, or trustee to execute; notice; hearing; procedure; order.**

(1) Upon the filing of such petition, the court or judge thereof sitting in chambers within the district, if such court or judge deems the petition sufficient, shall set the matter down for hearing and direct to what persons and in what manner notice of such hearing shall be given.

(2) At the hearing provided for in subsection (1) of this section, any person interested in the estate, trust, conservatorship, or guardianship proceeding may appear and present objections to the proposed lease or pooling or unitization contract. If objections are filed to the petition, the court or judge thereof may adjourn the hearing to enable the parties to fully present their reasons and evidence for and against the proposed lease or pooling or unitization contract.

(3) If no objections are filed, as provided for in subsection (2) of this section, or if upon such hearing the objections are deemed insufficient, the court or judge thereof may make an order authorizing such lease or pooling or unitization contract upon such terms and for such consideration and period as is deemed proper by the court or judge thereof. Such lease or pooling or unitization contract may be for a term as long as ten years and as long thereafter as oil, gas, or other hydrocarbons shall be, or can be, produced in commercial quantities. The lease or pooling or unitization contract shall not be invalid or voidable because its term may or does extend beyond the term of office of the executor, administrator, trustee, conservator, or guardian making the same, beyond the time of final settlement of the estate or trust, beyond the minority of the minor, or beyond the time of infirmity and physical disability of the person having a conservator, or beyond the period of incompetency of any such incompetent.

**Source:** Laws 1939, c. 69, § 3, p. 282; C.S.Supp.,1941, § 57-212; R.S. 1943, § 57-212; Laws 1951, c. 191, § 3, p. 702; Laws 1953, c. 190, § 2, p. 612; Laws 1955, c. 215, § 3, p. 604; Laws 1967, c. 350, § 3, p. 929.

**57-212.01 Lease; authority of executor, administrator, guardian, or trustee to execute; petition; unknown owners, heirs, devisees, or legatees; procedure.**

Whenever it is set forth in the petition that there are unknown owners, or unknown heirs, devisees, or legatees of deceased owners, who claim or appear to have some interest in, rights or title to, or lien upon the real estate sought to be leased, the provisions of section 25-321 shall be followed before authority to execute a lease or pooling or unitization contract may be granted. To carry out the provisions of sections 57-210 to 57-212.01, the court may, upon the hearing of the petition, appoint a trustee to represent the interests of such unknown owners, or unknown heirs, devisees, or legatees and to carry out the orders of the court with respect thereto.

**Source:** Laws 1951, c. 191, § 4, p. 702; Laws 1955, c. 215, § 4, p. 605.

**57-213 Repealed. Laws 1951, c. 192, § 3.**

**57-214 Repealed. Laws 1959, c. 262, § 22.**

**57-215 Repealed. Laws 1959, c. 262, § 22.**

**57-216 Repealed. Laws 1959, c. 262, § 22.**

**57-217 Repealed. Laws 1959, c. 262, § 22.**

**57-218 Oil and gas leases; authority to issue.**

The governing board of all lands of the State of Nebraska, except the Board of Educational Lands and Funds, and the governing board of all cities, towns, counties, public power districts, school districts and all other governmental

subdivisions of the State of Nebraska are respectively authorized and empowered to lease lands under their control for oil and gas exploration and development.

**Source:** Laws 1943, c. 163, § 1, p. 578; R.S.1943, § 57-218.

Cities may enter into oil and gas leases. *Belgum v. City of Kimball*, 163 Neb. 774, 81 N.W.2d 205 (1957).

**57-219 Oil and gas leases; annual delay rentals; royalties.**

Oil and gas leases, issued pursuant hereto, shall be for terms not to exceed ten years and as long thereafter as oil or gas is produced in paying quantities. Such leases shall provide for annual delay rentals of not less than twenty-five cents per acre and for a royalty of not less than twelve and one-half percent of all oil, gas, hydrocarbons and all other petroleum products produced and saved from the lands covered thereby and not used in the development and operation of the leased premises, or twelve and one-half percent of the market value thereof at the leased premises, free of cost to the lessor.

**Source:** Laws 1943, c. 163, § 2, p. 578; R.S.1943, § 57-219.

**57-220 Oil and gas leases; sale at public auction; notice.**

No such lease shall be sold except at public auction and after notice of the time and place of such sale, by publication two consecutive weeks in a legal newspaper published in the county where the land to be leased is situated and such other notice, if any, as the governing board may require. If no legal newspaper is published in the county where the land is situated said notice shall be published in a newspaper of general circulation therein. The purchaser of any such lease shall pay the cost of publishing the notice required hereunder.

**Source:** Laws 1943, c. 163, § 3, p. 578; R.S.1943, § 57-220.

**57-221 Oil and gas leases; pooling of acreage authorized; allocation of production.**

Such governing boards are respectively authorized in their discretion to enter into appropriate agreements for the purpose of unit or cooperative exploration, development, and operation of acreage, or any part of the acreage, covered by leases granted pursuant hereto with other acreage for the production of oil and gas. Such agreements shall provide for the allocation of production on a proportionate acreage or other agreed equitable basis.

**Source:** Laws 1943, c. 163, § 4, p. 579; R.S.1943, § 57-221; Laws 1961, c. 276, § 1, p. 810.

Cities may enter into agreements for pooling of acreage under oil and gas lease. *Belgum v. City of Kimball*, 163 Neb. 774, 81 N.W.2d 205 (1957).

**57-222 Oil and gas leases; life tenant; trustee for remaindermen; appointment.**

In any case where, by will, deed, or other instrument, title to real estate is in a tenant for life or other person having the right to the use thereof and income therefrom, with the remainder interest left to one or more contingent remaindermen, so that it is impossible to determine until the death of the life tenant or the future happening of some other determining event, who the contingent

remaindermen will be or what interest, if any, the various contingent remaindermen will take, the county court of the county in which the real estate is located, upon the application of the life tenant, or any other person having a vested or contingent interest in the real estate, shall have jurisdiction and authority to appoint a trustee under proper bond, over the real estate, for the purpose of leasing the land or entering into pooling or unitization contracts for oil and gas developing purposes.

**Source:** Laws 1951, c. 187, § 1, p. 693; Laws 1955, c. 216, § 1, p. 606; Laws 1972, LB 1032, § 263.

**57-223 Oil and gas leases; trustee for remaindermen; execute when authorized by court; procedure.**

The trustee shall have the power and authority, subject to approval of the county court of the county where the land is located, to make valid oil and gas leases, pooling or unitization contracts, and other mining leases, upon the lands, for a term not to exceed ten years, and as long thereafter as oil, gas, or other minerals may be produced in paying quantities. The procedure to obtain such authority shall be substantially the same as the procedure provided under sections 57-211 and 57-212. The bonus and rentals therefrom shall be paid to the life tenant or other person entitled thereto.

**Source:** Laws 1951, c. 187, § 2, p. 694; Laws 1955, c. 216, § 2, p. 607; Laws 1959, c. 259, § 2, p. 896; Laws 1972, LB 1032, § 264.

**57-224 Oil and gas leases; trustee for remaindermen; invest income from royalties.**

Under proper court order, the trustee shall be authorized to invest income from royalties in like manner as funds of guardianships may be invested, which investments shall remain intact until the ultimate taker is determined and shall then be paid over to such ultimate taker and the trust closed. Income from investments shall be paid to the life tenant or other person entitled thereto.

**Source:** Laws 1951, c. 187, § 3, p. 694.

**57-225 Repealed. Laws 1959, c. 262, § 22.**

**57-226 Repealed. Laws 1959, c. 262, § 22.**

**57-227 Mineral and royalty interests; separate interests; effect of foreclosure of lien for taxes.**

No estate or interest in land or minerals, including royalty interest, shall be subject to foreclosure or otherwise affected by virtue of any lien for taxes against any other estate or interest in such land or minerals owned by another person, firm, or corporation.

**Source:** Laws 1957, c. 239, § 1, p. 800.

A mineral interest severed from the surface ownership remains real estate but may be listed on the tax rolls separate from the surface rights. If the owner of the surface rights so requests, severed mineral interests must be separately listed on the tax rolls. State ex rel. Svoboda v. Weiler, 205 Neb. 799, 290 N.W.2d 456 (1980).

**57-228 Mineral interest; severed; termination; suit in equity; defendants.**

Any owner or owners of the surface of real estate from which a mineral interest has been severed, on behalf of himself and any other owners of such

interest in the surface, may sue in equity in the county where such real estate, or some part thereof, is located, praying for the termination and extinguishment of such severed mineral interest and cancellation of the same of record, naming as parties defendant therein all persons having or appearing to have any interest in such severed mineral interest, and if such parties defendant are not known and cannot be ascertained, they may be proceeded against as unknown defendants under the provisions of Chapter 25, article 3.

**Source:** Laws 1967, c. 348, § 1, p. 925.

Sections 57-228 to 57-231 which declared that mineral rights were abandoned unless the record owner had exercised ownership rights within twenty-three years immediately prior to the filing of an action to cancel the severed mineral interest, are unconstitutional insofar as the statutory provisions could be

interpreted to be retroactive in their operation. *Monahan Cattle Co. v. Goodwin*, 201 Neb. 845, 272 N.W.2d 774 (1978); *Wheeler & Manning 00 Ranches, Inc. v. Heath*, 201 Neb. 835, 272 N.W.2d 768 (1978).

### **57-229 Mineral interests; severed; abandonment; extension; procedure.**

A severed mineral interest shall be abandoned unless the record owner of such mineral interest has within the twenty-three years immediately prior to the filing of the action provided for in sections 57-228 to 57-231, exercised publicly the right of ownership by (1) acquiring, selling, leasing, pooling, utilizing, mortgaging, encumbering, or transferring such interest or any part thereof by an instrument which is properly recorded in the county where the land from which such interest was severed is located; or (2) drilling or mining for, removing, producing, or withdrawing minerals from under the lands or using the geological formations, or spaces or cavities below the surface of the lands for any purpose consistent with the rights conveyed or reserved in the deed or other instrument which creates the severed mineral interest; or (3) recording a verified claim of interest in the county where the lands from which such interest is severed are located. Such a claim of interest shall describe the land and the nature of the interest claimed, shall properly identify the deed or other instrument under which the interest is claimed, shall give the name and address of the person or persons claiming the interest, and shall state that such person or persons claim the interest and do not intend to abandon the same. The interest of any such owner shall be extended for a period of twenty-three years from the date of any such acts; *Provided*, that the provisions of this section shall not apply to mineral interests of which the State of Nebraska or any of its political subdivisions is the record owner.

**Source:** Laws 1967, c. 348, § 2, p. 925.

Sections 57-228 to 57-231 which declared that mineral rights were abandoned unless the record owner had exercised ownership rights within twenty-three years immediately prior to the filing of an action to cancel the severed mineral interest, are unconstitutional insofar as the statutory provisions could be

interpreted to be retroactive in their operation. *Monahan Cattle Co. v. Goodwin*, 201 Neb. 845, 272 N.W.2d 774 (1978); *Wheeler & Manning 00 Ranches, Inc. v. Heath*, 201 Neb. 835, 272 N.W.2d 768 (1978).

### **57-230 Mineral interests; severed; abandoned; judgment.**

If the court shall find that the severed mineral interest has been abandoned, it shall enter judgment terminating and extinguishing it, canceling it of record, and vesting the title thereto in the owner or owners of the interest in the surface from which it was originally severed in the proportions in which they own such interest in the surface.

**Source:** Laws 1967, c. 348, § 3, p. 926.

Sections 57-228 to 57-231 which declared that mineral rights were abandoned unless the record owner had exercised ownership rights within twenty-three years immediately prior to the

filing of an action to cancel the severed mineral interest, are unconstitutional insofar as the statutory provisions could be

interpreted to be retroactive in their operation. Monahan Cattle Co. v. Goodwin, 201 Neb. 845, 272 N.W.2d 774 (1978); Wheelock & Manning 00 Ranches, Inc. v. Heath, 201 Neb. 835, 272 N.W.2d 768 (1978).

**57-231 Mineral interests; severed; limitation of action.**

In any action filed within two years after October 23, 1967, the owner of a severed mineral interest may enter his appearance and assert his interest therein, and he shall be deemed thereby to have timely and publicly exercised his right of ownership.

**Source:** Laws 1967, c. 348, § 4, p. 926.

Sections 57-228 to 57-231 which declared that mineral rights were abandoned unless the record owner had exercised ownership rights within twenty-three years immediately prior to the filing of an action to cancel the severed mineral interest, are unconstitutional insofar as the statutory provisions could be interpreted to be retroactive in their operation. Monahan Cattle Co. v. Goodwin, 201 Neb. 845, 272 N.W.2d 774 (1978); Wheelock & Manning 00 Ranches, Inc. v. Heath, 201 Neb. 835, 272 N.W.2d 768 (1978).

**57-232 Repealed. Laws 1971, LB 636, § 2.**

**57-233 Repealed. Laws 1971, LB 636, § 2.**

**57-234 Fractional interests in oil, gas, or hydrocarbon units or fields; taxation; violations; penalty.**

(1) When oil, gas, or other hydrocarbon wells or fields belonging to multiple owners are operated as a unit, the owner of each fractional interest in such unit shall be liable for the same proportion of the tax levied against the real property of the unit that his or her fractional interest therein bears to the total of interests in such unit and shall be liable for the tax levied against his or her taxable value in the tangible personal property of such unit.

(2) The unit operator shall collect from the owners of the fractional interests and remit to the county treasurer of the county in which the unit is located all taxes levied against the real or tangible personal property of the unit. The unit operator may deduct and withhold from royalty payments, or any other payments made to any fractional interest owner, either in kind or in money, the estimated amount of the tax to be paid by such fractional interest owner. Any difference between the estimated tax so withheld and the actual tax payable by any owner of a fractional interest may be accounted for by adjustments in royalty or other payments made to such owner subsequent to the time the actual tax is determined.

(3) At the request of any unit operator who does not disburse payments to fractional interest owners, the first purchaser shall collect the tax from the fractional interest owners and transfer such proceeds to the unit operator who shall remit to the treasurer the taxes levied against the unit. Such first purchaser shall collect from the fractional interest owners under the same procedure outlined for the unit operator in this section.

(4) Failure of the unit operator to collect and remit the tax as provided in this section shall not preclude the county treasurer from utilizing lawful collection and enforcement remedies and procedures to collect the tax owed by the fractional interest owner, but a nonoperating owner shall not be subject to penalty or interest upon the tax owed unless he or she fails to remit such tax within twenty days after notification to him or her by the county treasurer of the default of the operator.

(5) For the purposes of this section, unit shall mean any single oil, gas, or other hydrocarbon well or field which has multiple ownership, or any combina-

tion of oil, gas, or other hydrocarbon wells, fields, and properties consolidated into a single operation, whether by a formal agreement or otherwise, and owner shall mean the holder of any interest or interests in any such property or unit including royalty interests.

(6) The county assessor shall assist the county treasurer in the preparation of a tax statement to the unit operator to aid in the collection of all property taxes assessed against the unit.

**Source:** Laws 1971, LB 636, § 1; Laws 1993, LB 345, § 3.

**57-235 Terms, defined.**

For purposes of sections 57-235 to 57-239, unless the context otherwise requires:

(1) Mineral interests shall mean mines, minerals, quarries, mineral springs and wells, oil and gas wells, and overriding royalty interests and production payments with respect to oil or gas leases; and

(2) Surface estate shall mean any real property, real estate, or lands including all city and village lots and all other lands except mineral interests.

**Source:** Laws 1981, LB 59, § 1.

**57-236 Mineral interests; severed; placed on tax list; application; contents.**

Any owner of the surface estate from which a mineral interest has been severed or the owner of the mineral interest which has been severed may file an application with the county assessor of the county where such surface estate is located to place such severed mineral interest on the tax list of the county. The applicant shall, at his or her own cost, provide to the county assessor proof of ownership of the severed mineral interest and a record of the creation of the severed mineral interest, as shown by the records of the county clerk or register of deeds. Proof of ownership, the name and last-known address of the owner or owners, the ownership interest, including any fractional interest, legal description, and the record of creation of the severed mineral interest shall be provided in the form of an opinion by an attorney or a certificate prepared by a licensed abstractor.

**Source:** Laws 1981, LB 59, § 2.

**57-237 Mineral interest; separate listing; application; when.**

All applications requesting separate listing of a mineral interest and surface estate must be filed with the county assessor on or before January 1 of the year in which they are to be separately listed and assessed.

**Source:** Laws 1981, LB 59, § 3.

**57-238 Mineral interest; separate listing; appeal.**

Appeals from actions of the county assessor pursuant to sections 57-235 to 57-239 may be taken to the county board of equalization in the manner provided in Chapter 77, article 15.

**Source:** Laws 1981, LB 59, § 4.

**57-239 Tax Commissioner; rules and regulations; prescribe forms.**

The Tax Commissioner shall adopt and promulgate rules and regulations necessary for the implementation of sections 57-235 to 57-239. The Tax Commissioner shall also prescribe necessary forms for the implementation of sections 57-235 to 57-239.

**Source:** Laws 1981, LB 59, § 5; Laws 2000, LB 968, § 19; Laws 2007, LB334, § 8.

### ARTICLE 3 OIL FIELD EQUIPMENT LIEN

#### Section

57-301. Terms, defined.

57-302. Lien; scope.

57-303. Lien; filing; notice; requirements; effect.

57-304. Lien; enforcement by action; time.

#### **57-301 Terms, defined.**

As used in sections 57-301 to 57-304, unless the context otherwise requires:

(1) The term person includes one or more individuals, partnerships, limited liability companies, associations, corporations, legal representatives, trustees, and receivers in bankruptcy and reorganization of any group whether or not it is incorporated; and

(2) The term oil field equipment means oil field supplies, oil field machinery, materials, heavy machinery, buildings, tubing, tanks, boilers, engines, casing, wire lines, sucker rods, oil pipelines, gas pipelines, and all other material used in digging, drilling, torpedoing, operating, completing, maintaining, or repairing any such oil or gas wells or oil pipelines or gas pipelines, or in the construction or dismantling of refineries, casing-head gasoline plants, and carbon black plants.

**Source:** Laws 1951, c. 185, § 1, p. 689; Laws 1993, LB 121, § 348.

#### **57-302 Lien; scope.**

Any person who transports or hauls oil field equipment under express contract with the owner or operator of any gas or oil leasehold interest in real property, the owner or operator of any gas pipeline or oil pipeline, the owner of any oil field equipment and material, or the trustee, agent, or receiver of any such owner, shall have a lien upon the interest of such owner in the oil field equipment so transported and hauled. The lien shall include, in addition to the charge for hauling or transporting, labor performed, or materials used and expended in the transporting, erecting, dismantling, loading, and unloading of any oil field machinery, equipment, or supplies hauled or transported.

**Source:** Laws 1951, c. 185, § 2, p. 690.

#### **57-303 Lien; filing; notice; requirements; effect.**

Any person entitled to file a lien shall, within four months after the oil field equipment was transported and delivered, file a statement in the office of the county clerk of such county where such oil field equipment was delivered, and at the time of filing such statement the claimant shall serve a copy of the statement upon the owner thereof, or upon the trustee, agent, or receiver of any such owner by mailing a copy of such statement to the owner or to the trustee,

agent, or receiver of such owner by either registered or certified mail to his or their last-known address. After the filing and service of such notice as heretofore provided, it shall be the duty of any such owner, trustee, agent, or receiver of any such owner to notify in writing any person who has a lien upon any such oil field equipment and materials before removing the same from the leasehold to which the lien claimant delivered the oil field equipment and materials. Such statement shall include the amount claimed and the items thereof described as definitely as practicable, the name of the owner, the name of the contractor, the name of the claimant, and a full description of the property subject to the lien, verified by affidavit. In the event such oil field equipment or any part thereof has been removed from the county in which it was originally delivered into another county within the state, any person entitled to file a lien as provided for in sections 57-301 to 57-304, may within thirty days after that person has received notice that such oil field equipment or any part thereof has been removed from the county in which it was originally delivered, file in the office of the county clerk of such county, a copy of the lien which has heretofore been filed in the county in which such property was originally transported and delivered. The lien provided for hereunder shall be junior to any valid and existing chattel mortgage of record.

**Source:** Laws 1951, c. 185, § 3, p. 690; Laws 1957, c. 242, § 47, p. 859; Laws 1959, c. 260, § 1, p. 897.

**57-304 Lien; enforcement by action; time.**

The holder of such lien shall within two years of the filing of such lien institute an action to foreclose and enforce the lien in the manner now provided by law for the foreclosure of a construction lien or institute an action in attachment or replevin, setting forth the lienholder's interest and right to possession thereto, in a court of competent jurisdiction in the county where such oil field equipment has been delivered, or in any county where it can be located.

**Source:** Laws 1951, c. 185, § 4, p. 691; Laws 1959, c. 260, § 2, p. 898.

**ARTICLE 4**

**EASEMENTS FOR OIL AND GAS PIPELINES**

**Cross References**

**Interstate bridges**, regulation of pipelines upon and across, see section 39-8,119.

**Pipeline companies**, acquisition of easement or right-of-way on school lands, see section 72-222.01.

**Real estate mortgage**, gas and oil pipeline system, limitation of expiration of, see section 76-239.

**Section**

57-401. Easement; authority of executor, administrator, guardian, trustee, or conservator to execute.

57-402. Easement; authority of executor, administrator, guardian, trustee, or conservator to execute; petition; notice; hearing; order.

**57-401 Easement; authority of executor, administrator, guardian, trustee, or conservator to execute.**

Administrators and executors of the estates of deceased persons, trustees of trust estates, conservators of estates of persons unfit by reason of infirmities of age or physical disability, and the guardians of estates of minors and incompetent persons are hereby authorized to enter into contracts with pipeline companies, corporations, individuals, partnerships, or limited liability companies for

the construction, operation, and maintenance of pipelines for the transmission of oil or gas and to sell and dispose of an easement under the contract for such purposes, upon and across the lands, or any interest therein, belonging to the estates of deceased persons, beneficiaries of a trust, estates of persons unfit by reason of infirmities of age or physical disability, and estates of minors and incompetents, upon such terms and conditions that the administrators, executors, trustees, conservators, or guardians of such persons may deem reasonable and equitable, and for the best interest of the estates of deceased persons, minors, persons unfit by reason of infirmities of age or physical disability, and incompetents and the beneficiaries of a trust.

**Source:** Laws 1951, c. 186, § 1, p. 692; Laws 1955, c. 217, § 1, p. 608; Laws 1967, c. 350, § 4, p. 930; Laws 1993, LB 121, § 349.

**57-402 Easement; authority of executor, administrator, guardian, trustee, or conservator to execute; petition; notice; hearing; order.**

(1) Before entering into any such contracts for such easements, an application shall be duly filed in the county court of the county in which the estate, guardianship, or conservatorship proceedings are pending, or trust is being administered, or in the county court of the county where the real estate is located, duly sworn and signed by the executor, administrator, trustee, conservator, or guardian, as the case may be. The application shall set forth in detail the nature and character of the contract and conveyance of the easement upon and across the lands of the estates, the purposes for which the same are to be used and maintained, the terms and conditions thereof, the consideration therefor, and the reasons why the same is for the best interests of the estate. The court or any judge thereof in chambers shall set the application for hearing and direct to what persons and in what manner notice of such hearing shall be given.

(2) At the time and place set for the hearing, as is provided for by subsection (1) of this section, the court shall conduct a hearing upon the application and if, after due consideration thereof, the court finds that the granting of the easement for the erection and maintaining of the pipeline upon or across the land, will not result in a material injury to the property of the deceased person, beneficiary of the trust, minor, incompetent, or person unfit by reason of infirmities of age or physical disability, and further finds that the consideration therefor is adequate and proper, the court may approve the application and authorize and direct the executor, administrator, trustee, conservator, or guardian to enter into such contract and to execute such grants or conveyances to carry the same into effect, and authorize and direct the executor, administrator, trustee, conservator, or guardian to deliver the same to the persons, individuals, firms, or corporations with whom the same were authorized to be made.

**Source:** Laws 1951, c. 186, § 2, p. 692; Laws 1955, c. 218, § 1, p. 609; Laws 1967, c. 350, § 5, p. 930; Laws 1972, LB 1032, § 265.

**ARTICLE 5**

**LIQUEFIED PETROLEUM GAS**

Section

57-501. Terms, defined.

57-502. Cylinders; filling; requirements.

57-503. Cylinders; valves; requirements.

## Section

- 57-504. Container; filled by owner; purchase of cylinder; effect.  
57-505. Container; filling by other than owner; unlawful.  
57-506. Container; unlawful use; search warrant; violation; penalty.  
57-507. Violations; penalty.  
57-508. Sale of gas; units of measurement.  
57-509. Sale by weight; marking required.  
57-510. Weighing and measuring devices; testing; duties of Department of Agriculture.  
57-511. Sale; invoices; information required.  
57-512. Sale of gas; rules and regulations; tolerances.  
57-513. Refilling of package or container; credit for unused liquid.  
57-514. Vehicle tank; equipment.  
57-515. Sale; correction for temperature; sale tickets; contents.  
57-516. Unlawful sale; violation; penalties.  
57-517. Liquefied petroleum gas vapor service system; container warning label; affixed by provider; limitation on liability.

**57-501 Terms, defined.**

As used in sections 57-501 to 57-507, unless the context otherwise requires:

- (1) Person means and includes any person, firm, or corporation;
- (2) Owner means and includes (a) any person who holds a written bill of sale or other instrument under which title to the container was transferred to such person, (b) any person who holds a paid or receipted invoice showing purchase and payment of such container, (c) any person whose name, initials, mark, or other identifying device has been plainly and legibly stamped or otherwise shown upon the surface of such container for a period of not less than one year prior to the final enactment and approval of sections 57-501 to 57-507, or (d) any manufacturer of a container who has not sold or transferred ownership thereof by written bill of sale or otherwise;
- (3) Liquefied petroleum gas means and includes any material which is composed predominantly of hydrocarbons or mixtures of the same, such as propane, propylene, butanes (normal butane and isobutane), and butylenes;
- (4) Container means any vessel, including a cylinder or tank, used for storing of liquefied petroleum gas; and
- (5) Cylinder means a container constructed in accordance with the United States Department of Transportation specifications in Title 49 of the Code of Federal Regulations as they existed on March 7, 2006.

**Source:** Laws 1951, c. 188, § 1, p. 695; Laws 2001, LB 137, § 1; Laws 2006, LB 1007, § 3.

**57-502 Cylinders; filling; requirements.**

No cylinder shall be filled or refilled with liquefied petroleum gas, or any other gas or compound, nor shall a cylinder be bought, sold, offered for sale, given, taken, loaned, delivered, or permitted to be delivered or otherwise used, or trafficked in, unless such cylinder meets the requirements of the regulations of the United States Department of Transportation as they exist on September 1, 2001.

**Source:** Laws 1951, c. 188, § 2, p. 696; Laws 2001, LB 137, § 2.

**57-503 Cylinders; valves; requirements.**

While in transit, in storage, and being moved into final utilization, all cylinders containing liquefied petroleum gas must have their valves protected as required by the regulations of the United States Department of Transportation on September 1, 2001.

**Source:** Laws 1951, c. 188, § 3, p. 696; Laws 2001, LB 137, § 3.

**57-504 Container; filled by owner; purchase of cylinder; effect.**

No person, except the owner thereof or persons authorized in writing by the owner so to do, shall fill or refill with liquefied petroleum gas, or any other gas or compound, a container or buy, sell, offer for sale, give, take, loan, deliver, or permit to be delivered, or otherwise use, dispose of, or traffic in a container if such container bears upon the surface thereof in plainly legible characters the name, initials, mark, or other device of the owner; nor shall any person, other than the owner of a container or a person authorized in writing by the owner, deface, erase, obliterate, cover up, or otherwise remove or conceal any such name, mark, initial, or device thereon. The person using any container may purchase the same at his or her option from the owner at a fair and reasonable market value, and after such purchase may purchase liquefied petroleum gas upon the open market.

**Source:** Laws 1951, c. 188, § 4, p. 696; Laws 2001, LB 137, § 4.

**57-505 Container; filling by other than owner; unlawful.**

The use of a container by any person other than the person whose name, mark, initial, or device is or has been upon such container, without written consent or purchase of such marked and distinguished container, for the sale of liquefied petroleum gas or filling or refilling with liquefied petroleum gas, or the possession of such container by any person other than the person having his or her name, mark, initial, or other device thereon, without the consent of such owner, is presumptive evidence of the unlawful use, filling or refilling, or trafficking in of such container.

**Source:** Laws 1951, c. 188, § 5, p. 697; Laws 2001, LB 137, § 5.

**57-506 Container; unlawful use; search warrant; violation; penalty.**

Whenever any person makes an oath in writing before any judge of the county court that the party making the affidavit has reason to believe and does believe that a container which is marked with the name, initials, mark, or other device of the owner is in the possession of or being used by or being filled or refilled by a person whose name, initials, mark, or other device does not appear on the container and who is in the possession of, filling or refilling, or using the container without the consent of the owner, the judge may, when satisfied that there is reasonable cause, issue a search warrant and cause the premises designated to be searched for the purpose of discovering and obtaining the container. The judge may also cause the person who possesses the container to be brought before the judge and inquire into the circumstances of such possession. If the judge finds that such person is guilty of a violation of sections 57-501 to 57-507, the judge shall sentence as provided in section 57-507 and shall also award the possession of the container, including the contents, taken upon such search warrant, to the owner thereof.

**Source:** Laws 1951, c. 188, § 6, p. 697; Laws 1986, LB 734, § 1; Laws 2001, LB 137, § 6.

**57-507 Violations; penalty.**

Any person who shall fail to comply with any of the provisions of sections 57-501 to 57-507 shall be deemed guilty of a Class III misdemeanor. Each violation of this section shall constitute a separate offense.

**Source:** Laws 1951, c. 188, § 7, p. 698; Laws 1977, LB 39, § 56.

**57-508 Sale of gas; units of measurement.**

It shall be unlawful to sell at retail or wholesale or offer for sale at retail or wholesale any liquefied petroleum gas except specified in pounds; liquid measure, specified in gallons; or vapor, specified in cubic feet or such other units as may be approved by the Department of Agriculture.

**Source:** Laws 1957, c. 240, § 1, p. 801.

**57-509 Sale by weight; marking required.**

When liquefied petroleum gas is sold at retail or wholesale or offered for sale at retail or wholesale by weight, in packages or containers, the tare weight of the container, and the net weight of the contents shall be plainly and conspicuously marked on the outside of the container or on a label firmly attached thereto. Tare weight shall not be construed to include the valve protecting cap, which shall be removed when weighing. It shall be a violation of sections 57-508 to 57-516 to sell or offer or expose for sale liquefied petroleum gas in packages or containers which do not bear a statement as to tare and net weight as required by this section, or which packages or containers bear a false statement as to weights.

**Source:** Laws 1957, c. 240, § 2, p. 801.

**57-510 Weighing and measuring devices; testing; duties of Department of Agriculture.**

The Department of Agriculture is authorized to test all weighing and measuring devices used in the retail or wholesale sale of liquefied petroleum gas, and shall condemn all such devices which are found (a) to be inaccurate and (b) do not clearly indicate the quantity of liquefied petroleum gas in pounds, or gallons, or cubic feet or other unit approved by the department. It shall be unlawful to use a weighing or measuring device for determining quantities of liquefied petroleum gas which has been condemned by the department. The department shall conspicuously mark all condemned devices, which mark shall not be removed or defaced except upon authorization of the said department or authorized representatives. It shall be unlawful to use a vapor meter dial which is not equipped with a cubic foot indicator for testing the accuracy of the meter.

**Source:** Laws 1957, c. 240, § 3, p. 802.

**57-511 Sale; invoices; information required.**

An invoice shall be submitted to the purchaser showing the quantity of liquefied petroleum gas sold, expressed in pounds, or gallons, or cubic feet, or other unit approved by the Department of Agriculture. When vapor meters reading in approved units other than cubic feet are used, the invoice shall clearly indicate to the purchaser a factor to convert to gallons.

**Source:** Laws 1957, c. 240, § 4, p. 802.

**57-512 Sale of gas; rules and regulations; tolerances.**

The Department of Agriculture is authorized to promulgate and adopt such rules and regulations and establish tolerances within a maximum of two percent, plus or minus, which may be necessary for the enforcement of sections 57-508 to 57-516.

**Source:** Laws 1957, c. 240, § 5, p. 802.

**57-513 Refilling of package or container; credit for unused liquid.**

When liquefied petroleum gas is sold by the package or container, either by a refilling of a container or an exchange of containers, the vendor shall give the purchaser full credit for the unused liquid remaining in a container being exchanged or refilled.

**Source:** Laws 1957, c. 240, § 6, p. 802.

**57-514 Vehicle tank; equipment.**

Each vehicle tank, used in the retail or wholesale sale of liquefied petroleum gas, shall be equipped with a meter for measurement of liquefied petroleum gas in terms of gallons, and shall not be equipped with a bypass around the meter; *Provided*, that the prohibition of a bypass is not intended to prohibit the use of an equalization line.

**Source:** Laws 1957, c. 240, § 7, p. 802.

**57-515 Sale; correction for temperature; sale tickets; contents.**

Liquefied petroleum gas sold or delivered to a consumer and measured by the gallon as liquid shall be corrected for temperature in accordance with the volume correction factor table for liquefied petroleum gases, being schedule A of this section. All retail or wholesale sale tickets shall show the metered gallons and the temperature at the time of delivery and the corrected gallonage. This section shall not apply to unit sales or deliveries made direct to mobile fuel tanks, consisting of less than one hundred gallons. To convert from measured volume at another temperature to net volume at 60 degrees Fahrenheit: measure the volume and temperature. Determine the gravity at 60 degrees Fahrenheit. Refer to the column corresponding to this gravity and read the volume conversion factor opposite the observed temperature. Multiply the observed volume by this factor to obtain the volume at 60 degrees Fahrenheit.

Schedule A

VOLUME CORRECTION FACTOR TABLE  
Specific Gravity at 60 F/60 F

Degrees Fahr. 0.500	Pro- pane 0.5079	0.510	0.520	0.530	0.540	0.550	0.560	Iso- bu- tane 0.5631	0.570	0.580	N- Bu- tane 0.5844
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VOLUME CORRECTION FACTORS

-15	1.112	1.109	1.107	1.102	1.097	1.093	1.089	1.084	1.083	1.080	1.077	1.075
-10	1.105	1.102	1.100	1.095	1.091	1.087	1.083	1.079	1.078	1.075	1.072	1.071
-5	1.098	1.094	1.094	1.089	1.085	1.081	1.077	1.074	1.073	1.070	1.067	1.066
0	1.092	1.088	1.088	1.084	1.080	1.076	1.073	1.069	1.068	1.066	1.063	1.062
2	1.089	1.086	1.085	1.081	1.077	1.074	1.070	1.067	1.066	1.064	1.061	1.060
4	1.086	1.083	1.082	1.079	1.075	1.071	1.068	1.065	1.064	1.062	1.059	1.058
6	1.084	1.080	1.080	1.076	1.072	1.069	1.065	1.062	1.061	1.059	1.057	1.055
8	1.081	1.078	1.077	1.074	1.070	1.066	1.063	1.060	1.059	1.057	1.055	1.053
10	1.078	1.075	1.074	1.071	1.067	1.064	1.061	1.058	1.057	1.055	1.053	1.051
12	1.075	1.072	1.071	1.068	1.064	1.061	1.059	1.056	1.055	1.053	1.051	1.049
14	1.072	1.070	1.069	1.066	1.062	1.059	1.056	1.053	1.053	1.051	1.049	1.047
16	1.070	1.067	1.066	1.063	1.060	1.056	1.054	1.051	1.050	1.048	1.046	1.045
18	1.067	1.065	1.064	1.061	1.057	1.054	1.051	1.049	1.048	1.046	1.044	1.043
20	1.064	1.062	1.061	1.058	1.054	1.051	1.049	1.046	1.046	1.044	1.042	1.041
22	1.061	1.059	1.058	1.055	1.052	1.049	1.046	1.044	1.044	1.042	1.040	1.040
24	1.058	1.056	1.055	1.052	1.049	1.046	1.044	1.042	1.042	1.040	1.038	1.037
26	1.055	1.053	1.052	1.049	1.047	1.044	1.042	1.039	1.039	1.037	1.036	1.036
28	1.052	1.050	1.049	1.047	1.044	1.041	1.039	1.037	1.037	1.035	1.034	1.034
30	1.049	1.047	1.046	1.044	1.041	1.039	1.037	1.035	1.035	1.033	1.032	1.032
32	1.046	1.044	1.043	1.041	1.038	1.036	1.035	1.033	1.033	1.031	1.030	1.030
34	1.043	1.041	1.040	1.038	1.036	1.034	1.032	1.031	1.030	1.029	1.028	1.028
36	1.039	1.038	1.037	1.035	1.033	1.031	1.030	1.028	1.028	1.027	1.025	1.025
38	1.036	1.035	1.034	1.032	1.031	1.029	1.027	1.026	1.025	1.025	1.023	1.023
40	1.033	1.032	1.031	1.029	1.028	1.026	1.025	1.024	1.023	1.023	1.021	1.021
42	1.030	1.029	1.028	1.026	1.025	1.023	1.023	1.022	1.021	1.021	1.019	1.019
44	1.027	1.026	1.025	1.023	1.022	1.021	1.020	1.019	1.019	1.018	1.017	1.017
46	1.023	1.022	1.022	1.021	1.020	1.018	1.018	1.017	1.016	1.016	1.015	1.015
48	1.020	1.019	1.019	1.018	1.017	1.016	1.015	1.014	1.014	1.013	1.013	1.013
50	1.017	1.016	1.016	1.015	1.014	1.013	1.013	1.012	1.012	1.011	1.011	1.011
52	1.014	1.013	1.012	1.012	1.011	1.010	1.010	1.009	1.009	1.009	1.009	1.009
54	1.010	1.010	1.009	1.009	1.008	1.007	1.007	1.007	1.007	1.007	1.006	1.006
56	1.007	1.007	1.006	1.006	1.005	1.005	1.005	1.005	1.005	1.005	1.004	1.004
58	1.003	1.003	1.003	1.003	1.003	1.002	1.002	1.002	1.002	1.002	1.002	1.002
60	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
62	0.997	0.997	0.997	0.997	0.997	0.997	0.997	0.998	0.998	0.998	0.998	0.998
64	0.993	0.993	0.994	0.994	0.994	0.994	0.995	0.995	0.995	0.995	0.996	0.996
66	0.991	0.990	0.990	0.990	0.991	0.992	0.992	0.993	0.993	0.993	0.993	0.993
68	0.986	0.986	0.987	0.987	0.988	0.989	0.990	0.990	0.990	0.990	0.991	0.991
70	0.983	0.983	0.984	0.984	0.985	0.986	0.987	0.988	0.988	0.988	0.989	0.989
72	0.979	0.980	0.981	0.981	0.982	0.983	0.984	0.985	0.986	0.986	0.987	0.987
74	0.976	0.975	0.977	0.978	0.980	0.980	0.982	0.983	0.983	0.984	0.985	0.985
76	0.972	0.973	0.974	0.975	0.977	0.978	0.979	0.980	0.981	0.981	0.982	0.982
78	0.969	0.970	0.970	0.972	0.974	0.975	0.977	0.978	0.978	0.979	0.979	0.980
80	0.965	0.966	0.967	0.969	0.971	0.972	0.974	0.975	0.976	0.977	0.978	0.978
82	0.961	0.963	0.963	0.966	0.968	0.969	0.971	0.972	0.973	0.974	0.976	0.976
84	0.957	0.959	0.960	0.962	0.965	0.966	0.968	0.970	0.971	0.972	0.974	0.974
86	0.954	0.956	0.956	0.959	0.961	0.964	0.966	0.967	0.968	0.969	0.972	0.972
88	0.950	0.952	0.953	0.955	0.958	0.961	0.963	0.965	0.966	0.967	0.969	0.969
90	0.946	0.949	0.949	0.952	0.955	0.958	0.960	0.962	0.963	0.964	0.967	0.967
92	0.942	0.945	0.946	0.949	0.952	0.955	0.957	0.959	0.960	0.962	0.964	0.965
94	0.938	0.941	0.942	0.946	0.949	0.952	0.954	0.957	0.958	0.959	0.962	0.962
96	0.935	0.938	0.939	0.942	0.946	0.949	0.952	0.954	0.955	0.957	0.959	0.960
98	0.931	0.934	0.935	0.939	0.943	0.946	0.949	0.952	0.953	0.954	0.957	0.957
100	0.927	0.930	0.932	0.936	0.940	0.943	0.946	0.949	0.950	0.952	0.954	0.955
105	0.918	0.920	0.923	0.927	0.932	0.935	0.939	0.943	0.943	0.946	0.949	0.949
110	0.907	0.911	0.913	0.918	0.923	0.927	0.932	0.936	0.937	0.939	0.943	0.944
115	0.897	0.902	0.904	0.910	0.915	0.920	0.925	0.930	0.930	0.933	0.937	0.938
120	0.887	0.892	0.894	0.900	0.907	0.912	0.918	0.923	0.924	0.927	0.931	0.932

Source: Laws 1957, c. 240, § 8, p. 803.

57-516 Unlawful sale; violation; penalties.

Any person who violates any of the provisions of sections 57-508 to 57-516 shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1957, c. 240, § 9, p. 807; Laws 1977, LB 39, § 57.

**57-517 Liquefied petroleum gas vapor service system; container warning label; affixed by provider; limitation on liability.**

(1) The Legislature finds it is necessary that a leak check be performed following an interruption of service of a liquefied petroleum gas vapor service system to ensure safe and proper operation. Further, the Legislature finds that a leak check must be performed by a qualified service technician.

(2) It is the intent of the Legislature to create a mechanism that will educate users of liquefied petroleum gas of the requirements for a leak check when an interruption of service occurs.

(3) For purposes of this section:

(a) Interruption of service means the gas supply to a liquefied petroleum gas vapor service system is turned off;

(b) Leak check means an operation performed on a complete liquefied petroleum gas piping system and the connection equipment to verify that the liquefied petroleum gas vapor service system does not leak;

(c) Liquefied petroleum gas provider means any person or entity engaged in the business of supplying, handling, transporting, or selling at retail liquefied petroleum gas in this state; and

(d) Liquefied petroleum gas vapor service system means an installation with a maximum operating pressure of one hundred twenty-five pounds per square inch or less and includes, but is not limited to, the container assembly, pressure regulator or regulators, piping system, gas utilization equipment and components thereof, and venting system in residential, commercial, or institutional installations. Liquefied petroleum gas vapor service system does not include:

(i) Portable liquefied petroleum gas appliances and equipment of all types that are not connected to a fixed-fuel piping system;

(ii) Farm appliances and equipment in liquid service, including, but not limited to, brooders, dehydrators, dryers, and irrigation equipment;

(iii) Liquefied petroleum gas equipment for vaporization, gas mixing, and gas manufacturing;

(iv) Liquefied petroleum gas piping for buildings under construction or renovations that is not to become part of the permanent building piping system, such as temporary fixed piping for building heat; or

(v) Fuel gas system engines, including, but not limited to, tractors, mowers, trucks, and recreational vehicles.

(4) The liquefied petroleum gas provider shall affix a container warning label on each tank supplying liquefied petroleum gas to a liquefied petroleum gas vapor service system. The container warning label shall be affixed near the tank shutoff.

(5) The container warning label required by subsection (4) of this section shall include this warning:

**WARNING: Do Not Open Container Shutoff Valve! If this valve is turned off for any reason, the National Fuel Gas Code (NFPA 54) requires a leak check of**

the system serviced by the container at the time the valve is turned back on. The leak check must be conducted by a qualified service technician. Do Not Attempt To Open The Valve Yourself! Failure to follow this warning may result in the ignition of leaking gas, causing serious and potentially fatal injury, fire, or explosion.

The container warning label shall include the statutory reference to this section.

(6) If the container warning label is affixed near the tank shutoff as required by subsection (4) of this section and the liquefied petroleum gas vapor service system is turned on prior to a leak check by a qualified service technician approved by the liquefied petroleum gas provider, the liquefied petroleum gas provider shall not be liable for any damage, injury, or death if the proximate cause of the damage, injury, or death was the negligence of a person or persons other than the liquefied petroleum gas provider.

**Source:** Laws 2007, LB274, § 1.

**ARTICLE 6**

**UNDERGROUND STORAGE OF NATURAL GAS**

Section

57-601. Terms, defined.

57-602. Public policy.

57-603. Eminent domain; rights of condemner.

57-604. Acquisition of property; petition of condemner; requirements.

57-605. Acquisition of property; conditions precedent; hearing; order; appeal.

57-606. Acquisition of property; without prejudice to drilling rights; protection of underground reservoir against pollution or escape of gas; payment by public utility owning right to storage; limitation on rights of condemnee.

57-607. Acquisition of property; eminent domain; procedure; payment of severance tax.

57-608. Reduction of gas to possession; property of condemner; exception.

57-609. Abandonment by condemner of underground reservoir; reversion of property to landowner.

**57-601 Terms, defined.**

As used in sections 57-601 to 57-607, unless the context otherwise requires:

- (1) Eminent domain statutes shall mean sections 76-701 to 76-724;
- (2) Underground reservoir shall mean any subsurface sand, stratum, or formation suitable for the injection and storage of natural gas or liquefied petroleum gas or both therein or which is capable of being made suitable for the storage of natural gas or liquefied petroleum gas, or both, by the construction of underground caverns by means of mining operations and the withdrawal of natural gas or liquefied gas therefrom;
- (3) Underground storage shall mean the right to inject and store natural gas or liquefied petroleum gas or both within and to withdraw natural gas or liquefied petroleum gas from an underground reservoir;
- (4) Natural gas shall mean gas which has been produced from the earth in its original state or such gas after the same has been processed or treated;
- (5) Native gas shall mean gas which has not been previously withdrawn from the earth;
- (6) Liquefied petroleum gas shall mean hydrocarbons or mixtures thereof which have been extracted from natural gas or crude oil and which consist primarily of propane or butane or mixtures thereof;

(7) Condemner shall mean any person, partnership, limited liability company, corporation, association, or municipal corporation authorized to transport or distribute natural gas as a public utility within this state for ultimate public use or consumption;

(8) Condemnee, property, and county judge shall have the same meaning as in the eminent domain statutes;

(9) Public owner shall mean (a) the state, (b) any agency or political subdivision thereof, (c) any municipal corporation, (d) any quasi-municipal corporation, or (e) any public authority which has an interest in any of the lands in and under which a condemner requires the right to underground storage;

(10) Commercially recoverable native gas shall mean that native gas which would provide revenue in excess of direct operating expenses if produced;

(11) Reasonable notice shall mean notice served in the same manner as is provided in the code of civil procedure for the service of process in civil actions in the district courts of this state; and

(12) Interested parties shall mean the owners of any oil or gas leasehold, mineral, or royalty interest in the underground stratum or formation sought to be acquired and the owners of the surface rights to the underground stratum or formation.

**Source:** Laws 1953, c. 191, § 1, p. 613; Laws 1963, c. 325, § 1, p. 983; Laws 1993, LB 121, § 350.

#### **57-602 Public policy.**

Underground storage of natural gas or liquefied petroleum gas or both is found and declared to be in the public interest if it promotes the conservation of natural gas and permits the accumulation of natural gas reserves or liquefied petroleum gas reserves or both in an underground reservoir in order to make natural gas more readily available to the domestic, commercial, and industrial consumers of this state.

**Source:** Laws 1953, c. 191, § 2, p. 614; Laws 1963, c. 325, § 2, p. 985.

#### **57-603 Eminent domain; rights of condemner.**

Whenever any condemner shall require the right to underground storage in any of the lands within this state, such condemner may file an action to condemn and acquire such underground storage in and under the lands sought to be condemned, including the amount of commercially recoverable native gas, if any, remaining in the reservoir, together with such other rights or interests as may be necessary and proper to the full enjoyment thereof; *Provided*, that any right of underground storage obtainable hereunder shall be without prejudice to the rights of the owners of the surface of such land or other interests therein as to all other uses thereof.

**Source:** Laws 1953, c. 191, § 3(1), p. 614; Laws 1963, c. 325, § 3, p. 985.

#### **57-604 Acquisition of property; petition of condemner; requirements.**

The condemner shall set forth in the petition filed in the action to condemn and acquire the right to underground storage, referred to in section 57-603, whether any public owner has any interest which would be affected by underground storage in any of the lands in which such right to underground storage

is required. Any such public owner having any such interest shall be served with notice of such petition in like manner as any condemnee, and such public owner shall, by instrument made by its proper officer or officers, grant such interest, but not more than the right to underground storage, to the condemner upon the payment to it by the condemner of compensation in such amount as shall have been fixed by the award in respect thereto, made in like manner as if such public owner were a condemnee.

**Source:** Laws 1953, c. 191, § 3(2), p. 614.

**57-605 Acquisition of property; conditions precedent; hearing; order; appeal.**

Any condemner desiring to exercise the right of eminent domain as to any property for use for underground storage of natural gas or liquefied petroleum gas or both shall, as a condition precedent to the filing of its petition, obtain from the Nebraska Oil and Gas Conservation Commission a certificate setting out findings of the commission (1) that the underground stratum or formation sought to be acquired is not capable of producing oil in paying quantities by any generally accepted method, (2) that the field, if then capable of producing commercially recoverable native gas, must have been producing natural gas for at least ten years, (3) that the condemner has acquired by purchase or other voluntary means at least sixty percent of the ownership which has the right to grant the use of the underground stratum or formation sought to be acquired, computed in relation to the surface area overlying that part of the stratum or formation expected to be penetrated by displaced or injected gas, and that the volume of native gas originally in place in the underground stratum or formation sought to be acquired is forty percent depleted, (4) that the underground stratum or formation sought to be acquired is suitable for the underground storage of natural gas or liquefied petroleum gas or both, (5) the amount of commercially recoverable native gas, if any, remaining therein, and (6) in the event any recoverable native gas is found to remain therein, that its use for such purposes is in the public interest because the stratum or formation has a greater value or utility as an underground reservoir for the storage of natural gas or liquefied petroleum gas or both than for the production of the remaining volumes of native gas. Such finding shall not of itself be a basis for compensation to be paid to the condemnee. If at the time of the condemner's filing with the commission native gas from the underground reservoir is being used for the secondary recovery of oil, then gas in necessary and required amounts shall be furnished to the operator or operators of the secondary recovery operations at equivalent costs, for so long as oil is produced in paying quantities in the secondary recovery operations, but the amount of gas to be furnished hereunder shall not exceed the quantity of recoverable native gas found to exist in the reservoir at the time of its acquisition hereunder if such operator was or operators were at such time entitled to the whole thereof, but if it was or they were at such time entitled to less than the whole thereof, then not to exceed the quantity thereof to which such operator was or operators were then entitled. The commission shall issue no such certificate until after public hearing is had on application and upon reasonable notice to interested parties. The applicant shall be assessed and pay all the costs of the proceedings incurred with the commission. Any person having an interest in the property affected by a finding of the commission or the condemner may appeal the issuance or denial of certificate or from any finding as to the amount of commercially recoverable

native gas, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1953, c. 191, § 3(3), p. 615; Laws 1963, c. 325, § 4, p. 985; Laws 1988, LB 352, § 100.

**Cross References**

Administrative Procedure Act, see section 84-920.

**57-606 Acquisition of property; without prejudice to drilling rights; protection of underground reservoir against pollution or escape of gas; payment by public utility owning right to storage; limitation on rights of condemnee.**

Any right of underground storage obtained hereunder, except in an underground storage reservoir which is a mined cavern constructed by mining operations, shall be without prejudice to the rights of any condemnee to explore for, drill for, produce, process, treat, or market any oil, gas, or other minerals which might be contained in such lands above or below the underground reservoir. Any additional cost and expense required to be incurred in order to protect the underground reservoir against pollution or escape of gas or liquefied petroleum gas therefrom by reason of boring or drilling above, into, or through such underground reservoir as provided for herein shall be paid by the public utility then owning the right to underground storage therein; *Provided*, no condemnee shall have the right to bore or drill into or through, or otherwise interfere with, an underground storage reservoir which is a mined cavern constructed by mining operations.

**Source:** Laws 1953, c. 191, § 3(4), p. 615; Laws 1963, c. 325, § 5, p. 987.

**57-607 Acquisition of property; eminent domain; procedure; payment of severance tax.**

Except as otherwise provided in sections 57-603 to 57-606, all proceedings in connection with the condemnation and acquisition of such underground storage and such other rights or interests as may be necessary and proper to the full enjoyment of such right shall be in accordance and compliance with sections 76-704 to 76-724, including full rights of appeal as to the amount of damages. The condemner shall pay the severance tax due on all commercially recoverable native gas being acquired for underground storage purposes whether such acquisition is made voluntarily or under the provisions of sections 57-601 to 57-609. The tax shall be based on the current value of the gas and shall be paid to the State Treasurer on the volume of commercially recoverable native gas remaining in place at the time of acquisition as found by the Nebraska Oil and Gas Conservation Commission pursuant to section 57-605. The State Treasurer shall place the tax received in the Severance Tax Fund.

**Source:** Laws 1953, c. 191, § 4, p. 616; Laws 1961, c. 370, § 3, p. 1145; Laws 1963, c. 325, § 6, p. 987.

**57-608 Reduction of gas to possession; property of condemner; exception.**

All natural gas or liquefied petroleum gas which has previously been reduced to possession, and which is subsequently injected into an underground storage reservoir, shall at all times be deemed the property of the condemner, his heirs, successors or assigns; and in no event shall such natural gas or liquefied petroleum gas be subject to the right of the owner of the surface of said lands or

of any mineral interest therein, under which said gas storage reservoir lies, or of any person other than the condemner, his heirs, successors and assigns, to produce, take, reduce to possession, waste, or otherwise interfere with or exercise any control thereover; *Provided*, that the condemner, his heirs, successors and assigns, shall have no right to natural gas or liquefied petroleum gas in any stratum, or portion thereof, which has not been condemned under the provisions of sections 57-601 to 57-609, or otherwise purchased.

**Source:** Laws 1963, c. 325, § 7, p. 988.

**57-609 Abandonment by condemner of underground reservoir; reversion of property to landowner.**

When the condemner shall have permanently abandoned the entire underground storage reservoir for storing natural gas or liquefied petroleum gas, title to that sand, formation, or stratum which had been appropriated under the terms of sections 57-601 to 57-609 shall revert to the then owners of the land, mineral and royalty interests in proportion to their several ownerships.

**Source:** Laws 1963, c. 325, § 8, p. 988.

**ARTICLE 7**

**OIL AND GAS SEVERANCE TAX**

Section

57-701. Terms, defined.

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57-703. Tax; levy on resources severed; rate.

57-704. Taxes; payment; time; statement; filing; form; contents.

57-705. Tax; remittance; Severance Tax Fund; Severance Tax Administration Fund; created; use.

57-706. Tax; security; notice; use.

57-707. Reports; payment of tax.

57-708. Tax; deductions permitted.

57-709. Tax; delinquent; action.

57-710. Tax; when delinquent; interest; penalty.

57-711. Repealed. Laws 1983, LB 228, § 12.

57-712. Tax Commissioner; supervise tax collections.

57-713. Repealed. Laws 1983, LB 228, § 12.

57-714. Tax; delinquent; restrain severing resource; Attorney General; county attorney.

57-715. Repealed. Laws 1973, LB 527, § 2.

57-716. Producer; file certificate; contents.

57-717. Severance tax collection; Tax Commissioner; powers and duties; penalty.

57-718. Tax Commissioner; enforcement; powers and duties; records; requirements.

57-719. Violations; penalties.

**57-701 Terms, defined.**

As used in Chapter 57, article 7, unless the context otherwise requires:

(1) Base production level shall mean a property's production for the preceding twelve months divided by the number of producing well production days. Enhanced recovery injection wells may be counted as producing wells to determine the base production level for a property;

(2) Oil shall mean any petroleum product or other oil taken from the earth;

(3) Severed shall mean the taking from the land by any means whatsoever of the natural resources enumerated in Chapter 57, article 7;

(4) Person shall mean any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, limited liability company, company, corporation, or person acting under a declaration of trust or as an operator under a lease agreement or unitization agreement;

(5) Property shall mean the right to produce crude oil or natural gas which arises from a lease, fee, or mineral interest. A property owner may treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil or natural gas if such reservoir is recognized by the Nebraska Oil and Gas Conservation Commission as a producing formation that is separate and distinct from and not in communication with any other producing formation;

(6) Producer shall mean the owner of a well or wells capable of producing oil or gas or both or any person who owns and operates a lease or a unit of producing leases in which other persons own interests, with respect to such well or wells;

(7) Stripper oil shall mean oil produced from a property where the base production level is ten or fewer barrels per day; and

(8) Nonstripper oil shall mean oil produced from a property where the base production level is more than ten barrels per day.

**Source:** Laws 1955, c. 219, § 1, p. 611; Laws 1967, c. 351, § 1, p. 932; Laws 1983, LB 228, § 1; Laws 1983, LB 224, § 1; Laws 1993, LB 121, § 351.

**57-702 Tax; levy; persons liable; due and payable; lien.**

(1) Commencing on January 1, 1956, and for each subsequent year, taxes are hereby levied on oil and natural gas severed from the soil of this state, except such oil or gas as is used only in severing operations or for repressuring or recycling purposes. Such taxes shall: (a) Be paid by (i) the first purchaser, if such oil or natural gas is sold in the state, or (ii) the person severing such oil or gas if such oil or natural gas is sold outside the state; and (b) become due and payable monthly, as provided by Chapter 57, article 7.

(2) The state shall have a prior and preferred lien, which shall arise when the tax levied in subsection (1) of this section is delinquent as provided in section 57-704, for the amount of the taxes, penalties, and interest imposed pursuant to Chapter 57, article 7, on:

(a) The oil or gas to which the tax applies that is possessed by the producer, first purchaser, or subsequent purchaser;

(b) The leasehold interest, oil or gas rights, the value of oil or gas rights, and other interests, including oil or gas produced and oil or gas runs owned by a person liable for the tax;

(c) Equipment, tools, tanks, and other implements used on the leasehold from which the oil or gas is produced; and

(d) Any other property not exempt from forced sale owned by the person liable for the tax.

As soon as possible after such lien arises, the Tax Commissioner shall cause such lien to be filed in the office of the appropriate filing officer.

**Source:** Laws 1955, c. 219, § 2, p. 611; Laws 1983, LB 228, § 2; Laws 1983, LB 224, § 2; Laws 1986, LB 1027, § 196.

**57-703 Tax; levy on resources severed; rate.**

The taxes levied by section 57-702 shall be levied upon the value of the resources severed, and shall be paid at the rate of three percent of the value of nonstripper oil and natural gas, except that oil produced from properties producing stripper oil shall be subject to a two percent severance tax. The value of oil and natural gas shall be computed immediately after such severance at the place where the same were severed.

**Source:** Laws 1955, c. 219, § 3, p. 611; Laws 1981, LB 257, § 1; Laws 1983, LB 228, § 3.

**57-704 Taxes; payment; time; statement; filing; form; contents.**

All taxes levied, as provided by sections 57-701 to 57-714, shall be due and payable in monthly installments on or before the last day of the month next succeeding the month in which the resources were severed. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed on time if mailed in an envelope properly addressed to the Tax Commissioner and postmarked before midnight of the final filing date. The person required to make payments pursuant to section 57-702 shall, on or before the last day of the month next succeeding the month in which the resources were severed, make out and file with the Tax Commissioner a report or return for the preceding month in such form as may be prescribed by the Tax Commissioner showing: The business conducted by the person engaged in the severing during the preceding month; the kind and gross quantity and value of the resources so severed; the location of the place or places where the same were severed; and such other information as the Tax Commissioner may require.

**Source:** Laws 1955, c. 219, § 4, p. 612; Laws 1967, c. 351, § 2, p. 932; Laws 1983, LB 224, § 3.

**57-705 Tax; remittance; Severance Tax Fund; Severance Tax Administration Fund; created; use.**

(1) All severance taxes levied by Chapter 57, article 7, shall be paid to the Tax Commissioner. He or she shall remit all such money received to the State Treasurer. All such money received by the State Treasurer shall be credited to a fund to be known as the Severance Tax Fund. An amount equal to one percent of the gross severance tax receipts, excluding those receipts from tax derived from oil and natural gas severed from school lands, credited to the fund shall be credited by the State Treasurer, upon the first day of each month, and shall inure to the Severance Tax Administration Fund to be used for the expenses of administering Chapter 57, article 7. Transfers may be made from the Severance Tax Administration Fund to the General Fund at the direction of the Legislature. The balance of the Severance Tax Fund received from school lands shall be credited by the State Treasurer, upon the first day of each month, and shall inure to the permanent school fund.

(2) Of the balance of the Severance Tax Fund received from other than school lands (a) the Legislature may transfer an amount to be determined by the Legislature through the appropriations process up to three hundred thousand dollars for each year to the State Energy Office Cash Fund, (b) the Legislature may transfer an amount to be determined by the Legislature through the appropriations process up to thirty thousand dollars for each year to the Public

Service Commission for administration of the Municipal Rate Negotiations Revolving Loan Fund, and (c) the remainder shall be credited and inure to the permanent school fund.

(3) The State Treasurer shall transfer two hundred fifty thousand dollars from the Severance Tax Administration Fund to the Department of Revenue Enforcement Fund on July 1, 2009, or as soon thereafter as administratively possible. The State Treasurer shall transfer two hundred fifty thousand dollars from the Severance Tax Administration Fund to the Department of Revenue Enforcement Fund on July 1, 2010, or as soon thereafter as administratively possible.

**Source:** Laws 1955, c. 219, § 5, p. 612; Laws 1959, c. 261, § 1, p. 899; Laws 1967, c. 351, § 3, p. 933; Laws 1981, LB 257, § 2; Laws 1982, LB 799, § 1; Laws 1983, LB 228, § 4; Laws 1983, LB 607, § 2; Laws 1985, LB 126, § 1; Laws 1986, LB 258, § 10; Laws 1989, LB 727, § 2; Laws 1993, LB 5, § 2; Laws 1993, LB 364, § 20; Laws 1993, LB 670, § 1; Laws 2000, LB 1369, § 1; Laws 2003, LB 790, § 58; Laws 2009, LB316, § 15; Laws 2009, First Spec. Sess., LB3, § 32.

**57-706 Tax; security; notice; use.**

The Tax Commissioner, whenever he deems it necessary to insure compliance with the provisions of sections 57-701 to 57-715, may require any person subject to the tax to deposit with the Tax Commissioner suitable indemnity bond to insure payment of the taxes, levied under the provisions of sections 57-701 to 57-715, as the Tax Commissioner may determine. Such security may be used if it becomes necessary to collect any tax, interest, or penalty due. Notice of the use thereof shall be given to such person by either registered or certified mail.

**Source:** Laws 1955, c. 219, § 6, p. 612; Laws 1957, c. 242, § 48, p. 860; Laws 1967, c. 351, § 4, p. 934.

**57-707 Reports; payment of tax.**

Except as otherwise provided in sections 57-701 to 57-714, the reports required under the provisions of sections 57-701 to 57-714 shall be made and the taxes paid by the person required to make payments pursuant to section 57-702.

**Source:** Laws 1955, c. 219, § 7, p. 613; Laws 1983, LB 224, § 4.

**57-708 Tax; deductions permitted.**

The person, remitting to the Tax Commissioner the taxes levied by the provisions of sections 57-701 to 57-714, shall deduct, from the amount due the persons owning an interest in the oil or gas or in the proceeds thereof at the time of severance, the proportionate amount of such taxes before making payment to such persons.

**Source:** Laws 1955, c. 219, § 8, p. 613; Laws 1967, c. 351, § 5, p. 934.

**57-709 Tax; delinquent; action.**

The Tax Commissioner may bring an action against any person engaged in the severing of the oil or natural gas, or when such resources are sold in the state, against the first purchaser of the oil or natural gas, for the collection of

taxes which are due and delinquent under the provisions of sections 57-701 to 57-714.

**Source:** Laws 1955, c. 219, § 9, p. 613; Laws 1967, c. 351, § 6, p. 934; Laws 1983, LB 224, § 5.

**57-710 Tax; when delinquent; interest; penalty.**

The tax provided by sections 57-701 to 57-714 shall become delinquent after the last day of each month as provided in section 57-704. Any such tax not paid within the time specified shall bear interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date of delinquency until paid, and such tax together with the interest shall be a lien as provided in section 57-702. The Tax Commissioner shall charge and collect a penalty for the delinquency in the amount of one percent of the delinquent taxes for each month, or part thereof, that the delinquency has continued, but in no event shall the penalty be more than twenty-five percent of the delinquent taxes. The Tax Commissioner may waive all or part of the penalty provided in this section but shall not waive the interest.

**Source:** Laws 1955, c. 219, § 10, p. 613; Laws 1967, c. 351, § 7, p. 934; Laws 1983, LB 224, § 6; Laws 1986, LB 1027, § 197; Laws 1992, Fourth Spec. Sess., LB 1, § 6.

**57-711 Repealed. Laws 1983, LB 228, § 12.**

**57-712 Tax Commissioner; supervise tax collections.**

It is hereby made the duty of the Tax Commissioner to supervise and enforce collections of all taxes that may be due under the provisions of sections 57-701 to 57-714.

**Source:** Laws 1955, c. 219, § 12, p. 613; Laws 1967, c. 351, § 8, p. 935.

**57-713 Repealed. Laws 1983, LB 228, § 12.**

**57-714 Tax; delinquent; restrain severing resource; Attorney General; county attorney.**

The Attorney General or the county attorney of the county wherein the natural resources are located may file a petition in the district court of such county, and upon such filing, such district court shall have the power to restrain by injunction any person from continuing to sever such oil products while delinquent in any report or the payment of any tax, penalty, or cost required under the provisions of sections 57-701 to 57-714.

**Source:** Laws 1955, c. 219, § 14, p. 614.

**57-715 Repealed. Laws 1973, LB 527, § 2.**

**57-716 Producer; file certificate; contents.**

The producer or a person designated by the producer shall, for each oil or natural gas producing property, file a certificate with the crude oil or natural gas purchaser and the Tax Commissioner which identifies the name and location of the oil or natural gas producing property, the property class, and the date upon which the property qualified for the class so certified. Such person

shall notify the crude oil or natural gas purchaser and the Tax Commissioner of any changes in the property's classification.

**Source:** Laws 1983, LB 228, § 6.

**57-717 Severance tax collection; Tax Commissioner; powers and duties; penalty.**

(1) The Tax Commissioner shall establish procedures to insure that all severance taxes which are due are paid in full and in a timely manner and shall undertake to insure that all oil and natural gas producing property classifications are current and correct.

(2) If the Tax Commissioner is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the state by any person, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his or her possession or which may come into his or her possession. One or more deficiency determinations of the amount due for one or more than one period may be made. To the amount of the deficiency determination for each period shall be added a penalty equal to ten percent thereof. In making a determination, the Tax Commissioner may offset overpayments for any period, together with interest on the overpayments, against underpayments for any period, against penalties, and against interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in this section.

(3) If any person fails to make a return the Tax Commissioner shall make an estimate of the amount of severance tax due. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the Tax Commissioner's possession or may come into his or her possession. Upon the basis of this estimate, the Tax Commissioner shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to ten percent thereof. One or more determinations may be made for one or more than one period.

(4) The amount of the determination of any deficiency, exclusive of penalties, shall bear interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the last day of the month following the period for which the amount should have been returned until the date of payment.

(5) If any part of a deficiency for which a deficiency determination is made is the result of fraud or an intent to evade Chapter 57, article 7, or authorized rules and regulations, a penalty of twenty-five percent of the amount of the determination shall be added thereto.

(6) Promptly after making his or her determination, the Tax Commissioner shall give to the person written notice of his or her determination.

**Source:** Laws 1983, LB 228, § 7; Laws 1992, Fourth Spec. Sess., LB 1, § 7.

**57-718 Tax Commissioner; enforcement; powers and duties; records; requirements.**

(1) The Tax Commissioner shall enforce Chapter 57, article 7, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such article. 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 Chapter 57, article 7, and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by such article.

(3) Every person subject to Chapter 57, article 7, shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax Commissioner may require. Every such 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 liable for the severance 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.

(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.

**Source:** Laws 1983, LB 228, § 8.

#### **57-719 Violations; penalties.**

(1) Any person who willfully aids or assists in, or 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 Chapter 57, article 7, 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.

(2) Any person who violates or aids or abets in the violation of Chapter 57, article 7, except as otherwise provided, shall be guilty of a Class IV misdemeanor. In the case of a continuing violation, every day of violation shall be considered a separate offense.

(3) Any corporate officer or employee with the duty to pay taxes imposed upon a corporation or to perform some other act required of a corporation shall be personally liable under section 77-1783.01 for the payment of such taxes or penalties in the event of willful failure on his or her part to perform such act.

**Source:** Laws 1983, LB 228, § 9; Laws 1996, LB 1041, § 1.

### **ARTICLE 8 OIL AND GAS LIENS**

Section

57-801. Terms, defined.

57-802. Leasehold interest; oil and gas operations; labor and material; lien.

## Section

- 57-803. Lien; property covered.  
57-804. Subcontractor; lien.  
57-805. Forfeiture of leasehold interest; effect; failure of equitable interest to ripen into legal title; effect.  
57-806. Notice of lien; how given; effect.  
57-807. Extent of liability of owner; payment after notice, effect; right of offset.  
57-808. Lien; time of attaching.  
57-809. Lien; labor preferred over material.  
57-810. Labor and materials deemed furnished under single contract; lapse of time; effect.  
57-811. Lien; filing; statement; contents.  
57-812. Filing of statement; duties of county clerk; effect of filing; fee.  
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57-814. Lien; enforcement by civil action; statute of limitations.  
57-815. Actions; parties; defense; retention of funds.  
57-816. Actions; consolidation; intervention.  
57-817. Lien; removal of property; consent of holder of lien required.  
57-818. Judgments; sale under execution.  
57-819. Applicability of sections; liens granted prior to September 20, 1957; filing; enforcement; validity.  
57-820. Act, how cited.

**57-801 Terms, defined.**

As used in sections 57-801 to 57-820, unless the context otherwise requires:

- (1) Person shall mean an individual, corporation, firm, partnership, limited liability company, or association;
- (2) Owner shall mean a person or persons holding any interest, legal or equitable, in a leasehold interest held for oil or gas purposes or any pipeline, or his or her agent, and shall include purchasers under executory contract, receivers, trustees, guardians, executors, and administrators;
- (3) Contract shall mean a contract, written or oral, express or implied, or partly express and partly implied, or executory or executed, or partly executory and partly executed;
- (4) Material shall mean material, water, machinery, equipment, appliances, buildings, structures, tools, bits, or supplies but does not include rigs or hoists or their integral component parts except wire lines;
- (5) Labor shall mean work performed in return for wages;
- (6) Services shall mean work performed exclusive of labor, including the hauling of material, whether or not involving the furnishing of materials;
- (7) Furnish shall mean sell or rent;
- (8) Drilling shall mean drilling, digging, torpedoing, acidizing, cementing, completing, or repairing;
- (9) Operating shall mean all operations in connection with or necessary to the production of oil or gas;
- (10) Construction or constructing shall mean construction, maintenance, fabrication, or repair;
- (11) Pipeline shall mean any pipeline laid and designed as a means of transporting natural gas, oil, or gasoline, or their components or derivatives, and the right-of-way therefor; and

(12) Original contractor shall mean any person for whose benefit a lien is prescribed by section 57-802.

**Source:** Laws 1957, c. 241, § 1, p. 807; Laws 1993, LB 121, § 352.

**57-802 Leasehold interest; oil and gas operations; labor and material; lien.**

Any person, who shall under contract with the owner of any leasehold interest held for oil or gas purposes or the owner of any pipeline perform any labor, furnish any material or services used or employed or furnished to be used or employed in the drilling or operating of any oil or gas well upon such leasehold interest or in the construction of any pipeline or in the constructing of any material so used, employed, or furnished to be used or employed, shall be entitled to a lien under sections 57-801 to 57-820. Any such person shall be entitled to such lien whether or not a producing well is obtained and whether or not such material is incorporated in or becomes a part of the completed oil well, gas well, or pipeline, for the amount due him for the performance of such labor or the furnishing of such material or services. This shall include, without limiting the generality of the foregoing, transportation and mileage charges connected therewith.

**Source:** Laws 1957, c. 241, § 2, p. 808.

Oil well lien was obtained under contract with owner of leasehold interest. *Western Pipe & Supply, Inc. v. Heart Mountain Oil Co., Inc.*, 179 Neb. 858, 140 N.W.2d 813 (1966).

**57-803 Lien; property covered.**

Liens created under the provisions of section 57-802 shall extend to:

(1) The leasehold interest held for oil or gas purposes to which the materials or services were furnished, or for which the labor was performed, and the appurtenances thereunto belonging;

(2) All materials and fixtures owned by the owner or owners of such leasehold interest and used or employed, or furnished to be used or employed in the drilling or operating of any oil or gas well located thereon;

(3) All oil or gas wells located on such leasehold interest, and the oil or gas produced therefrom, and the proceeds thereof, exclusive of the interest therein owned by the owner of the underlying royalty or fee title; or

(4) The whole of the pipeline to which the materials or services were furnished, or for which labor was performed, and all buildings and appurtenances thereunto belonging. This shall include, without limiting the generality of the foregoing, gates, valves, pumps, pump stations, and booster stations, and all materials and fixtures owned by the owner or owners of such pipeline and used or employed or furnished to be used or employed in the construction thereof.

**Source:** Laws 1957, c. 241, § 3, p. 809.

**57-804 Subcontractor; lien.**

Any person, who shall under contract perform any labor or furnish any material or services as a subcontractor under an original contractor or for or to an original contractor or a subcontractor under an original contractor, shall be entitled to a lien upon all the property upon which the lien of an original contractor may attach to the same extent as an original contractor. The lien

provided for in this section shall further extend and attach to all materials and fixtures owned by such original contractor or subcontractor to or for whom the labor is performed or material or services furnished and used or employed, or furnished to be used or employed in the drilling or operating of such oil or gas wells, or in the construction of such pipeline.

**Source:** Laws 1957, c. 241, § 4, p. 810.

**57-805 Forfeiture of leasehold interest; effect; failure of equitable interest to ripen into legal title; effect.**

If a lien provided for in sections 57-801 to 57-820 attaches to a leasehold interest, forfeiture of such leasehold interest shall not impair any lien as to material, appurtenances, and fixtures located thereon and to which such lien has attached prior to forfeiture. If a lien provided for in sections 57-801 to 57-820 attaches to an equitable interest or to a legal interest contingent upon the happening of a condition subsequent, failure of such interest to ripen into legal title or such condition subsequent to be fulfilled, shall not impair any lien as to material, appurtenances, and fixtures located thereon and to which such lien had attached prior to such failure.

**Source:** Laws 1957, c. 241, § 5, p. 810.

**57-806 Notice of lien; how given; effect.**

Anything in sections 57-801 to 57-820 to the contrary notwithstanding, any lien claimed by virtue of the provisions of sections 57-801 to 57-820 insofar as it may extend to oil or gas or the proceeds of the sale of oil or gas shall not be effective against any purchaser of such oil or gas until written notice of such claim has been delivered to such purchaser. Such notice shall state the name of the claimant, his address, the amount for which the lien is claimed, and a description of the leasehold interest upon which the lien is so claimed. Such notice shall be delivered personally to the purchaser or by registered or certified mail addressed to the purchaser. Until such notice is delivered as above provided, no such purchaser shall be liable to the claimant for any oil or gas produced from the leasehold interest upon which the lien is claimed or the proceeds thereof except to the extent of such part of the purchase price of such oil or gas or the proceeds thereof as may be owing by such purchaser at the time of delivery of such written notice. Such purchaser shall withhold payments for such oil or gas runs to the extent of the lien amount claimed until such delivery of notice in writing that the claim has been paid.

**Source:** Laws 1957, c. 241, § 6, p. 810.

**57-807 Extent of liability of owner; payment after notice, effect; right of offset.**

Nothing in sections 57-801 to 57-820 shall be deemed to fix a greater liability upon an owner in favor of any claimant under an original contractor than the amount for which the owner would be liable to the original contractor. The risk of all payments made to the original contractor shall be upon the owner after the receipt of notice that a lien is claimed and has been filed as herein provided by a person other than the original contractor. An owner shall not have the right to offset obligations of the original contractor unless such obligations arise out of the original contract.

**Source:** Laws 1957, c. 241, § 7, p. 811.

**57-808 Lien; time of attaching.**

The lien provided for in sections 57-801 to 57-820 arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor. Upon compliance with the provisions of section 57-811, such lien shall be preferred to all other titles, charges, liens, or encumbrances which may attach to or upon any of the property upon which a lien is given by the provisions of sections 57-801 to 57-820 subsequent to the date the lien herein provided for arises.

**Source:** Laws 1957, c. 241, § 8, p. 811.

**57-809 Lien; labor preferred over material.**

All liens affixed by virtue of the provisions of sections 57-801 to 57-820 upon the same property shall be of equal standing except that liens of persons for the performance of labor shall be preferred to all other liens affixed by virtue of sections 57-801 to 57-820.

**Source:** Laws 1957, c. 241, § 9, p. 811.

**57-810 Labor and materials deemed furnished under single contract; lapse of time; effect.**

All labor performed or materials or services furnished by any person entitled to a lien under the provisions of sections 57-801 to 57-820 upon the same leasehold interest for oil and gas purposes or the same pipeline shall for the purposes of sections 57-801 to 57-820 be considered as having been performed or furnished under a single contract regardless of whether or not the same was performed or furnished at different times or on separate orders. Not more than four months shall however elapse between the date of performance of such labor or the date of furnishing such material or services and the date on which labor is next performed or materials or services are next furnished.

**Source:** Laws 1957, c. 241, § 10, p. 811.

**57-811 Lien; filing; statement; contents.**

Every person, claiming a lien under the provisions of sections 57-801 to 57-820, shall file in the office of the county clerk for the county in which the land identified with the leasehold interest, or pipeline, or some part thereof, is situated, a statement verified by an affidavit. This statement shall set forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner or owners of the leasehold interest or pipeline, if known, the name of the claimant and his mailing address, a description of the leasehold interest or pipeline, and if the claimant be a claimant under the provisions of section 57-804, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. The statement of lien must be filed within four months after the date on which the claimant's labor was last performed or his material or services were last furnished under a single contract as provided for in section 57-810.

**Source:** Laws 1957, c. 241, § 11, p. 812.

The purpose of this section is to furnish interested parties with sufficient information to enable them to understand the nature of the lien claimed. *Western Pipe & Supply, Inc. v. Heart Mountain Oil Co., Inc.*, 179 Neb. 858, 140 N.W.2d 813 (1966).

**57-812 Filing of statement; duties of county clerk; effect of filing; fee.**

Immediately upon receipt of the statement of lien mentioned in section 57-811, the county clerk shall give such statement a file number and shall file the same and in addition shall enter a record of the same in a book kept by him or her for that purpose, to be called Oil and Gas Lien Record, which shall be ruled off into separate columns with headings as follows: File Number, When Filed, Name of Owner, Name of Claimant, Amount Claimed, Description of Land, and Remarks, and the county clerk shall make the proper entries under each column. The lien statement shall have the same force and effect as the timely filing of a construction lien with reference to real estate and secured transactions as provided in article 9, Uniform Commercial Code, insofar as personal property is concerned. The fee to be charged by the county clerk for the filing of such lien statement shall be two dollars.

**Source:** Laws 1957, c. 241, § 12, p. 812; Laws 1969, c. 461, § 2, p. 1611; Laws 1999, LB 550, § 39.

**57-813 Filing of bond; procedure; effect.**

(1) Whenever any lien or liens shall be fixed or attempted to be fixed under the provisions of sections 57-801 to 57-820 then the owner or owners of the property on which the lien or liens are claimed or the contractor or subcontractor through whom such lien or liens are claimed, or either of them, may file a bond with the county clerk of the county in which the property is located. Such bond shall describe the property on which the lien or liens are claimed, shall refer to the lien or liens claimed in manner sufficient to identify them and shall be in double the amount of the claimed lien or liens referred to and shall be payable to the party or parties claiming same. Such bond shall be executed by the party filing the same as principal and by a corporate surety authorized to execute such bonds as surety in the State of Nebraska. It shall be conditioned substantially that the principal and surety will pay to the obligees named or their assigns the amounts of the liens so claimed by them with all costs in the event same shall be proven to be liens on such property.

(2) Upon the filing of such bond, the county clerk shall send a notice thereof, to all obligees named therein, by registered or certified mail addressed to such obligees at the address set forth in their respective claims for lien.

(3) Such bond, when filed, and such notice, when mailed, shall be recorded by the county clerk in the Oil and Gas Lien Record, and any purchaser or lender may rely upon the record of such bond and notice in acquiring any interest in said property and shall be protected absolutely thereby.

(4) Such bond, when filed, shall take the place of the property against which any claim for lien referred to in such bond is asserted. At any time within the period of time provided in section 57-814, any person claiming such lien may sue upon such bond but no action shall be brought upon such bond after the expiration of such period. One action upon the bond shall not exhaust the remedies thereon but each obligee or assignee of an obligee named therein may maintain a separate suit thereon in any court having jurisdiction.

**Source:** Laws 1957, c. 241, § 13, p. 813.

**57-814 Lien; enforcement by civil action; statute of limitations.**

Any lien provided for by the provisions of sections 57-801 to 57-820 may be enforced by civil action in the district court of the county in which the land identified with such leasehold interest, or pipeline, or some part thereof, is situated. Such action shall be brought within two years from the time of the filing of the lien statement as provided for in section 57-811.

**Source:** Laws 1957, c. 241, § 14, p. 814.

**57-815 Actions; parties; defense; retention of funds.**

In such actions all persons whose liens are filed as herein provided and other encumbrancers may be made parties and the issues shall be made and the trials shall be conducted as in other civil cases. Where such action is brought by any person other than an original contractor, the original contractor through whom such person claims a lien shall be made a party defendant and shall at his own expense defend against the claim and if the contractor fails to make such defense, the owner may make the same at the expense of such original contractor. Until all claims, costs, and expenses are finally adjudicated and defeated or satisfied, the owner shall be entitled to retain from the original contractor the amount thereof.

**Source:** Laws 1957, c. 241, § 15, p. 814.

**57-816 Actions; consolidation; intervention.**

If several actions brought to enforce liens under the provisions of sections 57-801 to 57-820 on the same property be pending at the same time, the court may order them to be consolidated. Any claimant having filed his statement of lien as provided by the provisions of sections 57-801 to 57-820 shall be entitled to intervene in any pending action brought to enforce a lien on the same property.

**Source:** Laws 1957, c. 241, § 16, p. 814.

**57-817 Lien; removal of property; consent of holder of lien required.**

When any lien provided for by sections 57-801 to 57-820 shall have attached to the property covered thereby, it shall be unlawful for any person to remove such property, or any part thereof, or cause the same to be removed from the premises where located at the time such lien attached or otherwise dispose of the same without the written consent of the holder of such lien.

**Source:** Laws 1957, c. 241, § 17, p. 814.

**57-818 Judgments; sale under execution.**

In all cases where judgment may be rendered in favor of any person to enforce a lien under the provisions of sections 57-801 to 57-820, the leasehold interest, pipeline, or other property shall be ordered to be sold as in other cases of sales of real estate.

**Source:** Laws 1957, c. 241, § 18, p. 815.

**57-819 Applicability of sections; liens granted prior to September 20, 1957; filing; enforcement; validity.**

All liens granted by the provisions of sections 57-801 to 57-820 shall be perfected and enforced in accordance with the provisions of sections 57-801 to 57-820 whether such liens arise before or after September 20, 1957. Any

unperfected lien granted under any statute in effect prior to September 20, 1957, and which could be subsequently perfected in accordance with such prior statute were it not for the existence of sections 57-801 to 57-820 may be perfected and enforced in accordance with the provisions hereof if the statement of lien required to be filed under section 57-811 is filed within the time therein required or within two months after September 20, 1957, whichever period is longer. The validity of any lien perfected prior to September 20, 1957, in accordance with the requirements of any statute in effect prior to such date shall be determined on the basis of such prior statute but the enforcement thereof shall, insofar as possible, be governed by the provisions of sections 57-801 to 57-820.

**Source:** Laws 1957, c. 241, § 19, p. 815.

**57-820 Act, how cited.**

Sections 57-801 to 57-820 shall be known and may be cited as the Oil and Gas Lien Act.

**Source:** Laws 1957, c. 241, § 21, p. 815.

**ARTICLE 9**

**OIL AND GAS CONSERVATION**

Section

- 57-901. Oil and gas conservation; purpose.
- 57-902. Waste of oil and gas; prohibited.
- 57-903. Oil and gas; terms, defined.
- 57-904. Nebraska Oil and Gas Conservation Commission; members; qualifications; appointment; term; quorum; vacancy; compensation.
- 57-905. Commission; powers and duties.
- 57-906. Oil and gas; drilling permit; abandonment permit; fee.
- 57-907. Commission; limitation on production; duties.
- 57-908. Commission; spacing units; establish.
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- 57-910. Unit or cooperative development; plans and agreements; authorization; not violations of law; approval by commission; effect.
  - 57-910.01. Unit or cooperative development; application for order for unit operation; contents.
  - 57-910.02. Unit or cooperative development; hearing; notice.
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57-911.	Commission; rules and regulations; filing fee.
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57-922.	Oil and Gas Conservation Trust Fund; receipts; disbursements.
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### **57-901 Oil and gas conservation; purpose.**

It is hereby declared to be in the public interest to foster, to encourage and to promote the development, production and utilization of natural resources of oil and gas in the state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that the greatest ultimate recovery of oil and gas be had; and that the correlative rights of all owners be fully protected; and to encourage and to authorize cycling, recycling, pressure maintenance and secondary recovery operations in order that the greatest possible economic recovery of oil and gas be obtained within the state to the end that the landowners, the royalty owners, the producers and the general public realize and enjoy the greatest possible good from these vital irreplaceable natural resources.

It is the intent and purpose of sections 57-901 to 57-921 to permit each and every oil and gas pool in Nebraska to be produced up to its maximum efficient rate of production, subject to the prohibition of waste as herein defined and subject further to the enforcement and protection of the correlative rights of the owners of a common source of oil or gas so that each common owner may obtain his just and equitable share of production therefrom.

**Source:** Laws 1959, c. 262, § 1, p. 900.

This and succeeding sections contemplate determination of correlative rights of adjoining owners in a pool of oil or gas shall be determined on a fair, reasonable, and equitable basis. *Farmers Irr. Dist. v. Schumacher*, 187 Neb. 825, 194 N.W.2d 788 (1972).

Lessee who refused to participate in a secondary recovery unit formed prior to compulsory unitization only entitled to recover for that which he would have produced by his own efforts without unitization. *Baumgartner v. Gulf Oil Co.*, 184 Neb. 384, 168 N.W.2d 510 (1969).

### **57-902 Waste of oil and gas; prohibited.**

Waste of oil and gas, or either of them, as defined in section 57-903, is prohibited in the State of Nebraska.

**Source:** Laws 1959, c. 262, § 2, p. 901.

### **57-903 Oil and gas; terms, defined.**

As used in sections 57-901 to 57-921, unless the context otherwise requires:

(1)(a) Waste, as applied to oil, shall include underground waste, inefficient, excessive, or improper use, or dissipation of reservoir energy, including gas

energy and water drive, surface waste, open pit storage, and waste incident to the production of oil in excess of the producer's aboveground storage facilities and lease and contractual requirements, but excluding storage, other than open pit storage, reasonably necessary for building up or maintaining crude stocks and products thereof for consumption, use, and sale; (b) waste, as applied to gas shall include (i) the escape, blowing, or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas from wells producing oil or both oil and gas and (ii) the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil or gas that might ultimately be produced, but excluding gas that is reasonably necessary in the drilling, completing, testing, and producing of wells and gas unavoidably produced with oil if it is not economically feasible for the producer to save or use such gas; and (c) waste shall also mean the abuse of the correlative rights of any owner in a pool due to nonuniform, disproportionate, unratable, or excessive withdrawals of oil or gas therefrom causing reasonably avoidable drainage between tracts of land or resulting in one or more owners in such pool producing more than his or her just and equitable share of the oil or gas from such pool;

(2) Commission shall mean the Nebraska Oil and Gas Conservation Commission;

(3) Person shall mean any natural person, corporation, association, partnership, limited liability company, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and any department, agency, or instrumentality of the state or of any governmental subdivision thereof;

(4) Oil shall mean crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas other than gas produced in association with oil and commonly known as casing-head gas;

(5) Gas shall mean all natural gas and all other fluid hydrocarbons not defined as oil;

(6) Pool shall mean an underground reservoir containing a common accumulation of oil or gas or both, each zone of the structure which is completely separated from any other zone in the same structure is a pool as that term is used in sections 57-901 to 57-921;

(7) Field shall mean the general area underlaid by one or more pools;

(8) Owner shall mean the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he or she produces therefrom either for himself or herself or for himself or herself and others;

(9) Producer shall mean the owner of a well or wells capable of producing oil or gas or both or any person who owns and operates a lease, or a unit of producing leases in which other persons own interests, with respect to such well or wells;

(10) Correlative rights shall mean the opportunity afforded to the owner of each property in a pool to produce, so far as it is reasonably practicable to do so without waste, his or her just and equitable share of the oil or gas, or both, in the pool; and

(11) The word and shall include the word or, and the word or shall include the word and.

**Source:** Laws 1959, c. 262, § 3, p. 901; Laws 1983, LB 228, § 5; Laws 1983, LB 224, § 7; Laws 1993, LB 121, § 353.

The definition of waste embraces abuse of a correlative right resulting in an owner in the pool producing more than his just and equitable share of the oil therefrom. *Ohmart v. Dennis*, 188 Neb. 260, 196 N.W.2d 181 (1972).

One form of waste is abuse of correlative rights of any owner in a pool of oil or gas whereby another owner avoidably drains

more than a just and equitable share from the pool. *Farmers Irr. Dist. v. Schumacher*, 187 Neb. 825, 194 N.W.2d 788 (1972).

Cited in discussion in recovery allowed lessee who refused to participate in a precompulsory unitization agreement. *Baumgartner v. Gulf Oil Co.*, 184 Neb. 384, 168 N.W.2d 510 (1969).

**57-904 Nebraska Oil and Gas Conservation Commission; members; qualifications; appointment; term; quorum; vacancy; compensation.**

There is hereby established the Nebraska Oil and Gas Conservation Commission. The commission shall consist of three members to be appointed by the Governor. The director of the state geological survey shall serve the commission in the capacity as its technical advisor, but with no power to vote. Any two commissioners shall constitute a quorum for all purposes. At least one member of the commission shall have had experience in the production of oil or gas and shall have resided in the State of Nebraska for at least one year. Each of the other members of the commission shall have resided in the State of Nebraska for at least three years. Initially, two of said members shall be appointed for a term of two years each; and one shall be appointed for a term of four years. At the expiration of the initial terms all members thereafter appointed shall serve for a term of four years. The Governor may at any time remove any appointed member of the commission for cause, and by appointment, with the approval of the Legislature, shall fill any vacancy on the commission. The members of the commission shall receive as compensation for their services the sum of fifty dollars per day for each day actually devoted to the business of the commission; *Provided*, that they shall not receive a sum in any one year in excess of two thousand dollars each. In addition, each member of the commission shall be reimbursed for his or her actual and necessary traveling and other expenses incurred in connection with the carrying out of his or her duties as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1959, c. 262, § 4, p. 902; Laws 1979, LB 90, § 1; Laws 1981, LB 204, § 99.

**57-905 Commission; powers and duties.**

(1) The commission shall have jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of sections 57-901 to 57-921.

(2) The commission shall have authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the commission.

(3) The commission shall have authority to require: (a) Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the production of oil and gas; (b) the making and filing of directional surveys, and reports on well location, drilling, and production within six months after the completion or abandonment of the well; (c) the drilling, casing, operating, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water

into oil or gas strata, the pollution of fresh water supplies by oil, gas, or salt water, and to prevent blowouts, cave-ins, seepages, and fires; (d) the furnishing of a reasonable bond with good and sufficient surety, conditioned for the performance of the duty to comply with all the provisions of the laws of the State of Nebraska and the rules, regulations, and orders of the commission; (e) that the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured; (f) the operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios; (g) metering or other measuring of oil, gas, or product in pipelines or gathering systems; (h) that every person who produces or purchases oil or gas in this state shall keep and maintain or cause to be kept and maintained for a five-year period complete and accurate records of the quantities thereof, which records shall be available for examination by the commission or its agents at all reasonable times, and that every such person file with the commission such reports as it may reasonably prescribe with respect to such oil or gas or the products thereof; and (i) that upon written request of any person, geologic information, well logs, drilling samples, and other proprietary information filed with the commission in compliance with sections 57-901 to 57-921, or any rule, regulation, or order of the commission, may be held confidential for a period of not more than twelve months.

(4) The commission shall have authority in order to prevent waste, to regulate: (a) The drilling, producing and plugging of wells, or test holes, and all other operations for the production of oil or gas; (b) the shooting and chemical treatment of wells; (c) the spacing of wells; (d) operations to increase ultimate recovery such as, but without limitation, the cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; and (e) disposal of oilfield wastes, including salt water.

(5) The commission shall not have authority to limit the production of oil or gas, or both, from any pool or field except to prevent waste therein.

(6) The commission shall have authority to classify wells as oil or gas wells for purposes material to the interpretation or enforcement of the provisions of sections 57-901 to 57-921.

(7) The commission shall have authority to promulgate and to enforce rules, regulations, and orders to effectuate the purposes and the intent of sections 57-901 to 57-921.

(8) The commission, with the approval of the Governor, shall have authority to establish and maintain its principal office and its books, papers, and records at such place in the state as it shall determine. The commission shall not have authority to purchase its principal office quarters.

(9) The commission shall have authority to require that all wells drilled for oil and gas shall be adequately logged with mechanical-electrical logging devices, and to require the filing of logs.

(10) The commission shall have the authority to regulate the drilling and plugging of seismic and stratigraphic tests in oil and gas exploration holes.

(11) The commission shall have the authority to act as the state jurisdictional agency pursuant to the Natural Gas Policy Act, Public Law 95-621, 92 Stat. 3350.

(12) The commission shall have the authority to have one or more examiners, who are employees of the commission, conduct any of its hearings, investiga-

tions, and examinations authorized by sections 57-901 to 57-921. Such examiner may exercise the commission's powers including, but not limited to, the taking of evidence and testimony under oath, resolving questions of fact and questions of law, and the entering of an order. Such order shall be entered in the commission's order journal. Any person having an interest in property affected by an order issued by an examiner and who is dissatisfied with such order may appeal to the commission by filing a petition on appeal to the commission within fifteen days of the entering of the examiner's order. Such person shall provide notice to all interested persons by personal service or registered or certified United States mail with return receipt, requiring such parties to answer within fifteen days from the date of service. Upon appeal, the commission shall hear the case de novo on the record and shall not be bound by any conclusions of the examiner. The commission shall hold a hearing on the appeal within forty-five days of the filing of an appeal to the commission and issue its order within fifteen days after the hearing. The commission shall review all orders issued by an examiner that are not appealed and issue an order concerning the examiner's order within sixty days after the examiner's order. The commission shall adopt, amend, or reject the examiner's order. Any order of an examiner which is not appealed to the commission and which the commission adopts shall not be appealable to the district court unless the commission adopts an order before the end of the time for appeal to the commission.

**Source:** Laws 1959, c. 262, § 5, p. 903; Laws 1961, c. 277, § 1, p. 811; Laws 1961, c. 278, § 1, p. 813; Laws 1967, c. 352, § 1, p. 936; Laws 1971, LB 355, § 1; Laws 1978, LB 661, § 2; Laws 1979, LB 56, § 1; Laws 1980, LB 709, § 2; Laws 1983, LB 356, § 1.

Oil and Gas Conservation Commission has authority hereunder to prevent waste and to regulate the drilling, producing and spacing of wells. *Farmers Irr. Dist. v. Schumacher*, 187 Neb. 825, 194 N.W.2d 788 (1972).

#### **57-906 Oil and gas; drilling permit; abandonment permit; fee.**

(1) It shall be unlawful to commence operations for the drilling of a well for oil or gas without first giving to the commission notice of intention to drill, and without first obtaining a permit from the commission, under such rules and regulations as may be reasonably prescribed by the commission, and by paying to the commission a fee of two hundred dollars for each such permit.

(2) It shall be unlawful to commence operations for the abandonment of a well with production casing in the hole without first giving to the commission notice of intention to abandon and without first obtaining the approval of the commission for such abandonment and paying to the commission a fee of one hundred dollars.

**Source:** Laws 1959, c. 262, § 6, p. 905; Laws 1967, c. 353, § 1, p. 938; Laws 1974, LB 804, § 1; Laws 1995, LB 407, § 1.

This section requires a permit from the Oil and Gas Conservation Commission before a well may be drilled. *Farmers Irr. Dist. v. Schumacher*, 187 Neb. 825, 194 N.W.2d 788 (1972).

#### **57-907 Commission; limitation on production; duties.**

(1) The commission shall limit the production of oil and gas from each pool to that amount which can be produced without waste in such pool.

(2) Whenever the commission limits the total amount of oil and gas which may be produced in any pool in this state to an amount less than that amount

which the pool could produce if no restriction was imposed, the commission shall allocate or distribute the allowable production among the several wells or producing properties in the pool on a reasonable basis, preventing or minimizing reasonably avoidable drainage from each developed area not equalized by counterdrainage, so that each property will have the opportunity to produce or to receive its just and equitable share, subject to the reasonable necessities for the prevention of waste.

(3) The commission shall give due regard to the fact that gas produced from oil pools is to be regulated in a manner as will protect the reasonable use of its energy for oil production.

(4) Each person now or hereafter purchasing or taking for transportation oil or gas from any owner or producer shall purchase or take ratably without discrimination in favor of any owner or producer in the same common source of supply offering to sell his oil or gas produced therefrom to such person or offering it to him for transportation.

**Source:** Laws 1959, c. 262, § 7, p. 905.

This section authorizes the Oil and Gas Conservation Commission to limit production to prevent waste and to allocate or distribute allowable production equitably. *Farmers Irr. Dist. v. Schumacher*, 187 Neb. 825, 194 N.W.2d 788 (1972).

**57-908 Commission; spacing units; establish.**

(1) When required to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the commission shall establish spacing units for a pool, except in those pools which, prior to September 28, 1959, have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing state of development. Spacing units when established shall be of substantially uniform size and shape for the entire pool, except that when found to be necessary for any of the purposes above mentioned, the commission is authorized to divide any pool into zones and establish spacing units for each zone, which units may differ in size and shape from those established in any other zone.

(2) The size and the shape of spacing units are to be such as will result in the efficient and economical development of the pool as a whole, and that size shall be the area that can be efficiently and economically drained by one well.

(3) An order establishing spacing units for a pool shall specify the size and shape of each unit and the location of the permitted well thereon in accordance with a reasonably uniform spacing plan. Upon application of the person entitled to drill and after hearing, if the commission finds that a well drilled at the prescribed location would not produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, the commission is authorized to enter an order permitting the well to be drilled at a location other than that prescribed by such spacing order; *Provided*, the commission shall include in the order suitable provisions to prevent the production from the spacing unit of more than its just and equitable share of the oil and gas in the pool.

(4) An order establishing units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be changed or modified by the commission from time to time, when found necessary for the prevention of waste, or to avoid the drilling of unnecessary wells, or to protect correlative rights.

**Source:** Laws 1959, c. 262, § 8, p. 906.

Pooling order herein was entered in conformity to requirements of act. Farmers Irr. Dist. v. Schumacher, 187 Neb. 825, 194 N.W.2d 788 (1972).

**57-909 Spacing unit; pooling of interests; order of commission; provisions for drilling and operation; costs; determination; recording.**

(1) When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or part of the spacing unit, then the owners and royalty owners thereof may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, the commission, upon the application of any interested person, or upon its own motion, shall be empowered to enter an order pooling all interests in the spacing unit for the development and operation thereof. Each such pooling order shall be made only after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, his just and equitable share. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

(2) Each such pooling order shall make provision for the drilling and operation of the authorized well on the spacing unit, and for the payment of the reasonable actual cost thereof, including a reasonable charge for supervision. As to each owner who refuses to agree upon the terms for drilling and operating the well, the order shall provide for reimbursement for his share of the costs out of, and only out of, production from the unit representing his interest, excluding royalty or other interest not obligated to pay any part of the cost thereof. In the event of any dispute as to such cost, the commission shall determine the proper cost. The order shall determine the interest of each owner in the unit, and may provide in substance that, as to each owner who agrees with the person or persons drilling and operating the well for the payment by the owner of his share of the costs, such owner, unless he has agreed otherwise, shall be entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the tract of the consenting owner; and as to each owner who does not agree, he shall be entitled to receive from the person or persons drilling and operating said well on the unit his share of the production applicable to his interest, after the person or persons drilling and operating said well have recovered two hundred percent of that portion of the costs and expenses of staking, well site preparation, drilling, reworking, deepening or plugging back, testing, completing, and other intangible expenses approved by the commission chargeable to each owner who does not agree, and one hundred percent of all equipment including wellhead connections, casing, tubing, packers, and other downhole equipment and surface equipment, including but not limited to stock tanks, separators, treaters, pumping equipment, and piping, plus one hundred percent of the nonconsenting owner's share of the cost of operation and a reasonable rate of interest on the unpaid balance. For the purpose of this section, the owner or owners of oil and gas rights in and under an unleased tract of land shall be regarded as a lessee to the

extent of a seven-eighths interest in and to such rights and a lessor to the extent of the remaining one-eighth interest therein.

(3) A certified copy of the order may be filed for record with the county clerk or register of deeds of the county, as the case may be, where the property involved is located, which recording shall constitute constructive notice thereof. The county clerk, or register of deeds, as the case may be, shall record the same in the real property records of the county and shall index the same against the property affected.

**Source:** Laws 1959, c. 262, § 9, p. 907; Laws 1978, LB 447, § 1.

Waste occurs when an owner in a pool produces more than his just and equitable share of the oil therefrom. *Ohmart v. Dennis*, 188 Neb. 260, 196 N.W.2d 181 (1972).

Pooling order herein was entered in conformity to requirements of act. *Farmers Irr. Dist. v. Schumacher*, 187 Neb. 825, 194 N.W.2d 788 (1972).

**57-910 Unit or cooperative development; plans and agreements; authorization; not violations of law; approval by commission; effect.**

Plans and agreements for the unit or cooperative development and operation of a field or pool, or a part of either, including those in connection with the conduct of repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, water floods or any other method of operation, are authorized and may be performed, and shall not be held or construed to violate any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade, if the plans and agreements are in the public interest, protective of correlative rights, and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas. If any such plan or agreement has been approved by the commission and an order authorizing unit operations has been entered by it pursuant to notice and hearing as provided in sections 57-910 to 57-910.12, it shall bind not only the persons who have executed such plan or agreement, but also all persons owning interests in oil and gas within the unit area.

**Source:** Laws 1959, c. 262, § 10, p. 908; Laws 1965, c. 343, § 1, p. 975.

**57-910.01 Unit or cooperative development; application for order for unit operation; contents.**

Any owner may file an application with the commission requesting an order for the unit operation of a pool, pools, or parts thereof and for the pooling of the interests in the oil and gas in the proposed unit area for the purpose of conducting such unit operation. The application shall contain:

(1) A description of the land and pool, pools, or parts thereof to be so operated, termed the unit area;

(2) The names of all persons owning or having an interest in the oil and gas in the proposed unit area or the production therefrom, including mortgagees and the owners of other liens or encumbrances, as disclosed by the public records in the county in which the unit area is situated and their addresses, if known. If the name or address of any person is unknown, the application shall so indicate;

(3) A statement of the type of the operations contemplated in order to effectuate the purposes of sections 57-910 to 57-910.12;

(4) A proposed plan of unitization applicable to the proposed unit area which the petitioner considers fair, reasonable, and equitable; and

(5) A proposed operating plan covering the manner in which the unit will be supervised and managed and costs allocated and paid, unless all owners within the unit area have already executed an operating agreement covering such supervision, management, and allocation and payment of costs.

**Source:** Laws 1965, c. 343, § 2, p. 976.

**57-910.02 Unit or cooperative development; hearing; notice.**

Upon filing of an application for an order providing for the unit operation of a pool, pools, or part thereof, and for the pooling of the interests in the oil and gas in the proposed unit area, the commission shall promptly set the matter for hearing and in addition to the notice otherwise required by section 57-911 or the commission rules shall cause notice of the hearing to be given by certified mail at least fifteen days prior to the date of hearing to all persons whose names are required to be set forth in such application.

**Source:** Laws 1965, c. 343, § 3, p. 976; Laws 1967, c. 354, § 1, p. 939.

**57-910.03 Unit or cooperative development; findings required; entry of order; written consents required; revocation of order.**

If after considering the application and hearing the evidence offered in connection therewith the commission finds that:

- (1) The material averments of the application are true;
- (2) Such unit operation is feasible, will prevent waste, and can reasonably be expected to increase substantially the ultimate recovery of oil or gas, or both;
- (3) The value of the estimated additional recovery of oil or gas will exceed the estimated additional costs incident to conducting unit operations;
- (4) The oil and gas allocated to each separately owned tract within the unit area under the proposed plan of unitization represents, so far as can be practicably determined, each such tract's just and equitable share of the oil and gas, or both, in the unit area; and
- (5) In case there are owners who have not executed an operating agreement or agreed to the proposed operating plan, that such proposed operating plan:
  - (a) Makes a fair and equitable adjustment among the owners within the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment which are contributed to the unit operation;
  - (b) Provides for a fair and equitable determination of the cost of unit operations, including capital investment, and establishes a fair and equitable method for allocating such costs to the separately owned tracts and for payment of such costs by the owners of such tracts, either directly or out of such owner's respective shares of unit production;
  - (c) Establishes, if necessary, a fair and equitable method for carrying or otherwise financing any owner who elects to be carried, or otherwise financed, allowing a reasonable interest charge for such service payable out of such owner's share of the unit production; and
  - (d) Provides that each owner shall have a vote in the supervision and conduct of unit operations corresponding to the percentage of the costs of unit operations chargeable against the interest of such owner; then the commission shall enter an order setting forth such findings and approving the proposed plan of unitization and proposed operating plan, if any. No order shall be entered by

the commission authorizing the commencement of unit operations unless and until there has been written consent to the proposed plan of unitization by those persons who own at least seventy-five percent of the unit production or proceeds thereof and to the proposed operating plan, if any, by those persons who will be required to pay at least sixty-five percent of the costs of the unit operation. If such consent has not been obtained at the time the order of approval is made, the commission shall, upon application, hold such supplemental hearings and make such findings as may be required to determine if there has been such consent so that a supplemental order authorizing the commencement of unit operations can be entered. Notice of any such supplemental hearing shall be given, by mail to each person who has previously entered his or her appearance, at least ten days prior to such supplemental hearing. If the required percentages of consent have not been obtained within a period of six months from the date on which the order of approval is made, such order shall be ineffective and shall be revoked by the commission unless, for good cause shown, the commission extends that time.

**Source:** Laws 1965, c. 343, § 4, p. 977; Laws 1967, c. 355, § 1, p. 942; Laws 1984, LB 1032, § 1.

The possible advantage in delay to nonpooling owners by allowance of a cost item for risk capital. Ohmart v. Dennis, 188 Neb. 260, 196 N.W.2d 181 (1972).  
being carried or otherwise financed may be lessened or offset by

**57-910.04 Repealed. Laws 1984, LB 1032, § 2.**

**57-910.05 Unit or cooperative development; order for unit operation; allocation of unit production.**

Upon application by an owner the commission, by order, may, in the same manner and subject to the same conditions as in an original order, provide for the unit operation of a pool or pools, or parts thereof, that embrace a unit area established by a previous order of the commission. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the previous order.

**Source:** Laws 1965, c. 343, § 6, p. 979.

**57-910.06 Unit or cooperative development; operations upon any portion of unit area; effect.**

All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the unit area by the several owners thereof. The portion of the unit production allocated to a separately owned tract in a unit area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon. Operations conducted pursuant to an order of the commission providing for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the orders of the commission.

**Source:** Laws 1965, c. 343, § 7, p. 979.

**57-910.07 Unit or cooperative development; unit production; allocation; property of several owners.**

The portion of the unit production allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

**Source:** Laws 1965, c. 343, § 8, p. 980.

**57-910.08 Unit or cooperative development; division orders; no termination by commission.**

No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by any commission order, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

**Source:** Laws 1965, c. 343, § 9, p. 980.

**57-910.09 Unit or cooperative development; commission order not to result in transfer of title.**

Except to the extent that the parties affected so agree, no commission order shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area.

**Source:** Laws 1965, c. 343, § 10, p. 980.

**57-910.10 Unit or cooperative development; lien of operator; establishment and enforcement; effect on nonconsenting owner.**

Subject to the limitations set forth in sections 57-910 to 57-910.12, and to such further limitations as may be set forth in the plan of unitization and operating plan, the operator of the unit shall have a first and prior lien for costs incurred pursuant to the plan of unitization and operating plan upon each owner's oil and gas rights and his share of unitized production to secure the payment of such owner's proportionate part of the cost of developing and operating the unit area. The lien may be established and enforced in the same manner as is provided by sections 57-801 to 57-820. For such purposes any nonconsenting owner shall be deemed to have contracted with the unit operator for his proportionate part of the cost of developing and operating the unit area.

**Source:** Laws 1965, c. 343, § 11, p. 980.

The possible advantage in delay to nonpooling owners by allowance of a cost item for risk capital. Ohmart v. Dennis, 188 Neb. 260, 196 N.W.2d 181 (1972).  
being carried or otherwise financed may be lessened or offset by

**57-910.11 Unit or cooperative development; owner of land not subject to lease; obligation to pay share of costs of unit operation; effect.**

Notwithstanding any provisions in sections 57-910 to 57-910.12 to the contrary, any person who owns an oil or gas interest within the unit area in a tract which is not subject to an oil and gas lease or similar contract shall be deemed, for purposes of this section, an owner obligated to pay costs of unit operations to the extent of seven-eighths of such interest and shall be deemed a royalty owner to the extent of one-eighth of such interest free from such costs.

**Source:** Laws 1965, c. 343, § 12, p. 980.

**57-910.12 Unit or cooperative development; certified order of commission; recording; effect as notice.**

A certified copy of any order of the commission entered under any provisions of sections 57-910 to 57-910.12 shall be entitled to be recorded in the office of the register of deeds for the counties where all or any portion of the unit area is located, and such recordation shall constitute notice thereof to all persons.

**Source:** Laws 1965, c. 343, § 13, p. 981.

**57-911 Commission; rules and regulations; filing fee.**

(1) The commission shall prescribe rules and regulations governing the practice and procedure before the commission.

(2) No rule, regulation, or order, or amendment thereof, except in an emergency, shall be made by the commission without a public hearing upon at least fifteen days' notice. The public hearing shall be held at such time and place as may be prescribed by the commission, and any interested person shall be entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the commission is authorized to issue an emergency order without notice or hearing which shall be effective upon promulgation. No emergency order shall remain effective for more than twenty days.

(4) Any notice required by the provisions of sections 57-901 to 57-921, except in proceedings involving a direct complaint by the commission, shall be given at the election of the commission either by personal service, registered or certified mail, or one publication in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated. The notice shall be issued in the name of the state, shall be signed by a member of the commission or its secretary, and shall specify the style and number of the proceedings, the time and place of the hearing, and the purpose of the proceeding. Should the commission notice be by personal service, such service may be made by any officer authorized to serve summons, or by any agent of the commission, in the same manner and extent as is provided by law for the service of summons in civil actions in the district courts of this state. Proof of the service by such agent shall be by his or her affidavit and proof of service by an officer shall be in the form required by law with respect to service of process in civil actions. In all cases where a complaint is made by the commission or the Director of the Nebraska Oil and Gas Conservation Commission that any part of any provision of sections 57-901 to 57-921, or any rule, regulation, or order of the commission is being violated, notice of the hearing to be held on such complaint shall be served on the interested parties in the same manner as is provided in the code of civil procedure for the service of process in civil actions in the district courts of this state. In addition to notices required by this section, the commission may provide for further notice of hearing in such proceedings as it may deem necessary in order to notify all interested persons of the pendency of such proceedings and the time and place of hearing and to afford such persons an opportunity to appear and be heard.

(5) All rules, regulations, and orders issued by the commission shall be in writing, shall be entered in full and indexed in books to be kept by the commission for that purpose, shall be public records open for inspection at all times during reasonable office hours, and shall be filed as provided by the Administrative Procedure Act. A copy of any rule, regulation, or order certified

by any member of the commission, or its secretary, under its seal, shall be received in evidence in all courts of this state with the same effect as the original.

(6) The commission may act upon its own motion or upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the commission, the commission shall promptly fix a date for a hearing thereon, and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The commission shall enter its order within thirty days after the hearing.

(7) A petition filed with the commission for a public hearing shall be accompanied by a filing fee of two hundred fifty dollars.

**Source:** Laws 1959, c. 262, § 11, p. 908; Laws 1961, c. 279, § 1, p. 816; Laws 1967, c. 354, § 2, p. 939; Laws 1967, c. 356, § 1, p. 944; Laws 1995, LB 407, § 2.

#### Cross References

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

The requirement that the commission enter its order within thirty days after hearing is directory, not mandatory. *Ohmart v. Dennis*, 188 Neb. 260, 196 N.W.2d 181 (1972).

Rule 13(b) adopted hereunder establishes regulations for all wells drilled to sources of supply at estimated depth exceeding

two thousand five hundred feet where no spacing pattern has been established by existing wells. *Farmers Irr. Dist. v. Schumacher*, 187 Neb. 825, 194 N.W.2d 788 (1972).

#### **57-912 Commission; witnesses; power of subpoena; failure to appear or testify; contempt.**

(1) The commission shall have the power to summon witnesses, to administer oaths and to require the production of records, books and documents for examination at any hearing or investigation conducted by it. Any oral or documentary evidence may be received, but the commission shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence, and no decision shall be rendered, sanction imposed or rule or order issued except on consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with a preponderance of the reliable probative and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of facts. No person shall be excused from attending and testifying, or from producing books, papers and records before the commission or a court, or from obedience to the subpoena of the commission or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; *Provided*, that nothing in this subsection shall be construed as requiring any person to produce any books, papers or records or to testify in response to any inquiry not pertinent to some question lawfully before such commission or court for determination. No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in spite of his objection, he may be required to testify or produce evidence, documentary or otherwise, before the commission or court, or in obedience to its subpoena; *Provided*, that no person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying.

(2) In case of failure or refusal on the part of any person to comply with the subpoena issued by the commission, or in case of the refusal of any witness to testify as to any matter regarding which he may be lawfully interrogated, any district court in the state, upon the application of the commission, may in term time or vacation issue an attachment for such person and compel him to comply with such subpoena, and to attend before the commission and produce such records, books and documents for examination, and to give his testimony. Such court shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

**Source:** Laws 1959, c. 262, § 12, p. 910.

#### **57-913 Appeal; procedure.**

Any person having an interest in property affected by and who is dissatisfied with any rule, regulation, or order made or issued under sections 57-901 to 57-921 may appeal the rule, regulation, or order, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1959, c. 262, § 13, p. 911; Laws 1961, c. 280, § 1, p. 818; Laws 1967, c. 357, § 1, p. 946; Laws 1988, LB 352, § 101.

#### **Cross References**

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

#### **57-914 Temporary restraining order; bond; limitation of actions.**

(1) No temporary restraining order or injunction of any kind against the commission or its agents, employees or representatives, or the Attorney General, shall become operative unless and until the plaintiff party shall execute and file with the clerk of the district court a bond in such amount and upon such conditions as the court issuing such order or injunction may direct, with surety approved by the clerk of the district court thereof. The bond shall be made payable to the State of Nebraska, and shall be for the use and benefit of all persons who may be and to the extent that they shall suffer injury or damage by any acts done under the protection of the restraining order or injunction, if the same should not have issued. No suit on the bond may be brought after six months from the date of the final determination of the suit in which the restraining order or injunction was issued.

(2) Any suit, action, or other proceedings based upon a violation of any of the provisions of sections 57-901 to 57-921 shall be commenced within one year from the date of the violation complained of.

**Source:** Laws 1959, c. 262, § 14, p. 912.

#### **57-915 Violations; penalty.**

(1) Any person who violates any provision of sections 57-901 to 57-921, or any rule, regulation or order of the commission shall be guilty of a Class II misdemeanor. Each day that such violation continues shall constitute a separate offense.

(2) If any person, for the purpose of evading the provisions of sections 57-901 to 57-921, or any rule, regulation or order of the commission, shall make or cause to be made any false entry or statement in a report required by the provisions of sections 57-901 to 57-921, or by any such rule, regulation or

order, or shall make or cause to be made any false entry in any record, account or memorandum required by the provisions of sections 57-901 to 57-921, or by any such rule, regulation or order, or shall remove from this state or destroy, mutilate, alter or falsify any such record, account or memorandum, such person shall be guilty of a Class II misdemeanor.

(3) Any person knowingly aiding or abetting any other person in the violation of any provision of sections 57-901 to 57-921, or any rule, regulation or order of the commission shall be subject to the same penalty as that prescribed by the provisions of sections 57-901 to 57-921 for the violation by such other person.

(4) The penalties provided in this section shall be recoverable by suit filed by the Attorney General in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there be more than one defendant, or in the district court of any county in which the violation occurred. The payment of any such penalty shall not operate to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of such violation.

**Source:** Laws 1959, c. 262, § 15, p. 913; Laws 1977, LB 39, § 59.

**57-916 Violations; injunction; parties; process.**

(1) Whenever it appears that any person is violating or threatening to violate any provision of sections 57-901 to 57-921, or any rule, regulation or order of the commission, the commission shall bring suit against such person in the district court of any county where the violation occurs or is threatened, to restrain such person from continuing such violation or from carrying out the threat of violation. Upon the filing of any such suit, summons issued to such person may be directed to the sheriff of any county in this state for service by such sheriff or his deputies. In any such suit, the court shall have jurisdiction and authority to issue, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant.

(2) If the commission shall fail to bring suit to enjoin a violation or threatened violation of any provision of sections 57-901 to 57-921, or any rule, regulation, or order of the commission, within ten days after receipt of written request to do so by any person who is or will be adversely affected by such violation, the person making such request may bring suit in his own behalf to restrain such violation or threatened violation in any court in which the commission might have brought suit. The commission shall be made a party defendant in such suit in addition to the person violating or threatening to violate a provision of sections 57-901 to 57-921, or a rule, regulation or order of the commission, and the action shall proceed and injunctive relief may be granted in the same manner as if suit had been brought by the commission; *Provided*, that in such event the person bringing suit shall be required to give bond in accordance with the rules of civil procedure in the district courts.

**Source:** Laws 1959, c. 262, § 16, p. 914.

**57-916.01 Violations; civil penalty; procedure.**

(1) In addition to the penalties prescribed in section 57-915, any person who violates any provision of sections 57-901 to 57-921, any rule, regulation, or order of the commission, or any term, condition, or limitation of any permit issued pursuant to such sections, rule, regulation, or order may be subject to a civil penalty imposed by the commission of not to exceed one thousand dollars.

No civil penalty shall be imposed until written notice is sent pursuant to subsection (2) of this section and a period of ten days has elapsed in which the person may come into compliance if possible. If any violation is a continuing one, each day a violation continues after such ten-day period shall constitute a separate violation for the purpose of computing the applicable civil penalty. The commission may compromise, mitigate, or remit such penalties.

(2) Whenever the commission intends to impose a civil penalty under this section, the commission shall notify the person in writing (a) setting forth the date, facts, and nature of each violation with which the person is charged, (b) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or permit involved in the violation, and (c) specifying the amount of each penalty which the commission intends to impose. Such written notice shall be sent by registered or certified mail to the last-known address of such person. The notice shall also advise such person of his or her right to a hearing and that failure to pay any civil penalty subsequently imposed by the commission will result in a civil action by the commission to collect such penalty. The person so notified may, within thirty days of receipt of such notice, submit a written request for a hearing to review any penalty to be imposed by the commission. A hearing shall be held in accordance with the Administrative Procedure Act, and any person upon whom a civil penalty is subsequently imposed may appeal such penalty pursuant to such act. On the request of the commission, the Attorney General or county attorney may institute a civil action to collect a penalty imposed pursuant to this section.

**Source:** Laws 1990, LB 922, § 1.

**Cross References**

Administrative Procedure Act, see section 84-920.

**57-917 Commission; director; appointment; compensation; bond or insurance.**

To enable the commission to carry out its duties and powers under the laws of this state with respect to conservation of oil and gas and to enforce sections 57-901 to 57-921 and the rules and regulations so prescribed, the commission shall employ one chief administrator who shall not be a member of the commission and who shall be known as the Director of the Nebraska Oil and Gas Conservation Commission, and as such he or she shall be charged with the duty of administering and enforcing the provisions of sections 57-901 to 57-921 and all rules, regulations, and orders promulgated by the commission, subject to the direction of the commission. The director shall be a qualified petroleum engineer with not less than three years' actual field experience in the drilling and operation of oil and gas wells. Such director shall hold office at the pleasure of the commission and receive a salary to be fixed by the commission. The director, with the concurrence of the commission, shall have the authority, and it shall be his or her duty, to employ assistants and other employees necessary to carry out the provisions of sections 57-901 to 57-921. The director shall be ex officio secretary of the Nebraska Oil and Gas Conservation Commission and shall keep all minutes and records of the commission. The director shall, as secretary, be bonded or insured as required by section 11-201. The premium shall be paid by the State of Nebraska. The director and other employees of the commission performing duties authorized by sections 57-901 to 57-921 shall be paid their necessary traveling and living expenses when

traveling on official business at such rates and within such limits as may be fixed by the commission, subject to existing laws.

**Source:** Laws 1959, c. 262, § 17, p. 914; Laws 1978, LB 653, § 19; Laws 2004, LB 884, § 31.

**57-918 Attorney General; act as legal advisor; administration of oath.**

The Attorney General shall be the attorney for the Nebraska Oil and Gas Conservation Commission; *Provided*, that in cases of emergency or in other special cases the commission may, with the consent of the Attorney General retain additional legal counsel, and for such purpose may use any funds available under the provisions of sections 57-901 to 57-921. Any member of the commission, or the secretary thereof, shall have the power to administer oaths to any witness in any hearing, investigation or proceeding contemplated by sections 57-901 to 57-921 or by any other law of this state relating to the conservation of oil and gas.

**Source:** Laws 1959, c. 262, § 18, p. 915.

**57-919 Oil and Gas Conservation Fund; investment; charges; exemptions; payment; report of producer; filing; interest; lien; penalties.**

(1) All money collected by the Tax Commissioner or the commission or as civil penalties under sections 57-901 to 57-921 shall be remitted to the State Treasurer for credit to a special fund to be known as the Oil and Gas Conservation Fund. Expenses incident to the administration of such sections shall be paid out of the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Oil and Gas Conservation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) There is hereby levied and assessed on the value at the well of all oil and gas produced, saved, and sold or transported from the premises in Nebraska where produced a charge not to exceed fifteen mills on the dollar. The commission shall by order fix the amount of such charge in the first instance and may, from time to time, reduce or increase the amount thereof as in its judgment the expenses chargeable against the Oil and Gas Conservation Fund may require, except that the amounts fixed by the commission shall not exceed the limit prescribed in this section. It shall be the duty of the Tax Commissioner to make collection of such assessments. The persons owning an interest, a working interest, a royalty interest, payments out of production, or any other interest in the oil and gas, or in the proceeds thereof, subject to the charge provided for in this section shall be liable to the producer for such charge in proportion to their ownership at the time of production. The producer shall, on or before the last day of the month next succeeding the month in which the charge was assessed, file a report or return in such form as prescribed by the commission and Tax Commissioner together with all charges due. In the event of a sale of oil or gas within this state, the first purchaser shall file this report or return together with any charges then due. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. Such reports or returns shall be considered filed on time if postmarked before midnight of the final filing date. Any such charge not paid within the time herein specified shall bear interest at the rate specified in

section 45-104.02, as such rate may from time to time be adjusted, from the date of delinquency until paid, and such charge together with the interest shall be a lien as provided in section 57-702. The Tax Commissioner shall charge and collect a penalty for the delinquency in the amount of one percent of the charge for each month or part of the month that the charge has remained delinquent, but in no event shall the penalty be more than twenty-five percent of the charge. The Tax Commissioner may waive all or part of the penalty provided in this section but shall not waive the interest. The person remitting the charge as provided in this section is hereby authorized, empowered, and required to deduct from any amounts due the persons owning an interest in the oil and gas or in the proceeds thereof at the time of production the proportionate amount of such charge before making payment to such persons. This subsection shall apply to all lands in the State of Nebraska, anything in section 57-920 to the contrary notwithstanding, except that there shall be exempted from the charge levied and assessed in this section the following: (a) The interest of the United States of America and the interest of the State of Nebraska and the political subdivisions thereof in any oil or gas or in the proceeds thereof; (b) the interest of any Indian or Indian tribe in any oil or gas or in the proceeds thereof produced from land subject to the supervision of the United States; and (c) oil and gas used in producing operations or for repressuring or recycling purposes. All money so collected shall be remitted to the State Treasurer for credit to the Oil and Gas Conservation Fund and shall be used exclusively to pay the costs and expenses incurred in connection with the administration and enforcement of sections 57-901 to 57-921.

**Source:** Laws 1959, c. 262, § 19, p. 915; Laws 1969, c. 584, § 56, p. 2380; Laws 1973, LB 527, § 1; Laws 1974, LB 804, § 2; Laws 1980, LB 709, § 3; Laws 1981, LB 167, § 33; Laws 1983, LB 224, § 8; Laws 1986, LB 1027, § 198; Laws 1992, Fourth Spec. Sess., LB 1, § 8; Laws 1994, LB 1066, § 44; Laws 1995, LB 407, § 3; Laws 1997, LB 97, § 1; Laws 2009, First Spec. Sess., LB3, § 33.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**57-920 Sections; jurisdiction.**

The State of Nebraska being a sovereign state and not disposed to jeopardize or surrender any of its sovereign rights, sections 57-901 to 57-921 shall apply to all lands in the State of Nebraska lawfully subject to its police powers; *Provided*, it shall apply to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands shall fail to effect the intent and purposes of sections 57-901 to 57-921 and otherwise shall apply to such lands to such extent as an officer of the United States having jurisdiction, or his duly authorized representative, shall approve any of the provisions of sections 57-901 to 57-921 or the order or orders of the commission which affects such lands; *and provided further*, the same shall apply to any lands committed to a unit agreement approved by the Secretary of the Interior of the United States, or his duly authorized representative, except that the commission may, under such unit agreements, suspend the application of the provisions of sections 57-901 to 57-921 or any part of sections 57-901 to 57-921 so long as the conservation of oil and gas and the prevention of waste, as provided in sections

57-901 to 57-921, is accomplished thereby but such suspension shall not relieve any operator from making such reports as are necessary or advised to be fully informed as to operations under such agreement and as the commission may require under the provisions of sections 57-901 to 57-921.

**Source:** Laws 1959, c. 262, § 20, p. 917.

The commission is authorized to suspend the operation of the conservation act in certain situations subject to the requirement that conservation and prevention of waste be accomplished. Ohmart v. Dennis, 188 Neb. 260, 196 N.W.2d 181 (1972).

**57-921 Commission; price or value of oil, gas, or other hydrocarbon substances; no power to fix.**

Notwithstanding anything heretofore contained in sections 57-901 to 57-921, the Nebraska Oil and Gas Conservation Commission shall have no authority to establish, fix or in any way control the price or value of oil, gas, other hydrocarbon substances or any of the products or component parts thereof.

**Source:** Laws 1959, c. 262, § 21, p. 917.

**57-922 Oil and Gas Conservation Trust Fund; receipts; disbursements.**

There is hereby created in the state treasury a special fund to be known as the Oil and Gas Conservation Trust Fund. All sums of money received by the Nebraska Oil and Gas Conservation Commission, in a manner other than as provided in sections 57-901 to 57-921, shall be paid into the state treasury and the State Treasurer shall deposit the money in the Oil and Gas Conservation Trust Fund. The State Treasurer shall disburse the money in the trust fund as directed by resolution of the Nebraska Oil and Gas Conservation Commission. All disbursements for the fund shall be made upon warrants drawn by the Director of Administrative Services.

**Source:** Laws 1973, LB 119, § 1.

**57-923 Well Plugging and Abandonment Trust Fund; created; use; investment; inactive oil or gas well; fee.**

The Well Plugging and Abandonment Trust Fund is created. The Nebraska Oil and Gas Conservation Commission shall adopt and promulgate rules and regulations that provide for the collection of a fee for each inactive oil or gas well administered by the commission. The fee shall not exceed two hundred dollars per well per year and shall not be imposed unless an oil or gas well has been inactive for two years or longer. The commission shall remit such fees to the State Treasurer for credit to the fund. The fund shall be used by the commission for the purpose of plugging and abandoning oil or gas wells and completing the required surface restoration if the bonded operator is unable to fulfill such operator's financial obligation. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1999, LB 293, § 1.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

## ARTICLE 10

## PROCESS ON OIL AND GAS EXPLORERS

## Section

57-1001. Service of process.

57-1002. Repealed. Laws 1983, LB 447, § 104.

**57-1001 Service of process.**

The performance of any service in connection with exploring for oil and gas, drilling wells therefor, regardless of whether such wells be dry, development of oil and gas interests, and operating and servicing oil and gas properties by (1) a nonresident of the State of Nebraska or (2) an agent or employer of any such persons, shall constitute sufficient contact with this state for exercise of personal jurisdiction over such person in any action arising out of the activities within the State of Nebraska.

**Source:** Laws 1961, c. 281, § 1, p. 819; Laws 1983, LB 447, § 76.

**57-1002 Repealed. Laws 1983, LB 447, § 104.**

## ARTICLE 11

## EMINENT DOMAIN FOR PIPELINES

## Section

57-1101. Acquisition of property by eminent domain; authorized; procedure.

57-1102. Crossing public roads or highways; rights acquired; restrictions.

57-1103. Easements across public lands; acquisition; assessment of damages.

57-1104. Appeal; procedure.

57-1105. Award; payment; rights acquired; limitation on determination on appeal.

57-1106. Breaking, injuring, damaging, or interfering with pipeline, plant, or equipment; penalty.

**57-1101 Acquisition of property by eminent domain; authorized; procedure.**

Any person engaged in, and any company, corporation, or association formed or created for the purpose of transporting or conveying crude oil, petroleum, gases, or other products thereof in interstate commerce through, or across the State of Nebraska, or intrastate within the State of Nebraska, and desiring or requiring a right-of-way or other interest in real estate, and being unable to agree with the owner or lessee of any land, lot, right-of-way or other property for the amount of compensation for the use and occupancy of so much of any lot, land, real estate, right-of-way or other property as may be reasonably necessary for the laying, relaying, operation and maintenance of any such pipeline or the location of any plant or equipment necessary to operate such pipeline, shall have the right to acquire the same for such purpose through the exercise of the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** Laws 1963, c. 323, § 1, p. 979.

**57-1102 Crossing public roads or highways; rights acquired; restrictions.**

Any such person, company, corporation or association, in the laying, relaying, operation and maintenance of any such pipeline within the State of Nebraska, shall have the right to enter upon and cross, with such pipeline, any public road or highway, under such reasonable regulations and restrictions as

may be prescribed by the Department of Roads, if it is a state or federal highway, or by the county board of each county, as to all other public roads and highways within such county, and shall also have the right to lay, relay, operate and maintain such pipeline in and along any public road or highway.

**Source:** Laws 1963, c. 323, § 2, p. 980.

**57-1103 Easements across public lands; acquisition; assessment of damages.**

Any person engaged in, and any company, corporation, or association formed or created for the purpose of transporting or conveying crude oil, petroleum, or other products thereof, in interstate commerce through, or across the State of Nebraska, or intrastate within the State of Nebraska, and desiring or requiring a right-of-way in the nature of an easement, for the purpose of laying, relaying, operating and maintaining any pipeline or lines for such purpose in or across any of the public lands except school lands which are not subject to the provisions of section 57-1102, the title of which is vested in the State of Nebraska, shall have the right to acquire the same for such purpose by filing with the other governing body having title or supervision thereof, a plat describing the portion or portions of land, real estate, or right-of-way necessary for the laying, relaying, operating and maintaining of any such pipeline, and the governing body shall direct the county commissioners of the county or counties through which such pipeline right-of-way is desired, shown by petitioners' application and maps, to appraise and fix the amount to be paid by such person, company, corporation, or association for such right-of-way, and assess the damages therefor. Before making the assessment, the governing body shall notify the applicant of the time and place of such hearing by either certified or registered mail, to be mailed at least ten days prior to the hearing.

**Source:** Laws 1963, c. 323, § 3, p. 980; Laws 1967, c. 466, § 1, p. 1444.

**57-1104 Appeal; procedure.**

Any party objecting to such allowance may, within thirty days from the entering of the award, appeal to the district court of the county in which such lands are situated by entering into an undertaking to the State of Nebraska, to be approved by the Board of Educational Lands and Funds or governing body, in such sum as the board shall specify, conditioned (1) that the appellant shall prosecute such appeal to effect without unnecessary delay; and (2) that if judgment be rendered against such appellant, he will satisfy such judgment. Within ten days from the filing of such bond, the board or governing body shall make a certified transcript of such proceedings with the board or governing body and transmit the same to the district court of the county in which such lands are situated, where the same shall be heard before the court as a proceeding in equity.

**Source:** Laws 1963, c. 323, § 4, p. 981.

**57-1105 Award; payment; rights acquired; limitation on determination on appeal.**

Upon the determination of the amount by the Board of Educational Lands and Funds or governing body, the applicant shall pay the amount to the treasurer of the county in which such lands are situated, for the use of the permanent school fund of this state, if such lands are school lands; as to other public lands such payment shall be made to the State Treasurer for the use of

the board or other governing body having title or supervision over such lands. Upon making said payment the applicant shall be vested with the right to lay, relay, operate and maintain such pipeline through the lands described in the proceedings, notwithstanding any appeal as taken or authorized by section 57-1104. Upon appeal the district court shall determine only the amount of the award and not whether a right-of-way is granted.

**Source:** Laws 1963, c. 323, § 5, p. 981.

**57-1106 Breaking, injuring, damaging, or interfering with pipeline, plant, or equipment; penalty.**

Any person who shall willfully and maliciously break, injure, damage, or otherwise interfere with, any such pipeline, plant, or equipment of any such person, company, corporation, or association, shall be guilty of a Class III misdemeanor.

**Source:** Laws 1963, c. 323, § 6, p. 981; Laws 1977, LB 39, § 60.

**ARTICLE 12**

**URANIUM SEVERANCE TAX**

Section

57-1201. Terms, defined.

57-1202. Tax; levy; person liable; due and payable; lien.

57-1203. Tax; rate.

57-1204. Tax; payment; when; reports; contents.

57-1205. Tax; remittance.

57-1206. Tax; security; notice; use.

57-1207. Report; payment of tax; by whom.

57-1208. Tax; deductions permitted.

57-1209. Tax; delinquent; action.

57-1210. Tax; when delinquent; penalty.

57-1211. False oath; penalty.

57-1212. Tax Commissioner; supervise tax collections; rules and regulations.

57-1213. Returns; failure to make; penalty.

57-1214. Delinquencies; Attorney General; county attorney; injunction.

**57-1201 Terms, defined.**

As used in sections 57-1201 to 57-1214, unless the context otherwise requires:

(1) Person shall mean any natural person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, limited liability company, company, corporation, or person acting under a declaration of trust;

(2) Sever shall mean to take from the land by any means whatsoever; and

(3) Uranium shall mean tri-uranium oct-oxide.

**Source:** Laws 1983, LB 356, § 13; Laws 1993, LB 121, § 354.

**57-1202 Tax; levy; person liable; due and payable; lien.**

A tax is hereby levied on all uranium severed from the soil of this state. Such tax shall be paid by the person engaged in the severing of such uranium, shall become due and payable monthly, and shall operate as a first lien on all such uranium. Such lien shall follow the resource into the hands of third persons,

whether the resource is acquired in good faith or bad faith or is in a manufactured or unmanufactured state.

**Source:** Laws 1983, LB 356, § 14.

**57-1203 Tax; rate.**

The tax imposed by section 57-1202 shall be levied on the value of the uranium severed, and shall be paid at the rate of two percent of the value of such uranium produced each year in excess of five million dollars gross value. The value shall be computed immediately after such severance at the place where the uranium is severed.

**Source:** Laws 1983, LB 356, § 15.

**57-1204 Tax; payment; when; reports; contents.**

The tax imposed by section 57-1202 shall be due and payable in monthly installments on or before the last day of the month next succeeding the month in which the uranium was severed. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed on time if mailed in an envelope properly addressed to the Tax Commissioner and postmarked before midnight of the final filing date. For good cause the Tax Commissioner may grant a taxpayer reasonable extensions of time for filing, not to exceed ten days in the aggregate for any one return.

The person engaged in the severing, on or before the last day of the month next succeeding the month in which the uranium was so severed, shall make out and file with the Tax Commissioner a report or return for the preceding month in such form as may be prescribed by the Tax Commissioner showing: The business conducted by the person engaged in the severing during the preceding month; the kind gross quantity, and value of the uranium so severed; the name of the owner of the resource at the time of the severance; the portion owned by each owner; the location of the place where the uranium is severed; and such other information as the Tax Commissioner may require.

**Source:** Laws 1983, LB 356, § 16.

**57-1205 Tax; remittance.**

The tax imposed by section 57-1202 shall be paid to the Tax Commissioner who shall pay all money received to the State Treasurer to be placed in the General Fund.

**Source:** Laws 1983, LB 356, § 17.

**57-1206 Tax; security; notice; use.**

The Tax Commissioner, whenever he or she deems it necessary to insure compliance with sections 57-1201 to 57-1214, may require any person subject to the tax imposed by section 57-1202 to deposit with the Tax Commissioner a suitable indemnity bond to insure payment of the tax as the Tax Commissioner may determine. Such security may be used if it becomes necessary to collect any tax, interest, or penalty due. Notice of the use of the bond shall be given to such person by either registered or certified mail.

**Source:** Laws 1983, LB 356, § 18.

**57-1207 Report; payment of tax; by whom.**

The tax imposed by section 57-1202 shall be paid and the report required by section 57-1204 shall be made by the person engaged in the severing of the uranium, whether or not he or she is the owner of the land from which the uranium is severed.

**Source:** Laws 1983, LB 356, § 19.

**57-1208 Tax; deductions permitted.**

The person remitting to the Tax Commissioner the tax imposed by section 57-1202 shall deduct, from the amount due any person owning an interest in the uranium or in the proceeds of the uranium at the time of severance, the proportionate amount of such tax before making payment to any such person.

**Source:** Laws 1983, LB 356, § 20.

**57-1209 Tax; delinquent; action.**

The Tax Commissioner may bring an action against any person engaged in the severing of uranium for the collection of taxes which are due and delinquent under sections 57-1201 to 57-1214.

**Source:** Laws 1983, LB 356, § 21.

**57-1210 Tax; when delinquent; penalty.**

The tax imposed by section 57-1202 shall become delinquent after the last day of each month and, in addition to the amount of the delinquent tax, there shall be paid and the Tax Commissioner shall collect a penalty for such delinquency in the amount of one percent of the delinquent taxes for each month, or part thereof, that the delinquency has continued.

**Source:** Laws 1983, LB 356, § 22.

**57-1211 False oath; penalty.**

Any person who shall intentionally make false oath to any return or report required by sections 57-1201 to 57-1214 shall be guilty of perjury and shall, upon conviction thereof, be punished as prescribed by section 28-915.

**Source:** Laws 1983, LB 356, § 23.

**57-1212 Tax Commissioner; supervise tax collections; rules and regulations.**

The Tax Commissioner shall supervise and enforce the collection of all taxes that may be due pursuant to sections 57-1201 to 57-1214. The commissioner may adopt and promulgate any rules and regulations necessary to carry out such sections, including, but not limited to, provisions concerning the manner in which the tax shall be paid and the form of required reports.

**Source:** Laws 1983, LB 356, § 24.

**57-1213 Returns; failure to make; penalty.**

Any person failing or refusing to make returns or reports, as required by sections 57-1201 to 57-1214, and remaining in default for thirty days after notice to him or her by the Tax Commissioner, or failing to comply with any

other requirement of sections 57-1201 to 57-1214, shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1983, LB 356, § 25.

**57-1214 Delinquencies; Attorney General; county attorney; injunction.**

The Attorney General or the county attorney of the county in which the uranium is located may file a petition in the district court of such county and, upon such filing, the district court shall have the power to restrain by injunction any person from continuing to sever such uranium while delinquent in any report or the payment of any tax, penalty, or cost required by sections 57-1201 to 57-1214.

**Source:** Laws 1983, LB 356, § 26.

**ARTICLE 13**

**NATURAL GAS UTILITY SERVICE AREAS**

Section

- 57-1301. Transferred to section 66-1858.
- 57-1302. Transferred to section 66-1859.
- 57-1303. Transferred to section 66-1860.
- 57-1304. Transferred to section 66-1861.
- 57-1305. Transferred to section 66-1862.
- 57-1306. Transferred to section 66-1863.
- 57-1307. Transferred to section 66-1864.

**57-1301 Transferred to section 66-1858.**

**57-1302 Transferred to section 66-1859.**

**57-1303 Transferred to section 66-1860.**

**57-1304 Transferred to section 66-1861.**

**57-1305 Transferred to section 66-1862.**

**57-1306 Transferred to section 66-1863.**

**57-1307 Transferred to section 66-1864.**



## CHAPTER 58

### MONEY AND FINANCING

#### Article.

1. Money. 58-101, 58-102.
2. Nebraska Investment Finance Authority. 58-201 to 58-272.
3. Small Business Development. 58-301 to 58-326.
4. Research and Development Authority. 58-401 to 58-443.
5. Nebraska Redevelopment Act. 58-501 to 58-533.
6. Nebraska Uniform Prudent Management of Institutional Funds Act. 58-601 to 58-619.
7. Nebraska Affordable Housing Act. 58-701 to 58-711.

#### ARTICLE 1

##### MONEY

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**Attachment**, subject to, see section 25-1004.

**Definition of money for tax purposes**, see section 77-106.

**Indictments, requirements of:**

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Money, how described, see section 29-1509.

**Interest and usury**, see Chapter 45.

**Taxation as intangible property**, see section 77-105.

#### Section

58-101. Money; denominations; public payments.

58-102. Money; demand expressed in another denomination; effect.

#### **58-101 Money; denominations; public payments.**

The money of account of this state is the dollar, cent and mill, and all public accounts, and the proceedings of all courts in relation to money, shall be kept and expressed in money of the above denominations.

**Source:** R.S.1866, c. 37, § 1, p. 269; R.S.1913, § 4015; C.S.1922, § 3418; C.S.1929, § 58-101; R.S.1943, § 58-101.

#### **58-102 Money; demand expressed in another denomination; effect.**

The provisions of section 58-101 shall not in any manner affect any demand expressed in money of another denomination; but such demand, in any suit or proceeding affecting the same, shall be reduced to the denominations in that section given.

**Source:** R.S.1866, c. 37, § 2, p. 269; R.S.1913, § 4016; C.S.1922, § 3419; C.S.1929, § 58-102; R.S.1943, § 58-102.

#### ARTICLE 2

##### NEBRASKA INVESTMENT FINANCE AUTHORITY

###### Cross References

**Age Discrimination in Employment Act**, applicability, see section 48-1002.

**Fair Employment Practice Act, Nebraska**, applicability, see section 48-1102.

**Public power districts**, applicability, see sections 70-625 and 70-704.

**Sex discrimination**, prohibition, applicability, see section 48-1220.

## MONEY AND FINANCING

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#### **58-201 Act, how cited.**

Sections 58-201 to 58-272 shall be known and may be cited as the Nebraska Investment Finance Authority Act.

**Source:** Laws 1983, LB 626, § 1; Laws 1986, LB 1230, § 29; Laws 1989, LB 311, § 1; Laws 1989, LB 706, § 1; Laws 1991, LB 253, § 1; Laws 1992, LB 1001, § 2; Laws 1996, LB 1322, § 1; Laws 2002, LB 1211, § 3; Laws 2006, LB 693, § 1.

#### **58-202 Cost and availability of financing; legislative findings and declarations.**

(1) The Legislature hereby finds and declares that:

(a) The high cost of agricultural loans and the general unavailability of such loans at favorable rates and terms for farmers, particularly beginning farmers, and other agricultural enterprises have resulted in decreased crop, livestock, and business productivity and prevented farmers and other agricultural enterprises from acquiring modern agricultural equipment and processes. These problems have made it difficult for farmers and other agricultural enterprises to maintain or increase their present number of employees and have decreased the supply of agricultural commodities available to fulfill the needs of the citizens of this state; and

(b) There exists in this state an inadequate supply of and a pressing need for farm credit and agricultural loan financing at interest rates and terms which are consistent with the needs of farmers, particularly beginning farmers, and other agricultural enterprises.

(2) The Legislature hereby finds and declares that:

(a) From time to time the high rates of interest charged by mortgage lenders seriously restrict existing housing transfers and new housing starts and the resultant reduction in residential construction starts causes a condition of substantial unemployment and underemployment in the construction industry;

(b) Such conditions generally result in and contribute to the creation of slums and blighted areas in the urban and rural areas of this state and a deterioration of the quality of living conditions within this state and necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident prevention, and other public services and facilities; and

(c) There exists in the urban and rural areas of this state an inadequate supply of and a pressing need for sanitary, safe, and uncrowded housing at prices at which low-income and moderate-income persons, particularly first-time homebuyers, can afford to purchase, construct, or rent and as a result such persons are forced to occupy unsanitary, unsafe, and overcrowded housing.

(3) The Legislature hereby finds and declares that:

(a) Adequate and reliable energy supplies are a basic necessity of life and sufficient energy supplies are essential to supplying adequate food and shelter;

(b) The cost and availability of energy supplies has been and will continue to be a matter of state and national concern;

(c) The increasing cost and decreasing availability of energy supplies for purposes of residential heating will limit the ability of many of Nebraska's citizens to provide the basic necessities of life and will result in a deterioration in living conditions and a threat to the health and welfare of the citizens of this state;

(d) Energy conservation through building modifications including, but not limited to, insulation, weatherization, and the installation of alternative energy devices has been shown to be a prudent means of reducing energy consumption costs and the need for additional costly facilities to produce and supply energy;

(e) Because of the high cost of available capital, the purchase of energy conservation devices is not possible for many Nebraskans. The prohibitively high interest rates for private capital create a situation in which the necessary capital cannot be obtained solely from private enterprise sources and there is a need for the stimulation of investment of private capital, thereby encouraging the purchase of energy conservation devices and energy conserving building modifications;

(f) The increased cost per capita of supplying adequate life-sustaining energy needs has reduced the amount of funds, both public and private, available for providing other necessities of life, including food, health care, and safe, sanitary housing; and

(g) The continuing purchase of energy supplies results in the transfer of ever-increasing amounts of capital to out-of-state energy suppliers.

(4) The Legislature hereby finds and declares that:

(a) There exist within this state unemployment and underemployment especially in areas of basic economic activity, caused by economic decline and need for diversification of the economic base, needlessly increasing public expenditures for unemployment compensation and welfare, decreasing the tax base, reducing tax revenue, and resulting in economic and social liabilities to the entire state;

(b) Such unemployment and underemployment cause areas of the state to deteriorate and become substandard and blighted and such conditions result in making such areas economic or social liabilities harmful to the economic and social well-being of the entire state and the communities in which they exist, needlessly increasing public expenditures, imposing onerous state and municipal burdens, decreasing the tax base, reducing tax revenue, substantially impairing or arresting the sound growth of the state and the municipalities, depreciating general state and community-wide values, and contributing to the spread of disease and crime which necessitate excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, and punishment, for the treatment of juvenile delinquency, for the maintenance of adequate police, fire, and accident protection, and for other public services and facilities;

(c) There exist within this state conditions resulting from the concentration of population of various counties, cities, and villages which require the construction, maintenance, and operation of adequate hospital and nursing facilities for the care of the public health. Since these conditions cannot be remedied by the ordinary operations of private enterprises and since provision of adequate hospital, nursing, and medical care is a public use, it is in the public interest that adequate hospital and medical facilities and care be provided in order to care for and protect the public health and welfare;

(d) Creation of basic economic jobs in the private sector and the promotion of health and welfare by the means provided under the Nebraska Investment Finance Authority Act and the resulting reduction of needless public expenditures, expansion of the tax base, provision of hospitals and health care and related facilities, and increase of tax revenue are needed within this state; and

(e) Stimulation of economic development throughout the state and the provision of health care at affordable prices are matters of state policy, public interest, and statewide concern and within the powers and authority inherent in and reserved to the state in order that the state and its municipalities shall not continue to be endangered by areas which consume an excessive proportion of their revenue, in order that the economic base of the state may be broadened and stabilized thereby providing jobs and necessary tax base, and in order that adequate health care services be provided to all residents of this state.

(5) The Legislature hereby finds and declares that:

(a) There is a need within this state for financing to assist municipalities, as defined in section 81-15,149, in providing wastewater treatment facilities and safe drinking water facilities. The federal funding provided for wastewater treatment facilities is extremely limited while the need to provide and improve wastewater treatment facilities and safe drinking water facilities is great;

(b) The construction, development, rehabilitation, and improvement of modern and efficient sewer systems and wastewater treatment facilities are essential to protecting and improving the state's water quality, the provision of adequate

wastewater treatment facilities and safe drinking water facilities is essential to economic growth and development, and new sources of financing for such projects are needed;

(c) The federal government has acted to end the system of federal construction grants for clean water projects and has instead provided for capitalization grants to capitalize state revolving funds for wastewater treatment projects and will soon expand that to include safe drinking water facilities, and the state has created or is expected to create appropriate funds or accounts for such purpose. The state is required or expected to be required to provide matching funds for deposit into such funds or accounts, and there is a need for financing in excess of the amount which can be provided by the federal money and the state match; and

(d) Additional assistance can be provided to municipalities as defined in section 81-15,149 to alleviate the problems of water pollution or the provision of safe drinking water by providing for the issuance of revenue bonds, the proceeds of which shall be deposited into the Wastewater Treatment Facilities Construction Loan Fund or the comparable state fund to finance safe drinking water facilities. Nothing in this section shall prohibit the provision of loans, including loans made pursuant to the Conservation Corporation Act, to a municipality as defined in section 81-15,149 for the construction, development, rehabilitation, operation, maintenance, and improvement of wastewater treatment facilities or safe drinking water facilities.

(6) The Legislature hereby finds and declares that:

(a) There is a need within this state for financing to assist public school boards and school districts and private for-profit or not-for-profit schools in connection with removal of materials determined to be hazardous to the health and well-being of the residents of the state and the reduction or elimination of accessibility barriers and that the federal funding provided for such projects is extremely limited and the need and requirement to remove such materials and to reduce or eliminate accessibility barriers from school buildings is great;

(b) The financing of the removal of such environmental hazards and the reduction or elimination of accessibility barriers is essential to protecting and improving the facilities in the state which provide educational benefits and services;

(c) The federal government has directed schools to remove such hazardous materials and to reduce or eliminate accessibility barriers; and

(d) The problems enumerated in this subsection cannot be remedied through the operation of private enterprise or individual communities or both but may be alleviated through the assistance of the authority to encourage the investment of private capital and assist in the financing of the removal of environmental hazards and the reduction or elimination of accessibility barriers in educational facilities in this state in order to provide for a clean, safe, and accessible environment to protect the health and welfare of the citizens and residents of this state.

(7) The Legislature hereby finds and declares that:

(a) The rapidly rising volume of waste deposited by society threatens the capacity of existing and future landfills. The nature of waste disposal means that unknown quantities of potentially toxic and hazardous materials are being buried and pose a constant threat to the ground water supply. In addition, the

nature of the waste and the disposal methods utilized allow the waste to remain basically inert for decades, if not centuries, without decomposition;

(b) Wastes filling Nebraska's landfills may at best represent a potential resource, but without proper management wastes are hazards to the environment and to the public health and welfare;

(c) The growing concern with ground water protection and the desire to avoid financial risks inherent in ground water contamination have caused many smaller landfills to close in favor of using higher-volume facilities. Larger operations allow for better ground water protection at a relatively lower and more manageable cost;

(d) The reduction of solid waste at the source and the recycling of reusable waste materials will reduce the flow of waste to landfills and increase the supply of reusable materials for the use of the public;

(e) There is a need within this state for financing to assist counties, cities, villages, entities created under the Interlocal Cooperation Act and the Joint Public Agency Act, and private persons with the construction and operation of new solid waste disposal areas or facilities and with the closure, monitoring, and remediation of existing solid waste disposal areas and facilities;

(f) Financing the construction and operation of new solid waste disposal areas and facilities and financing the closure, monitoring, and remediation of existing and former solid waste disposal areas and facilities in the state is essential to protect the environment and the public health and welfare;

(g) The federal government has directed that effective October 1, 1993, all solid waste disposal areas and facilities shall be upgraded to meet stringent siting, design, construction, operation, closure, monitoring, and remediation requirements; and

(h) The problems enumerated in this subsection cannot be remedied through the operation of private enterprise or individual communities or both but may be alleviated through the assistance of the authority to encourage the investment of private capital and to assist in the financing of solid waste disposal areas and facilities and in the removal of environmental hazards in solid waste disposal areas and facilities in this state in order to provide for a clean environment to protect the health and welfare of the citizens and residents of this state.

(8) The Legislature hereby finds and declares that:

(a) During emergencies the resources of political subdivisions must be effectively directed and coordinated to public safety agencies to save lives, to protect property, and to meet the needs of citizens;

(b) There exists a need for public safety communication systems for use by Nebraska's public safety agencies as defined in the Nebraska Public Safety Communication System Act;

(c) Investment in the public safety communication infrastructure is required to ensure the effectiveness of such public safety agencies. Since the maintenance of public safety is a paramount concern but the cost of purchasing and operating multiple communication infrastructures is prohibitive, it is imperative that political subdivisions cooperate in their efforts to obtain real and personal property to establish, operate, maintain, and manage public safety communication systems; and

(d) There is a need within this state for financing to assist political subdivisions and any entities created under the Interlocal Cooperation Act and the Joint Public Agency Act with the acquisition, construction, and operation of real and personal property of public safety communication systems.

(9) The Legislature hereby finds and declares that, as of May 27, 2005, and in connection with the financing of agricultural projects, there is a need to increase both the limit on individual net worth and the limit on the aggregate loan amount that may be provided by the authority. Such adjustments are necessary to address the inadequate supply of and pressing need for farm credit and agricultural loan financing at interest rates and terms that are consistent with the needs of farmers, particularly beginning farmers, and other agricultural enterprises.

(10) The Legislature hereby finds and declares that:

(a) The amount of funding and other resources available to remedy the problems identified in this section has been, and continues to be, insufficient. Accordingly, the authority must be provided with additional powers to adequately address the problems identified in this section with funding derived from public and private sources and state and federal sources;

(b) Carrying out the purposes of the Nebraska Investment Finance Authority Act may necessitate innovative agreements with public agencies and private entities and it is the policy of this state to encourage such public-private and intergovernmental cooperation; and

(c) Better, more broad-based sources of financing must be made available to the authority and by the authority to the private sector of the economy to enable the authority to address the problems identified in this section.

**Source:** Laws 1983, LB 626, § 2; Laws 1989, LB 706, § 2; Laws 1989, LB 311, § 2; Laws 1991, LB 253, § 2; Laws 1992, LB 1001, § 3; Laws 1992, LB 1257, § 67; Laws 1996, LB 1322, § 2; Laws 1999, LB 87, § 77; Laws 2002, LB 1211, § 4; Laws 2005, LB 90, § 16; Laws 2005, LB 343, § 1; Laws 2006, LB 693, § 2.

#### Cross References

**Conservation Corporation Act**, see section 2-4201.

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**Nebraska Public Safety Communication System Act**, see section 86-401.

#### 58-203 Authority; purpose for creation.

(1) The problems enumerated in section 58-202 cannot alone be remedied through the operation of private enterprise or individual communities or both but may be alleviated through the creation of a quasi-governmental body to:

(a) Encourage the investment of private capital and stimulate the construction of sanitary, safe, and uncrowded housing for low-income and moderate-income persons, particularly first-time homebuyers, through the use of public financing as provided by the Nebraska Investment Finance Authority Act at reasonable interest rates and by coordinating and cooperating with private industry and local communities which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(b) Encourage the investment of private capital to provide financing for farmers, particularly beginning farmers, and other agricultural enterprises of usual and customary size for such farming operations within the community at

interest rates lower than those available in conventional farm credit markets which is essential to alleviating the conditions described in section 58-202 and is in the public interest;

(c) Encourage the investment of private capital and stimulate the creation of basic economic activity, the creation of jobs, the provision of adequate health care, and the expansion of the tax base throughout the state through the use of public financing and by coordinating with private industry and local communities which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(d) Encourage the investment of private capital and assist in the construction, development, rehabilitation, and improvement of wastewater treatment facilities and safe drinking water facilities in this state to provide for clean water to protect the health and welfare of the citizens and residents of this state and promote economic well-being which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(e) Encourage the investment of private capital and assist schools through the use of public financing in the abatement of environmental hazards and the reduction and elimination of accessibility barriers in their school buildings or on their school grounds in order to protect the health and welfare of the citizens and residents of this state and promote economic well-being which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(f) Encourage the investment of private capital and assist in financing the construction and operation of new solid waste disposal areas and facilities and the closure, monitoring, and remediation of former and existing solid waste disposal areas and facilities;

(g) Encourage the investment of private capital and stimulate the construction and operation of any public safety communication project through the use of public financing as provided by the act at reasonable interest rates which is essential to addressing the needs described in section 58-202 and is in the public interest; and

(h) Encourage cooperation with public agencies and the use of entrepreneurial methods and approaches to better access federal, state, and local government resources and to stimulate more private sector initiatives and joint public-private initiatives to carry out the purposes of the Nebraska Investment Finance Authority Act.

(2) Alleviating the conditions and problems enumerated in section 58-202 through encouragement of private investment by a quasi-governmental body is a public purpose and use for which public money provided by the sale of bonds may be borrowed, expended, advanced, loaned, or granted. Such activities shall not be conducted for profit. Such activities are proper governmental functions and can best be accomplished by the creation of a quasi-governmental body vested with the powers and duties specified in the Nebraska Investment Finance Authority Act. The necessity for the provisions of the act to protect the health, safety, morals, and general welfare of all the people of this state is hereby declared to be a matter of legislative determination. The quasi-governmental body created by the act shall make financing available for new or existing housing to serve those people, particularly first-time homebuyers, whom private industry is unable to serve at current interest rates, shall make financing available for farmers, particularly beginning farmers, shall make

financing available for the construction, development, rehabilitation, and improvement of wastewater treatment facilities or safe drinking water facilities and for the construction, operation, closure, monitoring, and remediation of solid waste disposal areas and facilities in this state, shall make financing available to schools for the abatement of environmental hazards and the reduction and elimination of accessibility barriers, and shall make financing available for public safety communication projects in this state.

**Source:** Laws 1983, LB 626, § 3; Laws 1989, LB 311, § 3; Laws 1991, LB 253, § 3; Laws 1992, LB 1001, § 4; Laws 1992, LB 1257, § 68; Laws 1996, LB 1322, § 3; Laws 2002, LB 1211, § 5; Laws 2006, LB 693, § 3.

**58-204 Finance and development entities; legislative findings.**

The Legislature finds that the Nebraska Mortgage Finance Fund, the Nebraska Development Finance Fund, and the Agricultural Development Corporation have effectuated their respective public purposes.

**Source:** Laws 1983, LB 626, § 4; Laws 1991, LB 253, § 4.

**58-205 Consolidation of various finance and development entities; legislative findings.**

The Legislature further finds that the use of a single staff by the Nebraska Mortgage Finance Fund, the Nebraska Development Finance Fund, and the Agricultural Development Corporation has proven to be very efficient and that it would promote an even more efficient operation of the activities of such entities if they were consolidated into a single entity with a single governing body.

**Source:** Laws 1983, LB 626, § 5; Laws 1991, LB 253, § 5.

**58-206 Assistance and expertise; provided by single finance and development entity; legislative findings.**

The Legislature further finds that:

(1) In many instances local communities, citizens of the state, and private enterprise lack the knowledge and technical expertise necessary to take advantage of the public purpose financings offered by the Nebraska Mortgage Finance Fund, the Nebraska Development Finance Fund, the Agricultural Development Corporation, and local industrial development revenue bond options, resulting in less than full realization of the public purpose benefits of such financings to the state and its citizens;

(2) It is in the interest of the state and its citizens, as well as local communities, to provide assistance and expertise to enable local communities, citizens, and private enterprise to more fully realize the benefits available to the general public; and

(3) Such assistance and expertise can be provided by a single quasi-governmental entity with a professional staff.

**Source:** Laws 1983, LB 626, § 6; Laws 1991, LB 253, § 6.

**58-207 Definitions, where found.**

For purposes of the Nebraska Investment Finance Authority Act, unless the context otherwise requires, the definitions found in sections 58-207.01 to 58-225 shall be used.

**Source:** Laws 1983, LB 626, § 7; Laws 1984, LB 1084, § 3; Laws 1989, LB 706, § 3; Laws 1991, LB 253, § 7; Laws 1992, LB 1001, § 5; Laws 1996, LB 1322, § 4; Laws 2006, LB 693, § 4.

**58-207.01 Abatement, defined.**

Abatement shall include, but not be limited to, any (1) inspection and testing regarding environmental hazards, (2) maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate environmental hazards, (3) removal or encapsulation of environmentally hazardous material or property, (4) restoration or replacement of material or property, (5) related architectural and engineering services, and (6) other action to reduce or eliminate environmental hazards in the school buildings or grounds under the school's control. Abatement shall not include the encapsulation of any material containing more than one percent friable asbestos.

**Source:** Laws 1989, LB 706, § 4; Laws 1991, LB 253, § 8; Laws 1992, LB 1001, § 6.

**58-207.02 Accessibility barrier, defined.**

Accessibility barrier shall mean anything which impedes entry into, exit from, or use of any building or facility by all people.

**Source:** Laws 1992, LB 1001, § 7.

**58-207.03 Accessibility barrier elimination, defined.**

Accessibility barrier elimination shall include, but not be limited to, inspection for and removal of accessibility barriers, maintenance to reduce, lessen, put an end to, diminish, control, dispose of, or eliminate accessibility barriers, related restoration or replacement of facilities or property, any related architectural and engineering services, and any other action to reduce or eliminate accessibility barriers in the school buildings or on the school grounds under the control of the school board. Accessibility barrier elimination project costs shall include, but not be limited to, inspection, maintenance, accounting, emergency services, consultation, or any other action to reduce or eliminate accessibility barriers.

**Source:** Laws 1992, LB 1001, § 8.

**58-208 Agriculture or agricultural enterprise, defined.**

Agriculture or agricultural enterprise shall mean the real and personal property constituting farms and ranches.

**Source:** Laws 1983, LB 626, § 8; Laws 1991, LB 253, § 9.

**58-209 Authority, defined.**

Authority shall mean the Nebraska Investment Finance Authority.

**Source:** Laws 1983, LB 626, § 9; Laws 1991, LB 253, § 10.

**58-209.01 Blighted area, defined.**

Blighted area shall mean an area within a city or village (1) which by reason of the presence of a substantial number of deteriorated or deteriorating structures, defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or conditions which endanger life or property by fire and other causes or any combination of such factors substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations, or constitutes an economic or social liability and is detrimental to the public health, safety, morals, or welfare in its present condition and use and (2) in which there is at least one of the following conditions: (a) Unemployment in the designated area is at least one hundred twenty percent of the state or national average; (b) the average age of the residential or commercial units in the area is at least forty years; (c) more than half of the plotted and subdivided property in the area is unimproved land that has been within the city or village for forty years and has remained unimproved during that time; (d) the per capita income of the area is lower than the average per capita income of the municipality in which the area is designated; or (e) the area has had either stable or decreasing population based on the last two decennial censuses. A city of the metropolitan, primary, or first class shall not designate more than thirty-five percent of the city as blighted, a city of the second class shall not designate an area larger than fifty percent of the city as blighted, and a village shall not designate an area larger than one hundred percent of the village as blighted.

**Source:** Laws 1984, LB 1084, § 4; Laws 1991, LB 253, § 11.

**58-210 Bond, defined.**

Bond shall mean any bond, note, debenture, interim certificate, bond anticipation note, or other evidence of financial indebtedness.

**Source:** Laws 1983, LB 626, § 10; Laws 1991, LB 253, § 12.

**58-210.01 Environmental hazard, defined.**

Environmental hazard shall mean any contamination of the air, water, or land surface or subsurface caused by any substance adversely affecting human health or safety, if such substance has been declared hazardous by a federal or state statute, rule, or regulation.

**Source:** Laws 1989, LB 706, § 5; Laws 1991, LB 253, § 13.

**58-210.02 Economic-impact project, defined.**

(1) Economic-impact project means 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:

(a) Any land, building, or other improvement, including, but not limited to, infrastructure;

(b) Any real or personal property;

- (c) Any equipment; and
  - (d) Any undivided or other interest in any property described in subdivision (a), (b), or (c) of this subsection.
- (2) Economic-impact project does not include any operating capital.

**Source:** Laws 2006, LB 693, § 5.

**58-211 Financing agreement, defined.**

Financing agreement shall mean any contractual obligation between the authority and another entity with respect to the financing which shall include without limitation refinancing of a project or projects and shall include without limitation a lease agreement, loan agreement, sale contract, take-or-pay contract, or user agreement. The financing agreement shall provide for payments by such other entity to the authority in such amounts that the authority shall be able to pay on a timely basis interest on the bonds issued in connection with such agreement, the principal of such bonds, and any redemption prices or premiums with respect thereto. The financing agreement may provide that the obligation to make such payments shall be secured or evidenced in such manner as the authority deems appropriate to provide adequate security for the authority and the holders of the bonds issued in connection with such agreements. The financing agreement shall also contain provisions with respect to the acquisition, construction, rehabilitation, improvement, or refinancing of a project to effectuate the public purposes of the Nebraska Investment Finance Authority Act and provide that the agreement is not subject to assumption except under such circumstances as the authority determines are consistent with the public purposes to be carried out.

**Source:** Laws 1983, LB 626, § 11; Laws 1991, LB 253, § 14.

**58-211.01 First-time homebuyer, defined.**

First-time homebuyer shall mean a low-income or moderate-income person who has had no present ownership interest in his or her principal residence at any time during the three-year period ending on the date a mortgage loan financed by the authority is received.

**Source:** Laws 1991, LB 253, § 15.

**58-212 Hospital or nursing home, defined.**

Hospital or nursing home shall mean (1) any private nonprofit hospital, nonprofit nursing home, corporation, association, or institution, (2) any public hospital, public nursing home, or institution authorized by law to provide or operate health facilities in this state, and (3) any cooperative hospital service organization which is described in section 501(c) of the Internal Revenue Code or any similar nonprofit corporation, whether or not such corporation is exempt from federal income taxation pursuant to section 501(e) of the Internal Revenue Code.

**Source:** Laws 1983, LB 626, § 12; Laws 1991, LB 253, § 16; Laws 1995, LB 574, § 54.

**58-213 Insurer, defined.**

Insurer shall mean (1) an agency, department, administration, or instrumentality, corporate or otherwise, of or in the United States Department of Housing

and Urban Development, the Farmers Home Administration of the United States Department of Agriculture, or the United States Department of Veterans Affairs, (2) any private insurance company, or (3) any other public or private agency which insures or guarantees loans, including mortgage loans.

**Source:** Laws 1983, LB 626, § 13; Laws 1991, LB 2, § 9; Laws 1991, LB 253, § 17.

**58-214 Lender, defined.**

Lender shall mean (1) any federally chartered or state-chartered bank, federal land bank, production credit association, bank for cooperatives, savings and loan association, building and loan association, or small business investment company, (2) the Wastewater Treatment Facilities Construction Loan Fund, or (3) any other institution or fund qualified within the state to originate or service loans, including, but not limited to, insurance companies, credit unions, and mortgage loan companies.

**Source:** Laws 1983, LB 626, § 14; Laws 1989, LB 311, § 4; Laws 1991, LB 253, § 18.

**58-215 Loan, defined.**

Loan shall mean any lending arrangement pursuant to a financing agreement.

**Source:** Laws 1983, LB 626, § 15.

**58-216 Low-income or moderate-income person, defined.**

Low-income or moderate-income person shall mean any person irrespective of race, religion, creed, national origin, or sex determined by the authority to be eligible for such assistance as is made available by the Nebraska Investment Finance Authority Act on account of insufficient personal or family income, taking into consideration without limiting the generality thereof such factors as:

- (1) The amount of income of such person available for housing needs;
- (2) Size of family;
- (3) Cost and condition of housing available;
- (4) Whether such person is elderly, infirm, or disabled;
- (5) The ability of such person to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing sanitary, safe, and uncrowded housing; and
- (6) Existing federal guidelines or standards for determining low income and moderate income.

**Source:** Laws 1983, LB 626, § 16; Laws 1991, LB 253, § 19.

**58-216.01 Microenterprise, defined.**

Microenterprise shall mean any business, whether new or existing, with less than ten employees, less than twenty-five thousand dollars of net assets, and less than one hundred thousand dollars of annual sales.

**Source:** Laws 1996, LB 1322, § 5.

**58-217 Mortgage, defined.**

Mortgage shall mean a mortgage deed, deed of trust, or other instrument securing a mortgage loan and constituting a lien on real property held in fee simple or on a leasehold under a lease having a remaining term at the time such mortgage is acquired of not less than the term for repayment of the mortgage loan secured by such mortgage which is improved by residential housing.

**Source:** Laws 1983, LB 626, § 17; Laws 1991, LB 253, § 20.

**58-218 Mortgage loan, defined.**

Mortgage loan shall mean an interest-bearing obligation which may be secured by a mortgage or such other security as the authority deems appropriate.

**Source:** Laws 1983, LB 626, § 18; Laws 1991, LB 253, § 21.

**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;

(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; 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, and 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, 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 1084, § 5; Laws 1984, LB 372, § 10; 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.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**58-219.01 Public agency, defined.**

Public agency means any:

(1) County, city, or village; school, drainage, tax, improvement, or other district; local or regional housing agency; department, division, or political subdivision of this state or another state; housing agency or housing trust of this state or another state; and other agency, bureau, office, authority, or instrumentality of this state or another state;

(2) Board, agency, commission, division, or other instrumentality of a city, village, or county; and

(3) Board, commission, agency, department, or other instrumentality of the United States, or any political subdivision or governmental unit thereof, and in each case, any affiliates thereof.

**Source:** Laws 2006, LB 693, § 7.

**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 as may be incidental or appurtenant thereto.

**Source:** Laws 1983, LB 626, § 20; Laws 1991, LB 253, § 23.

**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 the State Energy Office, 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, 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 the State Energy Office by rule or regulation identifies.

**Source:** Laws 1983, LB 626, § 21; Laws 1991, LB 253, § 24.

#### **58-222 Residential housing, defined.**

Residential housing shall mean a specific work or improvement within this state undertaken primarily to provide single-family 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 and such other nonhousing facilities as may be incidental or appurtenant thereto, including residential energy conservation devices.

**Source:** Laws 1983, LB 626, § 22; Laws 1991, LB 253, § 25.

#### **58-223 Residential energy conservation loan program, defined.**

Residential energy conservation loan program shall mean a system by which loans and mortgage loans for residential energy conservation devices are made to low-income and moderate-income persons pursuant to the Nebraska Investment Finance Authority Act.

**Source:** Laws 1983, LB 626, § 23; Laws 1991, LB 253, § 26.

#### **58-223.01 School, defined.**

School shall mean (1) any school board or school district and (2) any private for-profit or not-for-profit institution, the primary purpose of which is to provide educational instruction if such institution is available for attendance by members of the general public.

**Source:** Laws 1989, LB 706, § 6; Laws 1991, LB 253, § 27.

#### **58-224 State, defined.**

State shall mean the State of Nebraska.

**Source:** Laws 1983, LB 626, § 24.

#### **58-225 Utility, defined.**

Utility shall mean an entity which provides electricity or natural gas to retail customers in the state.

**Source:** Laws 1983, LB 626, § 25; Laws 1991, LB 253, § 28.

**58-226 Nebraska Investment Finance Authority; created; members; qualifications.**

(1) There is hereby created a body politic and corporate, not a state agency, but an independent instrumentality exercising essential public functions, to be known as the Nebraska Investment Finance Authority. The authority shall have the powers and duties set forth in the Nebraska Investment Finance Authority Act.

(2) The authority shall be composed of nine members as follows:

(a) The Director of Agriculture, the Director of Economic Development, and the chairperson of the Nebraska Investment Council who shall be ex officio members; and

(b) Six public members who shall be appointed by the Governor as follows:

(i) One member shall be experienced in real estate development;

(ii) One member shall be experienced in industrial mortgage credit, commercial credit, agricultural credit, or housing mortgage credit;

(iii) One member shall be experienced in banking or investment banking;

(iv) One member shall be experienced in home building or shall be a licensed real estate broker;

(v) One member shall be experienced in agricultural production; and

(vi) One member shall be appointed at large.

(3) All members shall be residents of the state. Of the public members, two members shall be appointed from each congressional district. Of the six public members, not more than three shall belong to the same political party. The three ex officio members may each designate a representative to perform their respective duties under the act. It shall not constitute a conflict of interest for members of the authority to serve on any other public board or commission.

**Source:** Laws 1983, LB 626, § 26; Laws 1991, LB 253, § 29.

**58-227 Authority; public members; terms; vacancies; removal.**

Of the six public members first appointed to the authority, three shall be appointed to terms of office expiring on January 15, 1985, and the remaining three to terms of office expiring on January 15, 1987. All subsequent appointments shall be for terms of four years. Vacancies in the public membership of the authority shall be filled for the unexpired term by appointment by the Governor. Each member shall hold office for the term of his or her appointment and until his or her successor shall have been appointed and qualified. Any public member shall be eligible for reappointment. Any public member may be removed from office for incompetency, neglect of duty, or malfeasance in office by the Governor or by an affirmative vote by any six members of the authority.

**Source:** Laws 1983, LB 626, § 27.

**58-228 Authority; chairperson; officers; expenses.**

The Director of Economic Development shall be the chairperson of the authority. The members shall elect from among the membership a vice-chairperson and such other officers as they may determine. Members shall receive no compensation for their services but shall be reimbursed for actual, necessary, and reasonable expenses incurred in the discharge of their official duties as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1983, LB 626, § 28; Laws 1991, LB 253, § 30.

**58-229 Authority; quorum; vacancy; effect.**

The powers of the authority shall be vested in the members. Five members of the authority shall constitute a quorum. The affirmative vote of at least five members shall be necessary for any action to be taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all rights and perform all duties of the authority.

**Source:** Laws 1983, LB 626, § 29; Laws 1991, LB 253, § 31.

**58-230 Meetings; when held; videoconferencing authorized.**

Meetings of the members of the authority shall be held at least once every three months to attend to the business of the authority and may be held at the call of the chairperson or whenever any five members so request. Such meetings shall at all times be subject to the Open Meetings Act, and such meetings may be held by means of videoconferencing in accordance with subsection (2) of section 84-1411.

**Source:** Laws 1983, LB 626, § 30; Laws 1991, LB 253, § 32; Laws 1996, LB 1322, § 7; Laws 2004, LB 821, § 14.

**Cross References**

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

**58-231 Executive director; powers and duties.**

The members of the authority shall appoint an executive director who shall be an employee but not a member of the authority and who shall serve at the pleasure of the members and receive compensation fixed by the members. The executive director shall serve as the ex officio secretary of the authority, shall administer, manage, and direct the affairs and activities of the authority in accordance with the policies and under the control and direction of the members, and shall approve all accounts for salaries, allowable expenses of the authority or of any employee or consultant thereof, and expenses incidental to the operation of the authority. The executive director may, to the extent he or she deems it advisable, establish such divisions within the authority as necessary to carry out the public purposes of the authority. He or she shall perform such other duties as may be directed by the members in carrying out the purposes of the Nebraska Investment Finance Authority Act.

**Source:** Laws 1983, LB 626, § 31; Laws 1991, LB 253, § 33.

**58-232 Executive director; meetings; records; duties.**

The executive director shall attend the meetings of the members of the authority, keep a record of the proceedings of the authority, and maintain and be custodian of all books, documents, and papers filed with the authority, of the minute book or journal of the authority, and of its official seal. The executive

director may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

**Source:** Laws 1983, LB 626, § 32; Laws 1991, LB 253, § 34.

**58-233 Repealed. Laws 1991, LB 253, § 69.**

**58-234 Authority; personnel.**

The authority may employ legal counsel, technical experts, and such other officers, agents, and employees, permanent or temporary, as it deems necessary to carry out the efficient operation of the authority and shall determine qualifications, duties, compensation, and terms of office. The members may delegate to one or more agents or employees of the authority such administrative duties as they deem proper.

**Source:** Laws 1983, LB 626, § 34; Laws 1991, LB 253, § 35.

**58-235 Authority; member or employee; conflict of interest; disclosure.**

Any member or employee of the authority who has, will have, or later acquires any direct or indirect interest in any transaction with the authority shall immediately disclose the nature and extent of such interest in writing to the authority as soon as he or she has knowledge of such interest. Such disclosure shall be entered upon the minutes of the authority. Upon such disclosure such member or employee shall not participate in any action by the authority authorizing such transaction. Actions taken when such member or employee reasonably believed that he or she had no conflict shall not be invalidated because of such conflict. The fact that a member is also an officer or owner of an organization shall not be deemed to be a direct or indirect interest unless (1) such member has an ownership interest of greater than five percent in such organization or (2) the transaction in question does not involve all similar organizations but involves only the authority and such organization.

**Source:** Laws 1983, LB 626, § 35; Laws 1991, LB 253, § 36.

**58-236 Officer or employee of state; membership on or service to authority; how treated.**

Notwithstanding any other law, no officer or employee of this state shall be deemed to have forfeited or shall forfeit his or her office or employment by reason of acceptance of membership in the authority or of providing services to such authority.

**Source:** Laws 1983, LB 626, § 36; Laws 1991, LB 253, § 37.

**58-237 Authority; members; executive director; surety bond.**

Before the issuance of any bonds under the Nebraska Investment Finance Authority Act, each member of the authority shall execute a surety bond in the penal sum of twenty-five thousand dollars. The executive director of the authority shall execute a surety bond in the penal sum of fifty thousand dollars. To the extent that any member of the authority or the executive director of the authority is already covered by a bond required by state law, such member or the executive director need not obtain another bond so long as the bond required by state law is in at least the penal sum specified in this section and

covers the member's or executive director's activities for the authority. In lieu of such bonds the chairperson of the authority may execute a blanket surety bond covering each member, the executive director, and the employees or other officers of the authority. Each surety bond shall be conditioned upon the faithful performance of the duties of the office of the member or executive director and shall be issued by a surety company authorized to transact business in the state as surety. At all times after the issuance of any surety bonds, each member and executive director shall maintain such surety bonds in full force and effect. All costs of the surety bonds shall be paid by the authority.

**Source:** Laws 1983, LB 626, § 37; Laws 1991, LB 253, § 38.

**58-238 Authority; members; liability.**

Members of the authority shall not be liable to the state, the authority, or any other person as a result of their activities, whether ministerial or discretionary, as authority members, except for willful dishonesty or intentional violations of law. Members of the authority and any person executing bonds or policies of insurance shall not be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof. The authority may purchase liability insurance for members, officers, and employees and may indemnify any authority member to the same extent that a school district may indemnify a school board member pursuant to section 79-516.

**Source:** Laws 1983, LB 626, § 38; Laws 1991, LB 253, § 39; Laws 1996, LB 900, § 1054.

**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. The authority shall not operate any project referred to in this section as a business or in any manner except as the lessor or seller of such project;

(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

(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.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**58-239.01 Authority; microenterprises; powers and duties.**

(1) In addition to the powers granted to the authority under section 58-239, the authority may:

(a) Guaranty all or part of loans to microenterprises, establish and fund any such fund or account as it deems appropriate, and if it deems appropriate limit its guaranty obligation to money in such fund or account;

(b) Borrow money and issue bonds for the purpose of making guaranties of loans to microenterprises or any program of making such guaranties; and

(c) Enforce any and all rights it may have pursuant to such guaranties.

(2) Prior to exercising any of the powers granted by subsection (1) of this section, the authority shall adopt program eligibility guidelines:

(a) Specifying the type and amount of loans that may be guaranteed and the security or collateral, if any, to be provided by the microenterprise;

(b) Designed to avoid competing with private financial institutions to the extent private financial institutions are making such guaranties on reasonably favorable terms;

(c) Insuring that the public purposes specified in section 58-202, particularly subsection (4) of section 58-202, and subdivision (1)(c) of section 58-203 are effectuated and specifically addressing the effect on the economic and tax base of the state, tax revenue, and employment opportunities; and

(d) Addressing any other matters related to the exercise of the authority's powers under subsection (1) of this section.

**Source:** Laws 1996, LB 1322, § 9.

**58-239.02 Authority; wastewater treatment and safe drinking water projects; powers and duties.**

(1) In addition to the powers granted to the authority under section 58-239, the authority may:

(a) Borrow money and issue bonds for the purpose of financing wastewater treatment and safe drinking water projects; and

(b) Make and undertake commitments to deposit the proceeds from the issuance of bonds in the Wastewater Treatment Facilities Construction Loan Fund to be used to make loans for wastewater treatment projects or in such fund or any comparable state fund established with respect to financing safe drinking water facilities to be used to make loans for safe drinking water projects. Loans made through the Wastewater Treatment Facilities Construction Loan Fund for wastewater treatment facilities shall be originated and serviced pursuant to the Wastewater Treatment Facilities Construction Assistance Act. Loans made through a fund for safe drinking water facilities shall be originated and serviced pursuant to the law creating such fund.

(2) Upon the issuance of bonds for aiding the financing of wastewater treatment projects or safe drinking water projects and at the earliest time that bond proceeds become available, the authority shall transfer the proceeds, less the cost of the issuance and financing of such bond issues and the debt service reserve fund, if any, to the Wastewater Treatment Facilities Construction Loan Fund for wastewater treatment projects or to the appropriate state fund established to finance safe drinking water projects for safe drinking water projects.

**Source:** Laws 1989, LB 311, § 6; Laws 1996, LB 1322, § 10.

**Cross References**

Wastewater Treatment Facilities Construction Assistance Act, see section 81-15,147.

**58-239.03 Authority; public safety communication projects; powers.**

In addition to the powers granted under section 58-239, the authority may:

(1) Borrow money and issue bonds for the purpose of financing public safety communication projects; and

(2) Enter into financing agreements for a public safety communication project with a joint entity created pursuant to the Interlocal Cooperation Act or a joint public agency created pursuant to the Joint Public Agency Act.

**Source:** Laws 2002, LB 1211, § 7.

## Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

**58-239.04 Authority; economic-impact projects; powers and duties.**

(1) In addition to the powers granted under section 58-239, the authority may:

(a) Borrow money and issue bonds for the purpose of financing economic-impact projects;

(b) Enter into and perform interagency and intergovernmental agreements with one or more public agencies in connection with financing or providing resources for economic-impact projects;

(c) Create, operate, manage, invest in, and own entities or other consortia created for the purpose of facilitating economic-impact projects; and

(d) Provide resources for economic-impact projects, in an amount not to exceed ten million dollars per project, including, but not limited to, making loans or providing equity through investment therein or ownership thereof or through other means or agreements.

(2) The authority may exercise any of the powers authorized by this section only after a public hearing has been held detailing the economic-impact project to be assisted and allowing for input from the public. Notice of the public hearing shall be given at least two weeks in advance of the hearing in a newspaper of general circulation within the county affected by the economic-impact project, which notice shall give a general designation of the project and identify where more detailed plans may be reviewed prior to the hearing.

**Source:** Laws 2006, LB 693, § 8.

**58-240 Authority; duties; enumerated.**

The authority shall:

(1) Invest any funds not needed for immediate disbursement, including any funds held in reserve, in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, any obligations of the United States or agencies thereof, obligations of this state, or any obligations or securities which may from time to time be legally purchased by governmental subdivisions of this state pursuant to subsection (1) of section 77-2341, except that any funds pledged to secure a bond issue shall be invested in the manner permitted by the indenture securing such bonds;

(2) Collect fees and charges the authority determines to be reasonable in connection with its loans, advances, insurance, commitments, and servicing;

(3) Cooperate with and exchange services, personnel, and information with any federal, state, or local governmental agency;

(4) Sell, at public or private sale, with or without public bidding, any mortgage or other obligation held by the authority; and

(5) Do any act necessary or convenient to the exercise of the powers granted by the Nebraska Investment Finance Authority Act or reasonably implied from such act.

**Source:** Laws 1983, LB 626, § 40; Laws 1989, LB 221, § 3; Laws 1991, LB 253, § 42.

**58-241 Authority; coordinate activities with state.**

In exercising any powers granted in the Nebraska Investment Finance Authority Act, the authority shall coordinate its activities with the policy, program, and planning efforts of the state, particularly the Governor's Policy Research Office and the Department of Economic Development.

**Source:** Laws 1983, LB 626, § 41.

**58-242 Authority; agricultural projects; duties.**

Prior to exercising any of the powers authorized by the Nebraska Investment Finance Authority Act regarding agricultural projects as defined in subdivision (2) of section 58-219, the authority shall require:

(1) That no loan will be made to any person with a net worth of more than five hundred thousand dollars;

(2) That the lender certify and agree that it will use the proceeds of such loan, investment, sale, or assignment within a reasonable period of time to make loans or purchase loans to provide agricultural enterprises or, if such lender has made a commitment to make loans to provide agricultural enterprises on the basis of a commitment from the authority to purchase such loans, such lender will make such loans and sell the same to the authority within a reasonable period of time;

(3) That the lender certify that the borrower is an individual who is actively engaged in or who will become actively engaged in an agricultural enterprise after he or she receives the loan or that the borrower is a firm, partnership, limited liability company, corporation, or other entity with all owners, partners, members, or stockholders thereof being natural persons who are actively engaged in or who will be actively engaged in an agricultural enterprise after the loan is received;

(4) That the aggregate amount of the loan received by a borrower shall not exceed five hundred thousand dollars. In computing such amount a loan received by an individual shall be aggregated with those loans received by his or her spouse and children and a loan received by a firm, partnership, limited liability company, or corporation shall be aggregated with those loans received by each owner, partner, member, or stockholder thereof; and

(5) That the recipient of the loan be identified in the minutes of the authority prior to or at the time of adoption by the authority of the resolution authorizing the issuance of the bonds which will provide for financing of the loan.

**Source:** Laws 1983, LB 626, § 42; Laws 1991, LB 253, § 43; Laws 1993, LB 121, § 356; Laws 2005, LB 90, § 17.

**58-243 Authority; agricultural projects; powers.**

Prior to exercising any of the powers conferred by the Nebraska Investment Finance Authority Act regarding agricultural projects as defined in subdivision (2) of section 58-219, the authority may, but need not:

(1) Require that the loan involved be insured by a loan insurer or be guaranteed by a loan guarantor;

(2) Require any type of security that it deems reasonable and necessary; or

(3) Authorize the reservation of funds by lenders in such amount and subject to such conditions as the authority considers reasonable and necessary.

**Source:** Laws 1983, LB 626, § 43; Laws 1991, LB 253, § 44.

**58-244 Authority; agricultural projects; adopt rules and regulations.**

Prior to exercising any of the powers granted under the Nebraska Investment Finance Authority Act regarding agricultural projects as defined in subdivision (2) of section 58-219, the authority shall adopt rules and regulations governing its activities authorized under the act, including rules and regulations relating to any or all of the following:

(1) Procedures for the submission of requests or invitations and proposals for making loans to lenders and the investment in, purchase, assignment, and sale of loans;

(2) The reinvestment by lenders of the proceeds or an equivalent amount from any loan to lenders or the investment in or purchase by the authority or the assignment or sale of loans to the authority in loans to provide for financing agricultural enterprises;

(3) The number and location of agricultural projects and other characteristics of agricultural enterprises, including, to the extent reasonably possible, assurance that the agricultural enterprises to be financed by an issue of bonds or series of issues will improve employment conditions or otherwise enhance the welfare of persons in the agricultural sector, as determined by the authority, to be financed directly or indirectly by the authority pursuant to the act;

(4) Rates, fees, charges, and other terms and conditions of originating or servicing loans in order to protect against realization of an excessive financial return or benefit by the originator or servicer;

(5) The type and amount of collateral or security to be provided to insure repayment of loans made by the authority;

(6) The type of collateral, payment bonds, performance bonds, or other security to be provided for any construction loans made by a lender;

(7) The nature and amount of fees to be charged by the authority to provide for expenses and reserves of the authority;

(8) Standards and requirements for the allocation of available money among lenders and the determination of the maturities, terms, conditions, and interest rates for loans made, purchased, sold, assigned, or committed pursuant to the act;

(9) Commitment requirements for agricultural financing by lenders involving money provided directly or indirectly by the authority; and

(10) Any other matters related to the duties or exercise of the authority's powers or duties under the act.

**Source:** Laws 1983, LB 626, § 44; Laws 1991, LB 253, § 45.

**58-245 Agricultural projects; loan; reports required; contents.**

(1) For each loan made, purchased, sold, assigned, or committed for use in agricultural projects as defined in subdivision (2) of section 58-219 pursuant to the provisions of the Nebraska Investment Finance Authority Act, the authority shall prepare an individual written report which includes the following information:

- (a) The name and description of the lender;
- (b) The name of the loan guarantor or loan insurer, when applicable;
- (c) The amount and purpose of the loan;
- (d) A description of the agricultural enterprise for which the loan is to be used, including the county in which the enterprise is located;
- (e) The rate of interest applicable to the loan and the current interest rate in the conventional farm credit market for that locality;
- (f) The maturity date of the loan;
- (g) All conditions attaching to the loan;
- (h) The amount and description of fees associated with servicing and processing the loan;
- (i) Whether the borrower is an individual farmer, a farm partnership, a farm limited liability company, a farm corporation, or another farm entity;
- (j) The age of the borrower or, if the borrower is a farm partnership, a farm limited liability company, a farm corporation, or another farm entity, the ages of all of the owners, partners, or stockholders; and
- (k) A statement of the gross farm sales, total assets, total liabilities, and net worth of each borrower.

(2) The authority shall also prepare, following the close of each fiscal year, a report which summarizes the individual loan reports required by subsection (1) of this section setting forth the following information regarding loans made during the immediately preceding fiscal year:

- (a) The number of loans;
- (b) The average principal amount of such loans;
- (c) The average interest rate savings with respect to such loans;
- (d) The average age of the borrowers;
- (e) The average net worth of the borrowers; and
- (f) A comparison of the items listed in subdivisions (a) through (e) of this subsection to the information included in the summary report for the prior year.

**Source:** Laws 1983, LB 626, § 45; Laws 1991, LB 253, § 46; Laws 1993, LB 121, § 357.

**58-246 Agricultural projects; loan reports; public information; borrower's name omitted.**

The reports required pursuant to section 58-245 shall be public information. No such report shall reveal the name of any individual borrower. The authority shall, following the close of each fiscal year, deliver to the Governor and to the Clerk of the Legislature a set of the individual reporting forms from the preceding year together with the report required pursuant to subsection (2) of section 58-245. Any member of the Legislature shall receive a copy of such reports by making a request to the chairperson of the authority.

**Source:** Laws 1983, LB 626, § 46; Laws 1991, LB 253, § 47.

**58-247 Authority; housing projects; powers.**

Prior to exercising any of the powers conferred by the Nebraska Investment Finance Authority Act regarding housing projects as defined in subdivision (1) of section 58-219, the authority may:

- (1) Require that the mortgage or mortgage loan involved be insured by a mortgage insurer;
- (2) Require any type of security that it deems reasonable and necessary; or
- (3) Authorize the reservation of funds by mortgage lenders in such amount and subject to such conditions as the authority considers reasonable and necessary under the act.

**Source:** Laws 1983, LB 626, § 47; Laws 1991, LB 253, § 48.

**58-248 Authority; housing projects; adopt rules and regulations.**

Prior to exercising any of the powers granted under the Nebraska Investment Finance Authority Act regarding housing projects as defined in subdivision (1) of section 58-219, the authority shall adopt rules and regulations governing its activities authorized under the act, including rules and regulations relating to any or all of the following:

- (1) Procedures for the submission of requests or invitations and proposals for making loans to mortgage lenders and the investment in, purchase, assignment, and sale of mortgages or mortgage loans;
- (2) The reinvestment by mortgage lenders of the proceeds or an equivalent amount from any loan to mortgage lenders or the investment in or purchase by the authority or the assignment or sale of mortgages or mortgage loans to the authority in mortgages or mortgage loans to provide residential housing for low-income or moderate-income persons, particularly first-time homebuyers;
- (3) The number of dwelling units, location of the units, and other characteristics of residential housing, including, to the extent reasonably possible, assurance that the residential housing to be financed by an issue of bonds or series of issues will be an adequate mixture of low-income and moderate-income residential housing benefiting particularly first-time homebuyers, as determined by the authority, to be financed directly or indirectly by the authority pursuant to the act;
- (4) Rates, fees, charges, and other terms and conditions of originating or servicing loans, mortgages, or mortgage loans in order to protect against realization of an excessive financial return or benefit by the originator or servicer;
- (5) The type and amount of collateral or security to be provided to assure repayment of loans made by the authority;
- (6) The type of collateral, payment bonds, performance bonds, or other security to be provided for any mortgage loans made by a mortgage lender for construction loans;
- (7) The nature and amount of fees to be charged by the authority to provide for expenses and reserves of the authority;
- (8) Standards and requirements for the allocation of available money among mortgage lenders and the determination of the maturities, terms, conditions, and interest rates for loans, mortgages, or mortgage loans made, purchased, sold, assigned, or committed pursuant to the act;

(9) Commitment requirements for residential housing financing for low-income and moderate-income persons by mortgage lenders involving money provided directly or indirectly by the authority;

(10) The procedures, standards, commitment requirements, and other matters necessary to offer an effective residential energy conservation loan program; or

(11) Any other matters related to the duties or exercise of the authority's powers or duties under the act.

**Source:** Laws 1983, LB 626, § 48; Laws 1991, LB 253, § 49.

**58-249 Authority; low-income housing loans; establish funds.**

The purpose of this section is to make loans available for single-family housing to people who due to low income would not otherwise qualify for loans under the normal lending practices of the lender and the authority.

In connection with any issuance of bonds in an aggregate principal amount of fifty million dollars or more for purposes of financing residential housing, the authority shall establish within such bond issue a fund of at least one million dollars to finance mortgages for low-income persons at an interest rate below the interest rate which otherwise applies to mortgages financed from such bond issue.

**Source:** Laws 1983, LB 626, § 49; Laws 1991, LB 253, § 50.

**58-250 Authority; development projects; adopt rules and regulations.**

Prior to exercising any of the powers granted under the Nebraska Investment Finance Authority Act relating to development projects as defined in subdivisions (3) and (5) of section 58-219, the authority shall adopt rules and regulations governing its activities authorized under such act, including rules and regulations relating to any or all of the following:

(1) The type and amount of collateral or security to be provided to insure repayment of loans made by the authority;

(2) The type of collateral, payment bonds, performance bonds, or other security to be provided for any mortgage or loan made for projects;

(3) The nature and amount of fees to be charged by the authority to provide for expenses and reserves of the authority;

(4) Standards and requirements for determination of the maturities, terms, conditions, and interest rates for loans or mortgages made, purchased, sold, assigned, or committed; and

(5) Any other matters related to the duties or exercise of the authority's powers or duties under the act.

**Source:** Laws 1983, LB 626, § 50; Laws 1989, LB 706, § 8; Laws 1991, LB 253, § 51.

**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 and related services.

**Source:** Laws 1983, LB 626, § 51.

**58-252 Authority; borrow money and issue bonds; purposes.**

The authority may borrow money and issue from time to time its bonds in such principal amounts as the authority determines necessary to provide sufficient funds to carry out its purposes which include:

- (1) Carrying out the additional powers of the Nebraska Investment Finance Authority Act;
- (2) The payment of interest on bonds issued under the act;
- (3) The establishment of reserves to secure the bonds in an amount not to exceed twenty-five percent of the aggregate principal amount of the particular issue of bonds; and
- (4) All other expenditures of the authority incident to and necessary and convenient to carry out its purposes and powers.

**Source:** Laws 1983, LB 626, § 52; Laws 1991, LB 253, § 52.

**58-253 Authority; issue bonds to renew, pay, or refund bonds.**

The authority may issue from time to time bonds to renew or to pay bonds, including the interest on such bonds, and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured and whether or not the project as originally financed with the bonds would at the time of the refunding qualify as a project, and may issue bonds partly to refund outstanding bonds and partly for any other of its corporate purposes. The refunding bonds may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded or exchanged for the bonds to be refunded.

Bonds originally issued by any municipality, county, hospital authority, housing authority, or other political subdivision may be subject to refunding pursuant to this section if the original issuer and beneficiary of the bonds request the authority to issue refunding bonds and the bonds to be refunded financed a project which would at the time of refunding qualify as a project.

**Source:** Laws 1983, LB 626, § 53; Laws 1991, LB 253, § 53; Laws 1992, LB 1257, § 71.

**58-254 Authority; bond issuance; general obligation; how paid and secured.**

Unless otherwise expressly provided by the authority, every issue of its bonds shall be general obligations of the authority payable solely out of any revenue or money of the authority, subject only to any agreements with the holders of particular bonds pledging any particular money or revenue. The bonds may be additionally secured by a pledge of any grant or contribution from the federal government or any corporation, association, institution, or person or a pledge of any money, income, or revenue of the authority from any source.

**Source:** Laws 1983, LB 626, § 54; Laws 1991, LB 253, § 54.

**58-255 Authority; bond issuance; state; no obligation; statement.**

No bonds issued by the authority under the Nebraska Investment Finance Authority Act shall constitute a debt, liability, or general obligation of this state or a pledge of the faith and credit of this state but shall be payable solely as provided by section 58-254. Each bond issued under the act shall contain on the face of such bond a statement that neither the faith and credit nor the taxing power of this state is pledged to the payment of the principal of or the interest on such bond.

**Source:** Laws 1983, LB 626, § 55; Laws 1991, LB 253, § 55.

**58-256 Bond resolution; contents; sale; manner; declaratory judgment.**

The authority shall authorize the bonds by a resolution. The bonds shall bear such date or dates and shall mature at such time or times as such resolution provides, except that no bond other than bonds issued to finance rental housing projects or residential housing shall mature more than thirty years from the date of its issue as the resolution provides. In no case shall any bond mature more than fifty years from the date of issue. The bonds shall bear interest at such rate or rates, including variations of such rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms of redemption, including redemption prior to maturity, as such resolution provides, except that facsimile signatures of all members of the authority shall be sufficient only if the resolution requires that the trustee for such bond issue manually authenticate each bond and the resolution permits the use of facsimile signatures. The resolution authorizing the bonds may provide that the bonds contain a recital that they are issued under the Nebraska Investment Finance Authority Act, and such recital shall be deemed conclusive evidence of the validity of the bonds and the regularity of the issuance. The provisions of section 10-126 shall not apply to bonds issued by the authority. Bonds of the authority may be sold by the authority at a public or private sale and at such price or prices as the authority shall determine.

The authority may bring an action for declaratory judgment to determine the validity of any issuance or proposed issuance of its bonds under the act and the legality and validity of all proceedings previously taken or proposed in a resolution of the authority to be taken for the authorization, issuance, sale, and delivery of such bonds and for the payment of the principal of and interest on such bonds.

**Source:** Laws 1983, LB 626, § 56; Laws 1984, LB 372, § 11; Laws 1991, LB 253, § 56.

**58-257 Bond resolution; provisions enumerated.**

Any resolution authorizing the issuance of bonds may contain provisions, which provisions shall be a part of the contract or contracts with the holders of such bonds, as to:

(1) Pledging all or any part of the revenue of the authority to secure the payment of the bonds, subject to such agreements with bondholders as then exist;

(2) Pledging all or any part of the assets of the authority, including financing agreements, mortgages, and obligations securing the same, to secure the payment of the bonds, subject to such agreements with bondholders as then exist;

(3) The use and disposition of the gross income from financing agreements, mortgages, or loans owned by the authority and payment of the principal of mortgages or loans owned by the authority;

(4) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(5) Limitations on the purposes to which the proceeds from the sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds;

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which the consent may be given;

(8) Limitations on the amount of money to be expended by the authority for operating expenses of the authority;

(9) Vesting in a trustee or trustees such property, rights, powers, and duties in trust as the authority may determine and limiting or abrogating the right of bondholders to appoint a trustee or limiting the rights, powers, and duties of the trustees;

(10) Defining the acts or omissions to act which shall constitute a default and the obligations or duties of the authority to the holders of the bonds and providing for the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver, except that the rights and remedies shall not be inconsistent with the general laws of this state and other provisions of the Nebraska Investment Finance Authority Act; and

(11) Any other matter of like or different character which in any manner affects the security or protection of the holders of the bonds.

**Source:** Laws 1983, LB 626, § 57; Laws 1991, LB 253, § 57.

**58-258 Authority; pledge; effect; lien; recording; not required.**

Any pledge made by the authority shall be valid and binding from the time when the pledge is made. The revenue, money, or properties so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

**Source:** Laws 1983, LB 626, § 58.

**58-259 Authority; purchase bonds of authority; canceled; price.**

Subject to such agreements with bondholders as then exist, the authority may, out of any funds available therefor, purchase bonds of the authority which

shall thereupon be canceled at any reasonable price which, if the bonds are then redeemable, shall not exceed the redemption price then applicable plus accrued interest to the next interest payment on such bonds.

**Source:** Laws 1983, LB 626, § 59; Laws 1991, LB 253, § 58.

**58-260 Bonds; secured by trust indenture; contents; expenses; how treated.**

The bonds may be secured by a trust indenture, which trust indenture may be in the form of a bond resolution or similar contract, by and between the authority and a corporate trustee which may be any financial institution having the power of a trust company or any trust company within or outside the state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safekeeping, and application of all money. The authority may provide by the trust indenture for the payment of the proceeds of the bonds and the revenue to the trustee under the trust indenture or other depository and for the method of disbursement of such proceeds, with such safeguards and restrictions as the authority may determine. All expenses incurred in carrying out the trust indenture may be treated as a part of the operating expenses of the authority. If the bonds are secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

**Source:** Laws 1983, LB 626, § 60; Laws 1991, LB 253, § 59.

**58-261 Bonds; negotiable instruments.**

The bonds are hereby made negotiable instruments, whether or not in the form of negotiable instruments, subject only to provisions of the bonds relating to registration.

**Source:** Laws 1983, LB 626, § 61; Laws 1991, LB 253, § 60.

**58-262 Bonds; signatures of prior members or officers; validity.**

In the event that any of the members or officers of the authority cease to be members or officers of the authority prior to the delivery of any bonds or coupons signed by them, their signatures or facsimiles thereof shall nevertheless be valid and sufficient for all purposes as if such members or officers had remained in office until such delivery.

**Source:** Laws 1983, LB 626, § 62; Laws 1991, LB 253, § 61.

**58-263 Authority; establish funds.**

The authority may create and establish any funds as may be necessary or desirable for its purposes.

**Source:** Laws 1983, LB 626, § 63.

**58-264 Authority; money; deposits; secured; expenditures.**

All money of the authority, except as otherwise authorized or provided in the Nebraska Investment Finance Authority Act, shall be deposited as soon as practical in a separate account or accounts in banks or trust companies organized under the laws of this state or in national banking associations. The money in such accounts shall be paid out on checks signed by the executive

director or other officers or employees of the authority as the authority authorizes. All deposits of money shall, if required by the authority, be secured in such a manner as the authority determines to be prudent, and all banks or trust companies may give security for the deposits.

**Source:** Laws 1983, LB 626, § 64; Laws 1991, LB 253, § 62.

**58-265 Authority; bondholders; contract; purposes; money; how secured.**

Notwithstanding the provisions of section 58-264, the authority may contract with the holders of any of its bonds as to the custody, collection, securing, investment, and payment of any money of the authority and of any money held in trust or otherwise for the payment of bonds and may carry out such contract. Money held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of money may be secured in the same manner as money of the authority, and all banks and trust companies may give security for the deposits.

**Source:** Laws 1983, LB 626, § 65; Laws 1991, LB 253, § 63.

**58-266 Bondholders; pledge; agreement of the state.**

The state hereby pledges to and agrees with the holder of any bonds issued under the Nebraska Investment Finance Authority Act that the state will not limit or alter the rights vested in the authority to fulfill the terms of any agreements made with the holders of the bonds or in any way impair the rights or remedies of the holders until the bonds, together with the interest on such bonds, with interest on any unpaid installments of interest, and with all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The authority may include this pledge and agreement of the state in any agreement with the holders of the bonds.

**Source:** Laws 1983, LB 626, § 66; Laws 1991, LB 253, § 64.

**58-267 Authority; expenses; how paid; liability of state or political subdivision; prohibited.**

All expenses incurred by the authority in carrying out the Nebraska Investment Finance Authority Act shall be payable solely from funds provided under such act, and nothing in such act shall be construed to authorize the authority to incur indebtedness or liability on behalf of or payable by this state or any political subdivision of this state.

**Source:** Laws 1983, LB 626, § 67.

**58-268 Authority; property; public; exempt from taxation; when; dissolution; assets; how distributed.**

All property acquired or held by the authority to carry out the purposes of the Nebraska Investment Finance Authority Act is declared to be public property. The property to the extent such property is used for a public purpose, all the income from such property, bonds issued under such act, interest payable on such bonds, and income derived from such bonds shall at all times be exempt from all taxes imposed by the state or any county, city, or other political subdivision of the state. The authority may, in the resolution authorizing the issuance of any series of bonds, elect to have the income on such bonds be subject to personal income taxation imposed by the state. If the authority is

dissolved, the ownership of any assets remaining after all indebtedness and other obligations of the authority have been discharged shall pass to the state. Notwithstanding that title to a project may be in the authority, such project shall be subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if such project is leased to or held by private interests.

**Source:** Laws 1983, LB 626, § 68; Laws 1991, LB 253, § 65; Laws 2001, LB 173, § 18.

**58-269 Bonds; legal investments; for whom; considered securities.**

The bonds issued by and under the authority of the Nebraska Investment Finance Authority Act by the authority are declared to be legal investments in which all public officers or public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on insurance business, all banks, bankers, banking associations, trust companies, savings associations, savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, personal representatives, and other fiduciaries, and all other persons who are now or may later be authorized to invest in bonds or in other obligations of this state may invest funds, including capital, in their control or belonging to them. Such bonds are also hereby made securities which may be deposited with and received by all public officers and bodies of this state, any agency or political subdivision of this state, and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of this state is now or may be later authorized by law.

**Source:** Laws 1983, LB 626, § 69; Laws 1991, LB 253, § 66.

**58-270 Authority; reports; contents; audit; issuance of bonds; notices.**

(1) The authority shall, following the close of each fiscal year, submit a report of its activities for the preceding year to the Governor and the Clerk of the Legislature of this state. Each member of the Legislature shall receive a copy of such report by making a request for it to the chairperson of the authority. Each report shall set forth a complete operating and financial statement for the authority during the fiscal year it covers. An independent certified public accountant shall at least once in each year audit the books and accounts of the authority.

(2) At least fourteen days prior to taking any final action to authorize the issuance of bonds to provide financing for projects, the beneficiaries or borrowers of which are not specifically identified, the authority shall notify the Governor, the Clerk of the Legislature, and any news media requesting notification of such proposed issuance of bonds. Such notice shall include:

- (a) The public purposes to be effectuated and the needs to be addressed through the issuance of the bonds;
- (b) The manner in which such need was identified;
- (c) The anticipated principal amount of the bond issue and the anticipated date of issuance of the bonds;
- (d) The anticipated size of any reserve funds; and
- (e) The professionals involved in connection with the issuance of the bonds.

(3) Within thirty days following the issuance of bonds subject to subsection (2) of this section, the authority shall notify the Governor and the Clerk of the Legislature of:

- (a) The final principal amount of the bonds;
- (b) The net interest cost of the bonds;
- (c) The costs of issuance paid and to whom paid;
- (d) The total amount of any reserve funds;
- (e) The net interest cost to the beneficiaries or borrowers; and
- (f) The amount of funds available for loans.

(4) With respect to bonds subject to subsection (2) of this section, until ninety-five percent of the proceeds of such bonds to be made available for loans are so used or a corresponding amount of such bonds are redeemed, the authority shall, no less often than quarterly after the issuance of such bonds, report to the Governor and the Clerk of the Legislature the status of the use of the proceeds of such issue of bonds.

Once the notice required pursuant to subsection (2) of this section is filed, nothing in this section shall require the authority to amend or supplement the notice prior to the issuance of the bonds.

(5) The notice and reporting requirements contained in this section shall be deemed satisfied upon good faith compliance by the authority. The failure to comply with any part of this section shall not affect the validity of any bonds issued by the authority.

**Source:** Laws 1983, LB 626, § 70; Laws 1984, LB 372, § 12; Laws 1991, LB 253, § 67.

**58-271 Act, how construed.**

Neither the Nebraska Investment Finance Authority Act nor anything contained in such act is or shall be construed as a restriction or limitation upon any powers which the authority might otherwise have under any other law of this state, and such act is cumulative to such powers. Such act does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized and shall be regarded as supplemental and additional to powers conferred by any other laws. The issuance of bonds under the provisions of such act need not comply with the requirements of any other state laws applicable to the issuance of bonds, notes, and other obligations. No proceedings, notice, or approval shall be required for the issuance of any bonds or any instrument or the security therefor, except as provided in such act. All projects for which funds are advanced, loaned, or otherwise provided by the authority under such act must be in compliance with any land-use, zoning, subdivision, and other laws of this state applicable to the lands upon which such project is to be constructed or located.

**Source:** Laws 1983, LB 626, § 71.

**58-272 Authority; successor to certain entities; transfer of property, funds, and obligations to authority; actions by predecessor entities; how treated.**

The authority shall be the successor to the Nebraska Mortgage Finance Fund, the Agricultural Development Corporation, and the Nebraska Development Finance Fund. All properties, rights in land, buildings, records, and equipment

and any funds, money, revenue, receipts, or assets of the Nebraska Mortgage Finance Fund, the Agricultural Development Corporation, and the Nebraska Development Finance Fund shall belong to the authority as successor. All obligations, debts, commitments, and liabilities of the Nebraska Mortgage Finance Fund, the Agricultural Development Corporation, and the Nebraska Development Finance Fund shall become obligations, debts, commitments, and liabilities of the authority. Any resolution with respect to the issuance of bonds by the Nebraska Mortgage Finance Fund, the Agricultural Development Corporation, or the Nebraska Development Fund and any other action taken by the Nebraska Mortgage Finance Fund, the Agricultural Development Corporation, or the Nebraska Development Finance Fund with respect to assisting in the financing of any project shall be a resolution of the authority or an action taken by the authority. The rules and regulations adopted by the Nebraska Mortgage Finance Fund, the Agricultural Development Corporation, and the Nebraska Development Finance Fund shall remain in effect until amended, repealed, or replaced by the authority. If a project application is pending before the Nebraska Mortgage Finance Fund, the Nebraska Agricultural Development Corporation, or the Nebraska Development Finance Fund on August 26, 1983, and such project is eligible to be financed under the Nebraska Mortgage Finance Fund Act, the Nebraska Agricultural Development Corporation Act, or the Nebraska Development Finance Fund Act, such project shall be deemed to be eligible for financing by the authority.

**Source:** Laws 1983, LB 626, § 72.

### ARTICLE 3

#### SMALL BUSINESS DEVELOPMENT

##### Section

- 58-301. Repealed. Laws 2009, LB 154, § 27.
- 58-302. Repealed. Laws 2009, LB 154, § 27.
- 58-303. Repealed. Laws 2009, LB 154, § 27.
- 58-304. Repealed. Laws 2009, LB 154, § 27.
- 58-305. Repealed. Laws 2009, LB 154, § 27.
- 58-306. Repealed. Laws 2009, LB 154, § 27.
- 58-307. Repealed. Laws 2009, LB 154, § 27.
- 58-308. Repealed. Laws 2009, LB 154, § 27.
- 58-309. Repealed. Laws 2009, LB 154, § 27.
- 58-310. Repealed. Laws 2009, LB 154, § 27.
- 58-311. Repealed. Laws 2009, LB 154, § 27.
- 58-312. Repealed. Laws 2009, LB 154, § 27.
- 58-313. Repealed. Laws 2009, LB 154, § 27.
- 58-314. Repealed. Laws 2009, LB 154, § 27.
- 58-315. Repealed. Laws 2009, LB 154, § 27.
- 58-316. Repealed. Laws 2009, LB 154, § 27.
- 58-317. Repealed. Laws 2009, LB 154, § 27.
- 58-318. Repealed. Laws 2009, LB 154, § 27.
- 58-319. Repealed. Laws 2009, LB 154, § 27.
- 58-320. Repealed. Laws 2009, LB 154, § 27.
- 58-321. Repealed. Laws 2009, LB 154, § 27.
- 58-322. Repealed. Laws 2009, LB 154, § 27.
- 58-323. Repealed. Laws 2009, LB 154, § 27.
- 58-324. Repealed. Laws 2009, LB 154, § 27.
- 58-325. Repealed. Laws 2009, LB 154, § 27.
- 58-326. Small Business Development Authority; dissolved; disposition of assets; Small Business Investment Fund; transfer.

**58-301 Repealed. Laws 2009, LB 154, § 27.**

**58-302 Repealed. Laws 2009, LB 154, § 27.**

**58-303 Repealed. Laws 2009, LB 154, § 27.**

**58-304 Repealed. Laws 2009, LB 154, § 27.**

**58-305 Repealed. Laws 2009, LB 154, § 27.**

**58-306 Repealed. Laws 2009, LB 154, § 27.**

**58-307 Repealed. Laws 2009, LB 154, § 27.**

**58-308 Repealed. Laws 2009, LB 154, § 27.**

**58-309 Repealed. Laws 2009, LB 154, § 27.**

**58-310 Repealed. Laws 2009, LB 154, § 27.**

**58-311 Repealed. Laws 2009, LB 154, § 27.**

**58-312 Repealed. Laws 2009, LB 154, § 27.**

**58-313 Repealed. Laws 2009, LB 154, § 27.**

**58-314 Repealed. Laws 2009, LB 154, § 27.**

**58-315 Repealed. Laws 2009, LB 154, § 27.**

**58-316 Repealed. Laws 2009, LB 154, § 27.**

**58-317 Repealed. Laws 2009, LB 154, § 27.**

**58-318 Repealed. Laws 2009, LB 154, § 27.**

**58-319 Repealed. Laws 2009, LB 154, § 27.**

**58-320 Repealed. Laws 2009, LB 154, § 27.**

**58-321 Repealed. Laws 2009, LB 154, § 27.**

**58-322 Repealed. Laws 2009, LB 154, § 27.**

**58-323 Repealed. Laws 2009, LB 154, § 27.**

**58-324 Repealed. Laws 2009, LB 154, § 27.**

**58-325 Repealed. Laws 2009, LB 154, § 27.**

**58-326 Small Business Development Authority; dissolved; disposition of assets; Small Business Investment Fund; transfer.**

(1) The Small Business Development Authority, created pursuant to section 58-309, as such section existed prior to August 30, 2009, is hereby dissolved. Any assets of the authority remaining upon such dissolution which are pledged to outstanding indebtedness of the authority shall, upon the consent of the holders of the respective indebtedness, be immediately transferred, free and clear, to the holder of such indebtedness in satisfaction of such indebtedness.

(2) The State Treasurer shall transfer any money in the Small Business Investment Fund on August 30, 2009, to the General Fund. Any remaining assets or obligations of the authority shall rest in the Department of Economic Development.

**Source:** Laws 2009, LB154, § 12.

#### ARTICLE 4

#### RESEARCH AND DEVELOPMENT AUTHORITY

##### Section

- 58-401. Repealed. Laws 2001, LB 300, § 10.
- 58-402. Repealed. Laws 2001, LB 300, § 10.
- 58-403. Repealed. Laws 2001, LB 300, § 10.
- 58-404. Repealed. Laws 2001, LB 300, § 10.
- 58-405. Repealed. Laws 2001, LB 300, § 10.
- 58-406. Repealed. Laws 2001, LB 300, § 10.
- 58-407. Repealed. Laws 2001, LB 300, § 10.
- 58-408. Repealed. Laws 2001, LB 300, § 10.
- 58-409. Repealed. Laws 2001, LB 300, § 10.
- 58-410. Repealed. Laws 2001, LB 300, § 10.
- 58-411. Repealed. Laws 2001, LB 300, § 10.
- 58-412. Repealed. Laws 2001, LB 300, § 10.
- 58-413. Repealed. Laws 2001, LB 300, § 10.
- 58-414. Repealed. Laws 2001, LB 300, § 10.
- 58-415. Repealed. Laws 2001, LB 300, § 10.
- 58-416. Repealed. Laws 2001, LB 300, § 10.
- 58-417. Repealed. Laws 2001, LB 300, § 10.
- 58-418. Repealed. Laws 2001, LB 300, § 10.
- 58-419. Repealed. Laws 2001, LB 300, § 10.
- 58-420. Repealed. Laws 2001, LB 300, § 10.
- 58-421. Repealed. Laws 2001, LB 300, § 10.
- 58-422. Repealed. Laws 2001, LB 300, § 10.
- 58-423. Repealed. Laws 2001, LB 300, § 10.
- 58-424. Repealed. Laws 2001, LB 300, § 10.
- 58-425. Repealed. Laws 2001, LB 300, § 10.
- 58-426. Repealed. Laws 2001, LB 300, § 10.
- 58-427. Repealed. Laws 2001, LB 300, § 10.
- 58-428. Repealed. Laws 2001, LB 300, § 10.
- 58-429. Repealed. Laws 2001, LB 300, § 10.
- 58-430. Repealed. Laws 2001, LB 300, § 10.
- 58-431. Repealed. Laws 2001, LB 300, § 10.
- 58-432. Repealed. Laws 2001, LB 300, § 10.
- 58-433. Repealed. Laws 2001, LB 300, § 10.
- 58-434. Repealed. Laws 2001, LB 300, § 10.
- 58-435. Repealed. Laws 2001, LB 300, § 10.
- 58-436. Repealed. Laws 2001, LB 300, § 10.
- 58-437. Repealed. Laws 2001, LB 300, § 10.
- 58-438. Repealed. Laws 2001, LB 300, § 10.
- 58-439. Repealed. Laws 2001, LB 300, § 10.
- 58-440. Repealed. Laws 2001, LB 300, § 10.
- 58-441. Repealed. Laws 2001, LB 300, § 10.
- 58-442. Repealed. Laws 2001, LB 300, § 10.
- 58-443. Research and Development Authority; dissolution; effect.

**58-401 Repealed. Laws 2001, LB 300, § 10.**

**58-402 Repealed. Laws 2001, LB 300, § 10.**

**58-403 Repealed. Laws 2001, LB 300, § 10.**

- 58-404 Repealed. Laws 2001, LB 300, § 10.
- 58-405 Repealed. Laws 2001, LB 300, § 10.
- 58-406 Repealed. Laws 2001, LB 300, § 10.
- 58-407 Repealed. Laws 2001, LB 300, § 10.
- 58-408 Repealed. Laws 2001, LB 300, § 10.
- 58-409 Repealed. Laws 2001, LB 300, § 10.
- 58-410 Repealed. Laws 2001, LB 300, § 10.
- 58-411 Repealed. Laws 2001, LB 300, § 10.
- 58-412 Repealed. Laws 2001, LB 300, § 10.
- 58-413 Repealed. Laws 2001, LB 300, § 10.
- 58-414 Repealed. Laws 2001, LB 300, § 10.
- 58-415 Repealed. Laws 2001, LB 300, § 10.
- 58-416 Repealed. Laws 2001, LB 300, § 10.
- 58-417 Repealed. Laws 2001, LB 300, § 10.
- 58-418 Repealed. Laws 2001, LB 300, § 10.
- 58-419 Repealed. Laws 2001, LB 300, § 10.
- 58-420 Repealed. Laws 2001, LB 300, § 10.
- 58-421 Repealed. Laws 2001, LB 300, § 10.
- 58-422 Repealed. Laws 2001, LB 300, § 10.
- 58-423 Repealed. Laws 2001, LB 300, § 10.
- 58-424 Repealed. Laws 2001, LB 300, § 10.
- 58-425 Repealed. Laws 2001, LB 300, § 10.
- 58-426 Repealed. Laws 2001, LB 300, § 10.
- 58-427 Repealed. Laws 2001, LB 300, § 10.
- 58-428 Repealed. Laws 2001, LB 300, § 10.
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- 58-432 Repealed. Laws 2001, LB 300, § 10.
- 58-433 Repealed. Laws 2001, LB 300, § 10.
- 58-434 Repealed. Laws 2001, LB 300, § 10.

**58-435 Repealed. Laws 2001, LB 300, § 10.**

**58-436 Repealed. Laws 2001, LB 300, § 10.**

**58-437 Repealed. Laws 2001, LB 300, § 10.**

**58-438 Repealed. Laws 2001, LB 300, § 10.**

**58-439 Repealed. Laws 2001, LB 300, § 10.**

**58-440 Repealed. Laws 2001, LB 300, § 10.**

**58-441 Repealed. Laws 2001, LB 300, § 10.**

**58-442 Repealed. Laws 2001, LB 300, § 10.**

**58-443 Research and Development Authority; dissolution; effect.**

(1) The Research and Development Authority, created pursuant to section 58-403, as such section existed prior to September 1, 2001, is hereby dissolved. Any assets of the authority remaining upon such dissolution which are pledged to outstanding indebtedness of the authority shall, upon the consent of the holders of the respective indebtedness, be immediately transferred, free and clear, to the holder of such indebtedness in satisfaction of such indebtedness.

(2) The business development corporation formed pursuant to section 58-440 shall no longer be required to include representatives of the authority. All interest of the authority in such business development corporation shall be transferred to the North Omaha Business Development Corporation, the business development corporation formed pursuant to section 58-440, as such section existed prior to September 1, 2001.

**Source:** Laws 2001, LB 300, § 1.

## ARTICLE 5

### NEBRASKA REDEVELOPMENT ACT

#### Section

- 58-501. Act, how cited.
- 58-502. Legislative findings.
- 58-503. Terms, defined.
- 58-504. Designated blighted and substandard area; application; hearing; approval.
- 58-505. Redevelopment project; application; hearing; approval.
- 58-506. Act; how construed.
- 58-507. Property taxes; how divided.
- 58-508. Redevelopment project valuation; county assessor; duties.
- 58-509. Property taxes; how treated.
- 58-510. Pledge of taxes authorized.
- 58-511. Bond required.
- 58-512. Powers supplemental; act, how construed.
- 58-513. Contracting public body; powers.
- 58-514. Issuance of bonds.
- 58-515. Bonds; liability; how paid; notes.
- 58-516. Bonds; how issued.
- 58-517. Bonds; how sold.
- 58-518. Bonds; signatures; negotiability.
- 58-519. Bonds; presumption of validity.
- 58-520. Bonds; leases; contracting public body; powers.
- 58-521. Default; contracting public body; powers.
- 58-522. Obligee; rights.
- 58-523. Bonds; authorized investment.

## Section

- 58-524. Bond validation proceeding; appeal.
- 58-525. Bonds or certificates; validation.
- 58-526. Public body or taxing body; supplemental powers.
- 58-527. Sale, conveyance, lease, or agreement; how made.
- 58-528. Contracting public body; estimate of expenses; appropriations; bonds authorized.
- 58-529. School districts; additional expenses; appropriations.
- 58-530. Presumption of compliance.
- 58-531. Act; how construed.
- 58-532. Act; when operative.
- 58-533. Filing of applications; limitation.

**58-501 Act, how cited.**

Sections 58-501 to 58-533 shall be known and may be cited as the Nebraska Redevelopment Act.

**Source:** Laws 1995, LB 830, § 1.

**58-502 Legislative findings.**

The Legislature finds and declares the following facts and purposes of the Nebraska Redevelopment Act:

(1) It is the policy of this state to make revisions in its statutory structure if this will encourage both new and existing businesses to relocate to and expand in Nebraska and to provide appropriate inducements to encourage them to do so if this will aid in the economic and population growth of the state and help create better jobs for the citizens of the State of Nebraska and if this can be done in a fiscally sound and effective manner;

(2) The prevention and elimination of blighted and substandard areas is a matter of state public policy and public interest;

(3) There exists in and around certain cities of this state areas which are blighted and substandard due to a lack of sufficient economic activity, public and private infrastructure, job growth, wage levels, population growth, low-income and moderate-income housing, business expansion, and new construction;

(4) Such conditions have prevented economic and population growth in certain areas and are beyond remedy solely by the normal regulatory process and the ordinary operations of private enterprise; and

(5) The elimination of such conditions through the rehabilitation, acquisition, and redevelopment of such areas, and the application of ad valorem taxes on new investment in such areas, as provided in the act, are public uses and public purposes which the Legislature intends that the act will help accomplish.

**Source:** Laws 1995, LB 830, § 2.

**58-503 Terms, defined.**

For purposes of the Nebraska Redevelopment Act, the following definitions apply:

(1) Any term not otherwise defined has the same meaning as used in the Interlocal Cooperation Act;

(2) Area application means the area application in section 58-504;

(3) Area of operation means and includes the area within the corporate limits of the public body;

(4) Base year means the year immediately preceding the year during which the project application was submitted;

(5) Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the company or its predecessors during the base year and who is employed at the redevelopment project;

(6) Blighted and substandard area means an area either within a city or cities or up to ten miles outside of the area of operation of a city or cities of the metropolitan or primary class, up to six miles outside of the area of operation of a city or cities of the first class, and up to three miles outside of the area of operation of a city or cities of the second class or village or villages, or any combination thereof, in which by reason of (a) the existence of significant areas of unimproved or insufficiently developed land, (b) the lack of a significant number of new and growing business enterprises, (c) the lack of sufficient economic growth, (d) the dilapidation, deterioration, age, or obsolescence of buildings and improvements, (e) the lack of a state, regional, or local redevelopment plan or program, (f) the existence of significant conditions which prevent or do not promote economic growth within such area, (g) the lack of medical and health care facilities, (h) the lack of utilities and other government services infrastructure, or (i) any combination of such factors, there exists (i) insufficient safe, sanitary, and available housing for low-income and moderate-income families and persons, including, but not limited to, persons displaced by clearing of slums or blighted areas or by other public programs, (ii) job growth at less than the United States or midwest average job growth rates, (iii) average wages at less than the United States or midwest average wage levels, (iv) a net emigration of population, (v) population growth that is less than that of the United States or the midwest, (vi) the failure to utilize substantial land areas at their highest and best uses in comparison to other areas within such city or cities, (vii) an abundance of property that is not on the tax rolls at levels at least equal to industrial and residential valuation levels, or (viii) any combination of such results;

(7) Board means a board consisting of the Governor, the State Treasurer, and the chairperson of the Nebraska Investment Council;

(8) Bonds means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued pursuant to the Nebraska Redevelopment Act;

(9) City means any city or incorporated village of this state;

(10) Company means any person subject to the sales and use taxes and either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under sections 77-3801 to 77-3807, any corporation, partnership, limited liability company, 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 are, subject to such taxes, and any other partnership, limited liability company, subchapter S corporation, or joint venture when the partners, owners, shareholders, or members are subject to such taxes;

(11) Contracting public body means the city or joint entity that enters into the project agreement with the company;

(12) Designated blighted and substandard area means an area that is a blighted and substandard area which the board designates as such under the Nebraska Redevelopment Act. Such area may include the area of operation of more than one taxing body;

(13) Employee means a person employed at the redevelopment project;

(14) 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;

(15) Governing body means the city council, board of trustees, other legislative body, or person or persons charged with governing the taxing body or contracting public body;

(16) Investment means the value of qualified property incorporated into or used at the project after the date of the application. For qualified property owned by the company, the value is the original cost of the property. For qualified property rented by the company, the value is the average net annual rent multiplied by the number of years of the lease for which the company was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is earlier. The rental of land included in and incidental to the leasing of a building is not excluded from the computation;

(17) Joint entity means a joint entity created pursuant to the Interlocal Cooperation Act or a joint public agency created pursuant to the Joint Public Agency Act, but consisting only of two or more cities. Such joint entity shall have all of the powers set forth in the Nebraska Redevelopment Act and the Interlocal Cooperation Act or the Joint Public Agency Act;

(18) Number of new employees means the excess of the number of equivalent employees employed at the redevelopment project during a year over the number of equivalent employees during the base year;

(19) Obligee means any bondholder, agent, or trustee for any bondholder, or lessor demising to any public body property used in connection with a redevelopment project or any assignee or assignees of such lessor's interest or any part thereof;

(20) Person means any individual, firm, partnership, corporation, company, association, joint-stock association, limited liability company, subchapter S corporation, or body politic and includes any trustee, receiver, assignee, or similar representative;

(21) Personal property has the same meaning as in section 77-104;

(22) Project agreement means the project agreement provided for in the Nebraska Redevelopment Act between the company and the applicable contracting public body;

(23) Project application means the project application in section 58-505;

(24) Project area means the area described in the project application. Such area may include the area of operation of more than one taxing body;

(25) Public body means any Nebraska county, city, school district, or contracting public body;

(26) Qualified business means any business engaged in the activities listed in subdivisions (a) through (e) of this subdivision or in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business does not include any business activity in which eighty percent or more

of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not assembled, fabricated, manufactured, or processed by the company or used by the purchaser in any of the following activities:

(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(b) The performance of data processing, telecommunication, insurance, or financial services. Financial services, for purposes of this subdivision, only includes financial services provided by any financial institution subject to tax under sections 77-3801 to 77-3807 or any person or entity licensed by the Department of Banking and Finance or the federal Securities and Exchange Commission;

(c) The assembly, fabrication, manufacture, or processing of tangible personal property;

(d) The administrative management of any activities, including headquarter facilities, relating to such activity; or

(e) Any combination of the activities listed in this subdivision;

(27) Qualified property means any tangible property of the type subject to depreciation, amortization, or other recovery under the Internal Revenue Code or the components of such property that will be located and used at the redevelopment project. Qualified property does not include aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or property that is rented by the company that is party to the project agreement to another person;

(28) Real property has the same meaning as in section 77-103;

(29) Redevelopment period means a period of ten years beginning with the year after which the required increases in employment and investment were met or exceeded and the next nine years;

(30) Redevelopment project means a project described in the Nebraska Redevelopment Act, approved as described in the act;

(31) Redevelopment project valuation means the valuation for assessment of the taxable real property and taxable personal property in the project area of a redevelopment project last certified for the year prior to the effective date of the project agreement;

(32) Taxing body means any Nebraska city, village, municipality, county, township, board, commission, authority, district, or other political subdivision or public body of the state having the power to levy ad valorem taxes; and

(33) Year means the taxable year of the company.

The changes made in this section by Laws 1997, LB 264, apply to investments made or employment on or after January 1, 1997, and for all agreements in effect on or after January 1, 1997.

**Source:** Laws 1995, LB 830, § 3; Laws 1997, LB 264, § 1; Laws 1999, LB 87, § 80.

#### Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**Nebraska Investment Council**, see section 72-1237.

**Nebraska Revenue Act of 1967**, see section 77-2701.

**58-504 Designated blighted and substandard area; application; hearing; approval.**

(1) Any city or joint entity may apply to the state to designate an area as a designated blighted and substandard area under the Nebraska Redevelopment Act. Such area may extend up to ten miles outside of the area of operation of an applying city of the metropolitan or primary class or joint entity, up to six miles outside of the area of operation of an applying city of the first class or joint entity, and up to three miles outside of the area of operation of an applying city of the second class or village or joint entity.

(2) To apply for such designation, such city or joint entity shall file an area application with the board. The area application shall contain:

(a) The proposed area to be designated as the designated blighted and substandard area;

(b) A description of the characteristics of such area that cause it to be a blighted and substandard area under the act;

(c) A statement that such city or joint entity intends that such area be designated by the board as a designated blighted and substandard area in order to allow for potential redevelopment projects under the act;

(d) The application to the state must have a description of the specific project for which a designation has been requested. No other project can be initiated, if such designation is approved, without again making application to the board; and

(e) Such other information as the board determines is necessary to decide whether the area is a blighted and substandard area under the act.

(3) The city or joint entity filing such area application shall at the same time of filing such application also provide notice of such filing and a copy of such area application to any governing body of the other public bodies whose area of operation is covered in whole or in part by the proposed designated blighted and substandard area and to any school district which has territory within twenty miles of the border of the proposed designated blighted and substandard area.

(4) Upon receipt of an area application, the board shall schedule a public hearing to be held within fifteen days after such receipt to receive public input. The board shall publish notice of the public hearing for five business days in advance of the hearing in some legal newspaper of general circulation near the proposed designated area. The notice shall list the name of the city or joint entity that filed the application and the legal or other sufficient description of the area and shall state that the area is proposed to be designated as a blighted and substandard area under the Nebraska Redevelopment Act.

(5) The board shall determine by majority vote no sooner than fifteen days but no later than sixty days after the date of filing of the area application whether to approve or disapprove the area application's request for designation of such area. Within ten days after receipt of such area application, any other governing body of any public body whose area of operation is included in whole or in part in the proposed designated blighted and substandard area and any school district which has territory within twenty miles of the border of the proposed designated blighted and substandard area may file a written objection with the board which the board shall consider in its decision as to whether or not it approves the application.

(6) The address of the board shall be the address of the Department of Revenue.

(7) The board may approve the area application if the proposed designated blighted and substandard area fits within the definition of such an area under the act and if such area application is in the public interest. Such designation shall not affect whether such area is considered blighted or substandard under any law other than the act. Such designation shall if approved remain in effect for project applications filed within twelve months after the date of designation if at the time of any project application being submitted, the project area continues to fit within the definition of blighted and substandard relied on in making the original designation.

(8) The board may modify or return the area application or approve a smaller blighted and substandard area that is contained within the area proposed in the area application without additional notice or publication if in the public interest and if such smaller area is within the definition of a blighted and substandard area under the act.

(9) If the board approves such area application, then, for purposes of Article VIII, section 12, of the Constitution of Nebraska, as applied in the act, the designated blighted and substandard area is considered as determined by law to be a designated blighted and substandard area and the property within such area is considered to be determined by law to be substandard and blighted property.

(10) The area application and all supporting information shall be considered public information.

**Source:** Laws 1995, LB 830, § 4; Laws 1997, LB 344, § 1.

**58-505 Redevelopment project; application; hearing; approval.**

(1) A company may file a project application with the city or joint entity that filed the area application for the designated blighted and substandard area to undertake and complete a redevelopment project in such designated area and to obtain tax increment financing under the Nebraska Redevelopment Act for such project. Such application may be filed either before or after approval by the board of the area application for designation of such area. The company shall, at the time of filing the project application with the city or joint entity, also file a copy of such project application with the governing body of each of the public bodies whose area of operation or the area within three miles thereof includes in whole or in part the project area. Not later than five calendar days before approving or disapproving the project application, the city or joint entity shall, by United States mail, postage prepaid, mail to the owners of real property described in the project application as being within the project area a written notice stating that the property owned by the person or persons is proposed to be included in the project area of a project under the Nebraska Redevelopment Act, that a project application has been filed with the city or joint entity, the date, time, and location of the public hearing, and where additional information may be obtained. The notice shall be sent to the owner or owners of the real property as their names appear and at the address indicated in the records of the county assessor for property tax purposes on the business day immediately prior to the date of the mailing. The city or joint entity may, but shall not be required to, send the notice by certified or

registered United States mail. Substantial compliance with this notice requirement shall be deemed sufficient for all purposes of the act.

(2) Such city or joint entity shall no sooner than twenty days after the filing of such project application, and no later than sixty days after the filing of such project application, either approve or disapprove such project application. Such project application shall not be approved if (a) the governing body of a county whose area of operation includes in whole or part the project area, (b) the governing body of a city whose area of operation and the area within three miles thereof includes in whole or part the project area, or (c) any electric utility serving the project area shall, within fifteen days after receipt of the project application, file with such city or joint entity a written objection to approval of the project application signed by the head of such governing body. The city, county, or electric utility may withdraw the objection within thirty days after it is filed.

(3) The project application shall contain:

(a) The exact name of the company and any related companies which will be included in the redevelopment project;

(b) A statement describing in detail the nature of the company's business, including the products sold and respective markets;

(c) A legal description of the project area;

(d) A detailed narrative that describes the proposed redevelopment project, including an allocation of the proposed expenditures for site acquisition, site preparation, and buildings and improvement construction, equipment, and other personal property purchases and leases;

(e) A request that the proposed redevelopment project be considered for approval by such city or joint entity;

(f) A copy of the company's internal authorization for the redevelopment project; and

(g) The number of base-year employees and the expected number of new employees, including the expected timing of the hiring of the new employees, the anticipated timing and anticipated amounts of new investment in buildings, equipment, and other real property and personal property and the average salaries expected by category for the new employees to be employed at the redevelopment project.

(4) The city or joint entity shall determine whether to approve the company's project application based on its determination as to whether the redevelopment project will sufficiently help enable the state and local communities to accomplish the legislative purposes of the act. The city or joint entity shall be governed by and shall take into consideration all of the following factors in making such determination:

(a) The timing, number, wage levels, employee benefit package, and types of new jobs to be created by the redevelopment project;

(b) The type of industry in which the company and the project would be engaged;

(c) The timing, amount of, and types of investment in qualified property to be made at the project;

(d) Whether the city or joint entity believes the redevelopment project would occur in this state regardless of whether the application was approved; and

(e) Whether the benefits allowed by the act for the redevelopment project, when compared to the local tax revenue and fees generated by the redevelopment project investment and employment, both on a direct and indirect multiplier basis, provide an adequate net benefit to the public bodies affected by such redevelopment project.

(5) A project shall be considered eligible under the act and may be approved by the city or joint entity only if the application defines a redevelopment project (a) which is consistent with the legislative purposes contained in section 58-502 in one or more qualified business activities within the project area and (b) that will result at the project area in the investment in qualified property of at least fifty million dollars and the hiring of a number of new employees of at least five hundred, and when such new investment and employment will occur within five years, meaning by the end of the fourth year after the end of the year the application was filed, and such new investment and employment will be maintained for the entire redevelopment period. These thresholds shall constitute the required levels of employment and investment for purposes of the act.

(6) If the redevelopment project application is approved by the city or joint entity, the city or joint entity shall as the contracting public body enter into a written project agreement with the company. The project agreement shall be executed on behalf of the contracting public body by the person normally or specifically authorized to execute agreements on behalf of such entity. In the project agreement, the company shall agree to complete the redevelopment project and the contracting public body shall designate the approved plans of the company as a redevelopment project and, in consideration of the company's agreement, agree to allow the provisions relating to indebtedness by a city or cities and the payment of such indebtedness through tax increment financing as provided for in the act. The contracting public body shall not incur indebtedness under the agreement except for the purposes of land acquisition, site preparation, extension of public services, and improvements to the site, including buildings for other than residential use. The project agreement shall contain other terms as the city or joint entity and the company determine are appropriate or necessary to protect the affected public bodies and to carry out the legislative purposes of the act and may contain terms for a recapture or other remedy if the company fails to attain the required levels of employment and investment within the time period contained in the act or fails to maintain such levels for the redevelopment period. The project application shall be considered as part of the project agreement.

(7) If the city or joint entity approves such project application, then the project area is, for purposes of Article VIII, section 12, of the Constitution of Nebraska, as applied in the act, considered as determined by law to be substandard and blighted property in a redevelopment project.

**Source:** Laws 1995, LB 830, § 5.

**58-506 Act; how construed.**

The Nebraska Redevelopment Act shall be construed in accordance with the authority granted by Article VIII, section 12, of the Constitution of Nebraska.

**Source:** Laws 1995, LB 830, § 6.

**58-507 Property taxes; how divided.**

The project agreement shall contain a provision that all property taxes levied on the assessed valuation of the real property or personal property, or both, in the project area of the redevelopment project by or for the benefit of all taxing bodies shall be divided, for a period not to exceed fifteen years after the effective date of such project agreement, as follows:

(1) That portion of the property tax which is produced by the levy at the rate fixed each year by or for each such taxing body upon the redevelopment project valuation shall be paid into the funds of each such taxing body in the same proportion as are all other taxes collected by or for such taxing body; and

(2) That portion of the property tax on real property, personal property, or both, as provided in the project agreement in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund established by the contracting public body to pay the principal of, the interest on, and any premiums due in connection with the bonds, loans, notes, advances of money, or other indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such contracting public body for financing or refinancing, in whole or in part, such redevelopment project. When such bonds, loans, notes, advances of money, or other indebtedness, including interest and premiums due, have been paid, the contracting public body shall so notify the county assessor and county treasurer and all property taxes upon taxable real property and personal property in such redevelopment project shall thereafter be paid into the funds of and applied as all other taxes of the respective taxing bodies.

**Source:** Laws 1995, LB 830, § 7.

**58-508 Redevelopment project valuation; county assessor; duties.**

Commencing on the effective date of the project agreement, the county assessor, or county clerk if he or she is ex officio county assessor, of the county or counties in which the redevelopment project is located, shall transmit to the contracting public body and to the county treasurer, upon request, the redevelopment project valuation and shall annually certify to such contracting public body and the county treasurer the current valuation for assessment of taxable real property and personal property in the redevelopment project. The county assessor shall undertake, upon request of such contracting public body, an investigation, examination, and inspection of the taxable real property and taxable personal property in the redevelopment project and shall reaffirm or revalue the current value for assessment for such property in accordance with the findings of such investigation, examination, and inspection.

**Source:** Laws 1995, LB 830, § 8.

**58-509 Property taxes; how treated.**

In each year after the determination of a redevelopment project valuation as outlined in section 58-508, the county assessor and the county board of equalization of each affected county shall include no more than the redevelopment project valuation of the taxable real property and taxable personal property in the redevelopment project in the assessed valuation upon which is computed the rates of all taxes levied by any taxing body on such project. In each year for which the current assessed valuation on taxable real property and taxable personal property in the redevelopment project exceeds the redevelopment project valuation, the county treasurer shall remit to the contracting

public body, instead of to any taxing body, that proportion of all property taxes on real property and personal property paid that year on the redevelopment project which such excess valuation bears to the current assessed valuation.

**Source:** Laws 1995, LB 830, § 9.

**58-510 Pledge of taxes authorized.**

In the proceedings for the issuance of bonds, the making of loans or advances of money, or the incurring of any indebtedness, whether funded, refunded, assumed, or otherwise, by a contracting public body to finance or refinance, in whole or in part, a redevelopment project, the portion of taxes mentioned in subdivision (2) of section 58-507 shall be pledged for the payment of the principal of, premium, if any, and interest on such bonds, loans, notes, advances, or indebtedness.

**Source:** Laws 1995, LB 830, § 10.

**58-511 Bond required.**

Any company entering into a project agreement for the undertaking of a redevelopment project pursuant to the Nebraska Redevelopment Act which contains the provision outlined in section 58-507 shall be required before commencing work to execute, in addition to all bonds that may be required, a penal bond with good and sufficient surety to be approved by the contracting public body conditioned that such contractor (1) shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing the contractor or its subcontractors with labor or materials performed or used in the prosecution of the work provided for in such contract and (2) will indemnify and save harmless the contracting public body to the extent of any payments in connection with the carrying out of such contracts which such contracting public body may be required to make under the law.

**Source:** Laws 1995, LB 830, § 11.

**58-512 Powers supplemental; act, how construed.**

The powers conferred by the Nebraska Redevelopment Act shall be in addition and supplemental to the powers conferred by any other law and shall be independent of and in addition to any other provision of the laws of the state with reference to the matters covered thereby and shall be considered as a complete and independent act and not as amendatory of or limited by any other provisions of the laws of the state. The act and all grants of power, authority, rights, or discretion made to a city and to a contracting public body shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon a city or a contracting public body.

**Source:** Laws 1995, LB 830, § 12.

**58-513 Contracting public body; powers.**

The contracting public body shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Nebraska Redevelopment Act, including, but not limited to, the following powers:

(1) All authority, powers, and duties which such contracting public body has under other provisions of law unless specifically limited in the act;

(2) Within the designated blighted and substandard area to:

(a) Purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise, eminent domain, or otherwise any real property or personal property, or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project, except that the power of eminent domain may be exercised only against nonpublic entities and individuals;

(b) Hold, improve, clear, or prepare for redevelopment any such property;

(c) Sell, lease for a term not exceeding ninety-nine years, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real property or personal property, or any interest therein;

(d) Enter into contracts with redevelopers of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, or recreational purposes or for public purposes in accordance with the project agreement and such other covenants, restrictions, and conditions as such contracting public body may deem necessary to eliminate or prevent a recurrence of blighted and substandard areas or to effectuate the purposes of the act;

(e) Make any of the covenants, restrictions, or conditions of such contract covenants running with the land and to provide appropriate remedies for any breach of any such covenants or conditions, including the right in such contracting public body to terminate such contracts and any interest in the property created;

(f) Borrow money, issue bonds, and provide security for loans or bonds;

(g) Establish a revolving loan fund;

(h) Insure or provide for the insurance of any real property or personal property or the operations of such contracting public body against any risks or hazards, including the power to pay premiums on any such insurance;

(i) Enter into any contracts necessary to effectuate the purposes of the act; and

(j) Provide grants, loans, or other means of financing to public or private persons in order to accomplish the rehabilitation, acquisition, or redevelopment in accordance with the project agreement. No statutory provision with respect to the acquisition, clearance, or disposition of property by other public bodies or taxing bodies shall restrict such contracting public body from exercising the powers under the act in such functions, unless the Legislature specifically states otherwise;

(3) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement in property or securities in which savings banks or other banks may legally invest funds subject to their control. To redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, and such bonds redeemed or purchased shall be canceled;

(4) To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, from the state, county, municipality, or other public body, or from any sources, public or private, including charitable funds, foundations, corporations, trusts, or requests, for the purposes of the act, to give such security as may be required, and to enter into and carry out contracts in connection with

the act. Notwithstanding any other provision of law, to include in any contract for financial assistance with the federal government for a redevelopment project such conditions imposed pursuant to federal law as such contracting public body deems reasonable and appropriate and which are not inconsistent with the purposes of the act;

(5) Within the designated blighted and substandard area, to make or have made all surveys, appraisals, studies, and plans necessary to the carrying out of the purposes of the act and to contract or cooperate with any and all persons or agencies, public or private, in the making and carrying out of such surveys, appraisals, studies, and plans;

(6) To make such expenditures as may be necessary to carry out the purposes of the act, and to make expenditures from funds obtained from the federal government without regard to any other laws pertaining to the making and approval of appropriations and expenditures;

(7) To annex all or any portion of the project area, whether such area is contiguous or not contiguous to the area of operation of the contracting public body if both the company and contracting public body agree to such annexation, except that (a) the annexing contracting public body shall comply with all other provisions of law relating to annexation generally applicable to a municipality of the class of the contracting public body, (b) the contracting public body shall not, in consequence of the annexation under this subdivision of any noncontiguous land, exercise the authority granted to it by statute to extend its jurisdiction beyond its corporate boundaries for purposes of planning, zoning, or subdivision development without the agreement of any city, village, or county currently exercising such jurisdiction over the area surrounding the annexed portion of the project area, and (c) the provisions of section 70-1008 shall apply to the annexation of any contiguous land by the contracting public body, but the annexation of any noncontiguous land undertaken pursuant to the act by a contracting public body shall not result in any change to the service area of any electric utility without the express agreement of the electric utility serving the annexed noncontiguous area at the time of annexation, except that at such time following the annexation of the noncontiguous area as the contracting public body lawfully annexes sufficient intervening territory so as to directly connect the noncontiguous area to the main body of the contracting public body, such noncontiguous area shall, solely for the purposes of section 70-1008, be treated as if it had been annexed by the contracting public body on the date upon which the connecting intervening territory had been formally annexed; and

(8) To exercise all or any part or combination of powers granted in the act.

**Source:** Laws 1995, LB 830, § 13.

#### **58-514 Issuance of bonds.**

The contracting public body may issue bonds from time to time for any of its corporate purposes as specified in a project agreement or with respect to the acquisition, rehabilitation, or redevelopment of property in a designated blighted and substandard area or as otherwise permitted by the Nebraska Redevelopment Act. The contracting public body may also issue refunding bonds for the purpose of paying, retiring, or otherwise refinancing, or in exchange for any or all of the principal or interest upon bonds previously issued by it. The contracting public body may issue such types of bonds as it determines, including,

without limiting the generality of the foregoing, bonds on which the principal and interest are payable:

(1) Exclusively from the income, proceeds, and revenue of the redevelopment project financed with proceeds of such bonds;

(2) Exclusively from the income, proceeds, and revenue of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds;

(3) Exclusively from its revenue and income, including such tax revenue or receipts as may be authorized, including those which may be pledged under section 58-510, and from such grants and loans as may be received; or

(4) From all or part of the income, proceeds, and revenue enumerated in subdivisions (1), (2), and (3) of this section.

Any such bonds may be additionally secured by a pledge of any loan, grant, or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the contracting public body, and the contracting public body shall not pledge the credit or taxing power of the state or any political subdivision thereof, except tax receipts authorized under this section or pledged under section 58-510, or place any lien or encumbrance on any property owned by the state, county, or city used by the contracting public body.

**Source:** Laws 1995, LB 830, § 14.

**58-515 Bonds; liability; how paid; notes.**

The contracting public body, the members of the governing body of the contracting public body, and any person executing the bonds shall not be liable personally on the bonds by reason of the issuance of the bonds. The bonds and other obligations of the contracting public body, and such bonds and obligations shall so state on their face, shall be special limited obligations of the contracting public body payable solely from a portion of ad valorem taxes levied by taxing bodies on property in the redevelopment project area and allocable to and collected by the contracting public body as authorized by the Nebraska Redevelopment Act and shall not be a debt of the contracting public body. The contracting public body shall not be liable on such bonds except to the extent authorized by sections 58-507 to 58-510. Such bonds or obligations shall not be payable out of any funds or properties other than those of the contracting public body acquired for the purposes of the act except to the extent authorized by sections 58-507 to 58-510. Except to the extent otherwise authorized, the bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of the contracting public party are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from all taxes.

The contracting public body may issue bond anticipation notes and may issue renewal notes, such notes in any case to mature not later than thirty months from the date of incurring the indebtedness represented in an amount not exceeding in the aggregate at any time outstanding the amount of bonds then or before authorized. Payment of such notes shall be made from any money or revenue which the contracting public body may have available for such purpose or from the proceeds of the sale of bonds of the contracting public body, or

such notes may be exchanged for a like amount of such bonds. The contracting public body may pledge such money or revenue of the contracting public body subject to prior pledges, if any, for the payment of such notes, and may in addition secure the notes in the same manner as provided for bonds. All notes shall be issued and sold in the same manner as bonds, and any contracting public body may contract for the future sale of notes on terms and conditions stated in such contracts, and the contracting public body may pay such consideration as it deems proper for any commitments to purchase notes and bonds in the future. Such notes shall also be collaterally secured by pledges and deposits with a bank or trust company, in trust for the payment of such notes, of bonds in an aggregate amount at least equal to the amount of such notes and, in any event, in an amount deemed by the issuing party sufficient to provide for the payment of the notes in full at the maturity of the notes. The contracting public body may provide in the collateral agreement that the notes may be exchanged for bonds held as collateral security for the notes, or that the trustee may sell the bonds if the notes are not otherwise paid at maturity and apply the proceeds of such sale to the payment of the notes. Such notes shall bear interest at a rate or rates set by the contracting public body and shall be sold at such price as will cause the interest cost on the note to not exceed such rate or rates.

Any pledge of revenue, income, receipts, proceeds, or other money made by a contracting public body for the payment of bonds or notes shall be valid and binding from the time such pledge is made. The revenue, income, receipts, proceeds, and other money so pledged and thereafter received by the contracting public body shall immediately be subject to the lien of such pledge without the physical delivery or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the contracting public body irrespective of whether such parties have actual notice. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

**Source:** Laws 1995, LB 830, § 15.

**58-516 Bonds; how issued.**

Bonds of a contracting public body shall be authorized by resolution of its governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution, its trust indenture, or mortgage may provide.

**Source:** Laws 1995, LB 830, § 16.

**58-517 Bonds; how sold.**

The bonds may be sold by the contracting public body in such manner and for such price as the contracting public body determines, at a discount, at par, or at a premium, at private negotiated sale or at public sale after notice published prior to such sale in a legal newspaper having general circulation in the municipality, in such other medium of publication as the contracting public

body deems appropriate, or may be exchanged by the contracting public body for other bonds issued by it under the Nebraska Redevelopment Act. Bonds which are issued under this section may be sold by the contracting public body to the federal government at private sale at a discount, at par, or at a premium and, if less than all of the authorized principal amount of such bonds is sold by the contracting public body to the federal government, the balance or any portion of the balance may be sold by the contracting public body at private sale at a discount, at par, or at a premium.

**Source:** Laws 1995, LB 830, § 17.

**58-518 Bonds; signatures; negotiability.**

In case any of the members or officers of the contracting public body whose signatures appear on any bonds shall cease to be such members or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, as if such members or officers had remained in office until the delivery. Any bonds issued pursuant to the provisions of the Nebraska Redevelopment Act are fully negotiable.

**Source:** Laws 1995, LB 830, § 18.

**58-519 Bonds; presumption of validity.**

In any suit, action, or proceedings involving the validity or enforceability of any bond of a contracting public body or the security therefor brought after the lapse of thirty days after the bonds are issued, any such bond reciting in substance that it has been issued by the contracting public body to aid in financing a redevelopment project shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the purposes and provisions of the Nebraska Redevelopment Act.

**Source:** Laws 1995, LB 830, § 19.

**58-520 Bonds; leases; contracting public body; powers.**

In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, the contracting public body, in addition to its other powers, may:

(1) Pledge all or any part of its gross or net rents, fees, or revenue arising from the redevelopment project to which its right then exists or may thereafter come into existence;

(2) Mortgage all or any part of its real property or personal property in the project area, then owned or acquired later;

(3) Covenant against pledging all or any part of its rents, fees, and revenue, or against mortgaging all or any part of its real property or personal property in the project area, to which its right or title then exists or may later come into existence, or against permitting or suffering any lien on such revenue or property, covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any redevelopment project, or any part thereof, and covenant as to what other or additional debts or obligations may be incurred by it;

(4) Covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds of the

bonds, provide for the replacement of lost, destroyed, or mutilated bonds, covenant against extending the time for the payment of its bonds or interest thereon, and covenant for the redemption of the bonds and to provide the terms and conditions of the bonds;

(5) Covenant, subject to the limitations contained in the Nebraska Redevelopment Act, as to the amount of revenue to be raised each year or other period of time by rents, fees, and other revenue, and as to the use and disposition to be made of such revenue, establish or authorize the establishment of special funds or money held for operating costs, debt service, reserves, or other purposes, and covenant as to the use and disposition of the money held in such funds;

(6) Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to the amendment or abrogation, and the manner in which such consent may be given;

(7) Covenant as to the use, maintenance, and replacement of any or all of its real property or personal property in the project area, the insurance to be carried on such property, the use and disposition of insurance money, and warrant its title to such property;

(8) Covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenants, conditions, or obligations, and covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(9) Vest in any obligees of the contracting public body the right to enforce the payment of the bonds or any covenants securing or relating to the bonds, vest in any obligee or obligees holding a specified amount in bonds the right, in the event of a default by the contracting public body, to take possession of and use, operate, and manage any redevelopment project or any part of such project, title to which is in the contracting public body, or any funds connected with the project, and collect the rents and revenue and dispose of such money in accordance with the agreement of the contracting public body with such obligees, provide for the powers and duties of such obligees and to limit their liabilities, and provide the terms and conditions upon which such obligees may enforce any covenant or rights securing or relating to the bonds; and

(10) Exercise all or any part or combination of the powers granted by this section and make such covenants, in addition to those necessary, convenient, or desirable in order to secure its bonds, or, in the absolute discretion of the contracting public body, as will tend to make the bonds more marketable.

**Source:** Laws 1995, LB 830, § 20.

**58-521 Default; contracting public body; powers.**

The contracting public body may by resolution, trust indenture, mortgage, lease, or other contract confer upon any obligee holding or representing a specified amount in bonds, the right to, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instruments, by suit, action, or proceeding in any court of competent jurisdiction:

(1) Cause possession of any redevelopment project or any part of the project, title to which is in the contracting public body, to be surrendered to any such obligee;

(2) Obtain the appointment of a receiver of any redevelopment project of the contracting public body or any part of the project, title to which is in the contracting public body, and of the rents and profits from the project. If a receiver is appointed, he or she may enter and take possession of, carry out, operate, and maintain such project or any part of the project and collect and receive all fees, rents, revenue, or other charges thereafter arising from the project, and shall keep such money in a separate account or accounts and apply the same in accordance with the obligations of the contracting public body as the court directs; and

(3) Require the contracting public body and the members, officers, agents, and employees of the contracting public body to account as if it and they were the trustee of an express trust.

**Source:** Laws 1995, LB 830, § 21.

**58-522 Obligee; rights.**

An obligee of a contracting public body shall have the right in addition to all other rights which may be conferred upon such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action, or proceeding at law or in equity to compel the contracting public body and the members, officers, agents, or employees to perform each and every term, provision, and covenant contained in any contract of the contracting public body with or for the benefit of such obligee and to require the carrying out of any or all such covenants and agreements to the contracting public body and the fulfillment of all duties imposed upon the contracting public body by the provisions of the Nebraska Redevelopment Act; and

(2) By suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of the contracting public body.

**Source:** Laws 1995, LB 830, § 22.

**58-523 Bonds; authorized investment.**

All public officers, municipal corporations, political subdivisions, and public bodies; all banks, trust companies, bankers, savings banks, financial institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or other obligations issued by a contracting public body pursuant to the Nebraska Redevelopment Act and such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any person, political subdivision, and officer, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. However, nothing contained in this section with regard to legal investments shall be construed as

relieving any person of any duty of exercising reasonable care in the selection of securities.

**Source:** Laws 1995, LB 830, § 23.

**58-524 Bond validation proceeding; appeal.**

(1) Any contracting public body may determine its authority to incur indebtedness and to apply or pledge the ad valorem taxes, all as provided in the Nebraska Redevelopment Act, and the legality of all proceedings in connection therewith. For this purpose a petition may be filed in the district court in the county in which the area of operation, or part thereof, of the contracting public body is located against the state and its taxpayers and citizens. Such action shall constitute a bond validation proceeding.

(2) The petition shall set out the contracting public body's authority for incurring the indebtedness and pledging or applying such ad valorem taxes and for all the other essential proceedings had or taken in connection therewith, the amount of the indebtedness issued or to be issued, and the interest they are to bear.

(3) The court shall issue an order, directed against the state and its taxpayers and citizens, requiring the state through the Attorney General to appear at a designated time and place within the county where the petition is filed and show why the petition should not be granted and the proceedings and bonds or tax matters validated. A copy of the petition and order shall be served on the Attorney General at least twenty days before the time fixed for hearing. The Attorney General shall examine the petition, and if it appears or there is reason to believe that it is defective, insufficient, or untrue, or if in the opinion of the Attorney General the issuance of the indebtedness in question has not been duly authorized, defense shall be made by the Attorney General. The Attorney General shall have access, for the purposes of such action, to all records and proceedings of the contracting public body, and any officer, agent, or employee having charge, possession, or control of any of the books, papers, or records of the contracting public body shall exhibit them for examination on demand of the Attorney General and shall furnish, without cost, duly authenticated copies which pertain to the proceedings for the issuance of the indebtedness and the pledge or application of taxes or which may affect their legality.

(4) At the hearing the court shall determine all questions of law and fact and make such orders as will enable it to properly try and determine the action and render a final judgment with the least possible delay. The company and any bondholder may intervene in such proceeding.

(5) The Attorney General, a contracting public body, company, or any bondholder may appeal such order in the normal manner and time for appeals from the district court prescribed by law and applicable court rules.

(6) If the judgment validates such indebtedness, tax matters, and proceedings and no appeal is taken within the time prescribed, or if taken and the judgment is affirmed, such judgment is forever conclusive as to all matters adjudicated against the plaintiff and all persons affected by the action, including all taxpayers and citizens.

(7) If any judgment extends into more than one county it shall be recorded in each such county.

(8) The court costs shall be paid by the contracting public body filing the petition except as the court otherwise determines is equitable.

(9) No judge shall be disqualified in any validation action because he or she is a landowner or taxpayer of any county or city affected.

**Source:** Laws 1995, LB 830, § 24.

**58-525 Bonds or certificates; validation.**

(1) Bonds or certificates, when validated under section 58-524, shall have stamped or written on the bond or certificate, by the proper officers of such contracting public body issuing them, a statement in substantially the following form: "This bond is one of a series of bonds which were validated by judgment of the District Court for . . . . . County, rendered on . . . . . 20....".

(2) A certified copy of the judgment or decree shall be received as evidence in any court in this state.

**Source:** Laws 1995, LB 830, § 25; Laws 2004, LB 813, § 27.

**58-526 Public body or taxing body; supplemental powers.**

In addition to any other provisions governing any public body or taxing body set forth in the Nebraska Redevelopment Act, for the purpose of aiding and cooperating in the planning, undertaking, or carrying out of a redevelopment project located within the area in which it is authorized to act, any public body or taxing body may, upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to a contracting public body;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in connection with a redevelopment project;

(3) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places which it is otherwise empowered to undertake;

(4) Plan, replan, zone, or rezone any part of the public body or taxing body or make exceptions from building regulations and ordinances if such functions are of the character which the public body or taxing body is otherwise empowered to perform;

(5) Cause administrative and other services to be furnished to the contracting public body of the character which the public body or taxing body is otherwise empowered to undertake or furnish for the same or other purposes;

(6) Incur the entire expense of any public improvements made by such public body or taxing body in exercising the powers granted in this section;

(7) Do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a redevelopment project;

(8) Lend, grant, or contribute funds to a contracting public body;

(9) Employ any funds belonging to or within the control of such public body or taxing body, including funds derived from the sale or furnishing of property, service, or facilities to a contracting public body, in the purchase of the bonds or other obligations of a contracting public body and, as the holder of such

bonds or other obligations, exercise the rights connected with the bonds or obligations; and

(10) Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a contracting public body respecting action to be taken by such public body or taxing body pursuant to any of the powers granted by the provisions of the act.

**Source:** Laws 1995, LB 830, § 26.

**58-527 Sale, conveyance, lease, or agreement; how made.**

Any sale, conveyance, lease, or agreement provided for in section 58-526 may be made by a public body or taxing body without appraisal, public notice, advertisement, or public bidding.

**Source:** Laws 1995, LB 830, § 27.

**58-528 Contracting public body; estimate of expenses; appropriations; bonds authorized.**

A contracting public body may, at such time as it may deem necessary, file with the governing body or governing bodies to which it relates an estimate of the amounts necessary to be appropriated by the governing body or governing bodies to defray the expense of the contracting public body arising under the Nebraska Redevelopment Act. Such governing body may appropriate from its general fund and place at the disposal of the contracting public body an amount sufficient to assist in defraying such expense. Any city or county located within the area of operation of the contracting public body or the designated blighted and substandard area may grant funds to a contracting public body for the purpose of aiding such contracting public body in carrying out any of its powers and functions under the act. To obtain funds for this purpose, such city or county may levy taxes and may issue and sell its bonds. Any bonds to be issued by such city or county pursuant to this section shall be issued in the manner and within the limitations, except as otherwise provided by the act, prescribed by the laws of this state for the issuance and authorization of bonds by a city or county for any public purpose.

**Source:** Laws 1995, LB 830, § 28.

**58-529 School districts; additional expenses; appropriations.**

Any school district impacted by a project approved under the Nebraska Redevelopment Act, the Invest Nebraska Act, or the Quality Jobs Act may file with the governing body an estimate of the amount of additional expenses of the school district as a result of the project which is in excess of amounts compensated by additional valuation or state aid. The governing body may appropriate funds to the school district to compensate for all or part of the impact.

**Source:** Laws 1995, LB 830, § 29; Laws 2001, LB 620, § 46.

**Cross References**

**Invest Nebraska Act**, see section 77-5501.

**Quality Jobs Act**, see section 77-4901.

**58-530 Presumption of compliance.**

Any instrument executed by a contracting public body and purporting to convey any right, title, or interest in any property under the Nebraska Redevelopment Act shall be conclusive evidence of compliance with the provisions of the act insofar as title or other interest of any bona fide purchasers, lessees, or other transferees of such property is concerned.

**Source:** Laws 1995, LB 830, § 30.

**58-531 Act; how construed.**

The Nebraska Redevelopment Act shall be full authority for the creation of or to act as a contracting public body by a city or cities and for the exercise of the powers of the act granted to a city or cities and to such contracting public bodies, and no action, proceeding, or election shall be required prior to the creation of or action by a contracting public body or to authorize the exercise of any of the powers granted in the act, except as specifically provided in the act, any provision of law or of any city charter or village law to the contrary notwithstanding.

No proceedings for the issuance of bonds of a contracting public body are required other than those required by the provisions of the act, and the provisions of all other laws and city charters, if any, relative to the terms and conditions for the issuance, payment, redemption, registration, sale, or delivery of bonds of public bodies, corporations, or political subdivisions of this state shall not be applicable to bonds issued by a contracting public body pursuant to the act.

Insofar as the provisions of the act are inconsistent with the provisions of any other law or of any city charter, if any, the provisions of the act shall be controlling.

**Source:** Laws 1995, LB 830, § 31.

**58-532 Act; when operative.**

The Nebraska Redevelopment Act becomes operative on February 1, 1995, and shall apply to all area applications and project applications filed on or after such date.

**Source:** Laws 1995, LB 830, § 32.

**58-533 Filing of applications; limitation.**

There shall be no area applications or project applications filed on or after February 1, 2000, without further authorization of the Legislature, except that all area applications, all project applications, and all project agreements pending, approved, or entered into before such date shall continue in full force and effect.

**Source:** Laws 1995, LB 830, § 33; Laws 1997, LB 344, § 2.

**ARTICLE 6**

**NEBRASKA UNIFORM PRUDENT MANAGEMENT  
OF INSTITUTIONAL FUNDS ACT**

Section

- 58-601. Repealed. Laws 2007, LB 136, § 11.
- 58-602. Repealed. Laws 2007, LB 136, § 11.
- 58-603. Repealed. Laws 2007, LB 136, § 11.

## Section

- 58-604. Repealed. Laws 2007, LB 136, § 11.  
58-605. Repealed. Laws 2007, LB 136, § 11.  
58-606. Repealed. Laws 2007, LB 136, § 11.  
58-607. Repealed. Laws 2007, LB 136, § 11.  
58-608. Repealed. Laws 2007, LB 136, § 11.  
58-609. Repealed. Laws 2007, LB 136, § 11.  
58-610. Act, how cited.  
58-611. Definitions.  
58-612. Standard of conduct in managing and investing institutional fund.  
58-613. Appropriation for expenditure or accumulation of endowment fund; rules of construction.  
58-614. Delegation of management and investment functions.  
58-615. Release or modification of restrictions on management, investment, or purpose.  
58-616. Reviewing compliance.  
58-617. Application to existing institutional funds.  
58-618. Relation to Electronic Signatures in Global and National Commerce Act.  
58-619. Uniformity of application and construction.

**58-601 Repealed. Laws 2007, LB 136, § 11.**

**58-602 Repealed. Laws 2007, LB 136, § 11.**

**58-603 Repealed. Laws 2007, LB 136, § 11.**

**58-604 Repealed. Laws 2007, LB 136, § 11.**

**58-605 Repealed. Laws 2007, LB 136, § 11.**

**58-606 Repealed. Laws 2007, LB 136, § 11.**

**58-607 Repealed. Laws 2007, LB 136, § 11.**

**58-608 Repealed. Laws 2007, LB 136, § 11.**

**58-609 Repealed. Laws 2007, LB 136, § 11.**

**58-610 Act, how cited.**

Sections 58-610 to 58-619 shall be known and be cited as the Nebraska Uniform Prudent Management of Institutional Funds Act.

**Source:** Laws 2007, LB136, § 1.

**58-611 Definitions.**

For purposes of the Nebraska Uniform Prudent Management of Institutional Funds Act:

(1) Charitable purpose means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) Endowment fund means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) Gift instrument means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) Institution means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes;

(B) a government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and

(C) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) Institutional fund means a fund held by an institution exclusively for charitable purposes. The term does not include:

(A) program-related assets;

(B) a fund held for an institution by a trustee that is not an institution; or

(C) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) Program-related asset means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**Source:** Laws 2007, LB136, § 2.

**58-612 Standard of conduct in managing and investing institutional fund.**

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) general economic conditions;

(B) the possible effect of inflation or deflation;

(C) the expected tax consequences, if any, of investment decisions or strategies;

(D) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) the expected total return from income and the appreciation of investments;

(F) other resources of the institution;

(G) the needs of the institution and the fund to make distributions and to preserve capital; and

(H) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of the act.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

**Source:** Laws 2007, LB136, § 3.

**58-613 Appropriation for expenditure or accumulation of endowment fund; rules of construction.**

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are

donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (1) the duration and preservation of the endowment fund;
- (2) the purposes of the institution and the endowment fund;
- (3) general economic conditions;
- (4) the possible effect of inflation or deflation;
- (5) the expected total return from income and the appreciation of investments;
- (6) other resources of the institution; and
- (7) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only income, interest, dividends, or rents, issues, or profits, or to preserve the principal intact, or words of similar import:

- (1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and
- (2) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

**Source:** Laws 2007, LB136, § 4.

**58-614 Delegation of management and investment functions.**

(a) Subject to any specific limitation set forth in a gift instrument or in law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
- (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the law of this state, an agent submits to the

jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than the Nebraska Uniform Prudent Management of Institutional Funds Act.

**Source:** Laws 2007, LB136, § 5.

**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 management, 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, impractical, 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 twenty-five 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.

**58-616 Reviewing compliance.**

Compliance with the Nebraska Uniform Prudent Management of Institutional Funds Act is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

**Source:** Laws 2007, LB136, § 7.

**58-617 Application to existing institutional funds.**

The Nebraska Uniform Prudent Management of Institutional Funds Act applies to institutional funds existing on or established after September 1, 2007. As applied to institutional funds existing on September 1, 2007, the act governs only decisions made or actions taken on or after that date.

**Source:** Laws 2007, LB136, § 8.

**58-618 Relation to Electronic Signatures in Global and National Commerce Act.**

The Nebraska Uniform Prudent Management of Institutional Funds Act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as the act existed on September 1, 2007, but does not modify, limit, or supersede section 101 of that act, 15 U.S.C. 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, 15 U.S.C. 7003(b).

**Source:** Laws 2007, LB136, § 9.

**58-619 Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Source:** Laws 2007, LB136, § 10.

**ARTICLE 7****NEBRASKA AFFORDABLE HOUSING ACT**

## Section

- 58-701. Act, how cited.
- 58-702. Legislative findings.
- 58-703. Affordable Housing Trust Fund; created; use.
- 58-704. Housing advisory committee; created; members; duties; meetings.
- 58-705. Department of Economic Development; Affordable Housing Trust Fund; duties.
- 58-706. Affordable Housing Trust Fund; eligible activities.
- 58-707. Assistance; qualified recipients.
- 58-708. Department of Economic Development; selection of projects to receive assistance; duties.
- 58-709. Rules and regulations.
- 58-710. Repealed. Laws 1998, LB 897, § 1.
- 58-711. Annual reports; contents.

**58-701 Act, how cited.**

Sections 58-701 to 58-711 shall be known and may be cited as the Nebraska Affordable Housing Act.

**Source:** Laws 1996, LB 1322, § 11; Laws 1997, LB 864, § 8.

**58-702 Legislative findings.**

The Legislature finds that current economic conditions, lack of available affordable housing, federal housing policies that have placed an increasing burden on the state, and declining resources at all levels of government adversely affect the ability of Nebraska's citizens to obtain safe, decent, and

affordable housing. Lack of affordable housing also affects the ability of communities to maintain and develop viable and stable economies.

Furthermore, the Legislature finds that impediments exist to the construction and rehabilitation of affordable housing. Local codes and state statutes have an important effect on housing's affordability by placing increased costs on developers. Financing affordable housing, especially in rural areas and smaller communities, is becoming increasingly difficult. An affordable housing trust fund would assist all Nebraska communities in financing affordable housing projects.

To enhance the economic development of the state and to provide for the general prosperity of all of Nebraska's citizens, it is in the public interest to assist in the provision of safe, decent, and affordable housing in all areas of the state. The establishment of the Nebraska Affordable Housing Act will assist in creating conditions favorable to meeting the affordable housing needs of the state.

**Source:** Laws 1996, LB 1322, § 12.

**58-703 Affordable Housing Trust Fund; created; use.**

The Affordable Housing Trust Fund is created. The fund shall receive money pursuant to sections 8-1120 and 76-903 and may include revenue from sources recommended by the housing advisory committee established in section 58-704, appropriations from the Legislature, grants, private contributions, repayment of loans, and all other sources, except that before appropriations from the General Fund may be used as a revenue source for the Affordable Housing Trust Fund or for administrative costs of the Department of Economic Development in administering the fund, such use must be specifically authorized by a separate legislative bill passed in a legislative session subsequent to the Ninety-fourth Legislature, Second Session, 1996. Any initial appropriation from the General Fund which is used as a revenue source for the Affordable Housing Trust Fund or for administrative costs shall be in an appropriations bill which does not contain appropriations for other programs. The department as part of its comprehensive housing affordability strategy shall administer the Affordable Housing Trust Fund.

Transfers may be made from the Affordable Housing Trust Fund to the General Fund and the Behavioral Health Services Fund at the direction of the Legislature. The State Treasurer shall make transfers from the Affordable Housing Trust Fund to the General Fund according to the following schedule: (1) \$1,500,000 on or after July 1, 2005, but no later than July 10, 2005; and (2) \$1,500,000 on or after July 1, 2006, but no later than July 10, 2006. The State Treasurer shall transfer \$2,000,000 from the Affordable Housing Trust Fund to the Behavioral Health Services Fund on or after July 1, 2005, but not later than July 10, 2005.

**Source:** Laws 1996, LB 1322, § 13; Laws 1997, LB 864, § 9; Laws 2004, LB 1083, § 100; Laws 2005, LB 40, § 1.

**58-704 Housing advisory committee; created; members; duties; meetings.**

(1) The Legislature finds that the development of operational rules and regulations and an appropriate source of funding is critical to the success of the Affordable Housing Trust Fund. A housing advisory committee is created to address issues related to the operation of the fund and to recommend a plan to

coordinate low-income housing efforts throughout the state. On or before December 15, 1996, the committee shall recommend to the Legislature and the Governor the most viable revenue source or sources for the funding of the fund. The committee shall also recommend for public review proposals for rules and regulations to carry out the fund, including time limitations for the use of financial assistance and limitations on the administrative costs of proposed projects. For administrative purposes, the committee shall be located in the Department of Economic Development.

(2) The committee shall consist of fifteen members who represent a wide range of interests associated with the development and sales of housing. The Governor shall appoint the members and a chairperson and vice-chairperson from the members. The committee may be a committee or council previously created by statute or executive order of the Governor. The Governor shall attempt to have the nonprofit and for-profit communities equally represented on the advisory committee.

(3) The committee shall meet at the call of the chairperson or a majority of the members. The chairperson shall call such meetings as he or she determines necessary to fulfill the duties of the committee. A quorum shall be one-half of the members.

**Source:** Laws 1996, LB 1322, § 14.

**58-705 Department of Economic Development; Affordable Housing Trust Fund; duties.**

The Department of Economic Development shall use the Affordable Housing Trust Fund to finance loans, grants, subsidies, credit enhancements, and other financial assistance for community affordable housing projects and for expenses of the department as appropriated by the Legislature for administering the fund.

**Source:** Laws 1996, LB 1322, § 15.

**58-706 Affordable Housing Trust Fund; eligible activities.**

The following activities are eligible for assistance from the Affordable Housing Trust Fund:

- (1) New construction, rehabilitation, or acquisition of housing to assist low-income and very low-income families;
- (2) Matching funds for new construction, rehabilitation, or acquisition of housing units to assist low-income and very low-income families;
- (3) Technical assistance, design and finance services, and consultation for eligible nonprofit community or neighborhood-based organizations involved in the creation of affordable housing;
- (4) Matching funds for operating costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's ability to produce affordable housing;
- (5) Mortgage insurance guarantees for eligible projects;
- (6) Acquisition of housing units for the purpose of preservation of housing to assist low-income or very low-income families;
- (7) Projects making affordable housing more accessible to families with elderly members or members who have disabilities;

(8) Projects providing housing in areas determined by the Department of Economic Development to be of critical importance for the continued economic development and economic well-being of the community and where, as determined by the department, a shortage of affordable housing exists;

(9) Infrastructure projects necessary for the development of affordable housing;

(10) Downpayment and closing cost assistance; and

(11) Housing education programs developed in conjunction with affordable housing projects. The education programs must be directed toward:

(a) Preparing potential home buyers to purchase affordable housing and postpurchase education;

(b) Target audiences eligible to utilize the services of housing assistance groups or organizations; and

(c) Developers interested in the rehabilitation, acquisition, or construction of affordable housing.

**Source:** Laws 1996, LB 1322, § 16; Laws 2004, LB 1083, § 101; Laws 2005, LB 40, § 2.

**58-707 Assistance; qualified recipients.**

Organizations which may receive assistance under the Nebraska Affordable Housing Act are governmental subdivisions, local housing authorities, community action agencies, community-based or neighborhood-based or reservation-based nonprofit organizations, and for-profit entities working in conjunction with one of the other eligible organizations and shall be required to provide, or cause to be provided, matching funds for the eligible activity in an amount determined by the Department of Economic Development, which amount shall be at least equal to ten percent of the amount of assistance provided by the Affordable Housing Trust Fund. Nothing in the act shall be construed to allow individuals to receive direct loans from the Affordable Housing Trust Fund.

**Source:** Laws 1996, LB 1322, § 17; Laws 1997, LB 864, § 10.

**58-708 Department of Economic Development; selection of projects to receive assistance; duties.**

(1) During each calendar year in which funds are available from the Affordable Housing Trust Fund for use by the Department of Economic Development, the department shall allocate a specific amount of funds, not less than twenty-five percent, to each congressional district. Entitlement area funds allocated under this section that are not awarded to an eligible project from within the entitlement area within one year shall be made available for distribution to eligible projects elsewhere in the state. The department shall announce a grant and loan application period of at least ninety days duration for all nonentitlement areas. In selecting projects to receive trust fund assistance, the department shall develop a qualified allocation plan and give first priority to financially viable projects that serve the lowest income occupants for the longest period of time. The qualified allocation plan shall:

(a) Set forth selection criteria to be used to determine housing priorities of the housing trust fund which are appropriate to local conditions, including the community's immediate need for affordable housing, proposed increases in home ownership, private dollars leveraged, level of local government support

and participation, and repayment, in part or in whole, of financial assistance awarded by the fund; and

(b) Give first priority in allocating trust fund assistance among selected projects to those projects which serve the lowest income occupant and are obligated to serve qualified occupants for the longest period of time.

(2) The department shall fund in order of priority as many applications as will utilize available funds less actual administrative costs of the department in administering the program. In administering the program the department may contract for services or directly provide funds to other governmental entities or instrumentalities.

**Source:** Laws 1996, LB 1322, § 18; Laws 2005, LB 40, § 3.

**58-709 Rules and regulations.**

The Department of Economic Development, in consultation with the Nebraska Investment Finance Authority and the housing advisory committee established in section 58-704, shall adopt and promulgate rules and regulations to carry out the Nebraska Affordable Housing Act. The department shall monitor programs to see that only qualified individuals and families are occupying projects funded by the Affordable Housing Trust Fund.

**Source:** Laws 1996, LB 1322, § 19.

**58-710 Repealed. Laws 1998, LB 897, § 1.**

**58-711 Annual reports; contents.**

The Department of Economic Development shall submit an annual report to the Legislature no later than March 15th of each year. The report shall list (1) the applications funded during the previous calendar year, (2) the applications funded in previous years, (3) the identity of the organizations receiving funds, (4) the location of each project, (5) the amount of funding provided to the project, (6) the amount of funding leveraged as a result of the project, (7) the number of units of housing created by the project and the occupancy rate, (8) the expected cost of rent or monthly payment of those units, (9) the projected number of new employees and community investment as a result of the project, and (10) the amount of revenue deposited into the Affordable Housing Trust Fund pursuant to sections 8-1120 and 76-903. The report shall contain no information that is protected by state or federal confidentiality laws.

**Source:** Laws 1997, LB 864, § 7.

## CHAPTER 59

### MONOPOLIES AND UNLAWFUL COMBINATIONS

Article.

1. Trusts. Repealed.
2. Grain Dealers. Repealed.
3. Fire Insurance Companies. Repealed.
4. Lumber and Coal Dealers. Repealed.
5. Local Discrimination. 59-501 to 59-509.
6. Pooling by Bridge Contractors. Repealed.
7. Rebate Vouchers. Repealed.
8. Unlawful Restraint of Trade. 59-801 to 59-831.
9. Regulation of Public Markets. Repealed.
10. Dairy Industry. Repealed.
11. Fair Trade Act. Repealed.
12. Unfair Sales Act. Repealed.
13. Monopoly Relating to Musical Compositions. Repealed.
14. Musical Compositions. 59-1401 to 59-1406.
15. Cigarette Sales.
  - (a) Unfair Cigarette Sales Act. 59-1501 to 59-1518.
  - (b) Grey Market Sales. 59-1519 to 59-1525.
16. Consumer Protection Act. 59-1601 to 59-1623.
17. Seller-Assisted Marketing Plan. 59-1701 to 59-1762.
18. Charitable Gift Annuity Act. 59-1801 to 59-1803.

#### ARTICLE 1

##### TRUSTS

Section

59-101. Repealed. Laws 1980, LB 741, § 1.

**59-101 Repealed. Laws 1980, LB 741, § 1.**

#### ARTICLE 2

##### GRAIN DEALERS

Section

59-201. Repealed. Laws 1974, LB 1028, § 32.

59-202. Repealed. Laws 1974, LB 1028, § 32.

59-203. Repealed. Laws 1974, LB 1028, § 32.

59-204. Repealed. Laws 1974, LB 1028, § 32.

**59-201 Repealed. Laws 1974, LB 1028, § 32.**

**59-202 Repealed. Laws 1974, LB 1028, § 32.**

**59-203 Repealed. Laws 1974, LB 1028, § 32.**

**59-204 Repealed. Laws 1974, LB 1028, § 32.**

**ARTICLE 3**

**FIRE INSURANCE COMPANIES**

Section

59-301. Repealed. Laws 1969, c. 485, § 5.

59-302. Repealed. Laws 1969, c. 485, § 5.

59-303. Repealed. Laws 1969, c. 485, § 5.

59-304. Repealed. Laws 1969, c. 485, § 5.

**59-301 Repealed. Laws 1969, c. 485, § 5.**

**59-302 Repealed. Laws 1969, c. 485, § 5.**

**59-303 Repealed. Laws 1969, c. 485, § 5.**

**59-304 Repealed. Laws 1969, c. 485, § 5.**

**ARTICLE 4**

**LUMBER AND COAL DEALERS**

Section

59-401. Repealed. Laws 1974, LB 1028, § 32.

59-402. Repealed. Laws 1974, LB 1028, § 32.

59-403. Repealed. Laws 1974, LB 1028, § 32.

**59-401 Repealed. Laws 1974, LB 1028, § 32.**

**59-402 Repealed. Laws 1974, LB 1028, § 32.**

**59-403 Repealed. Laws 1974, LB 1028, § 32.**

**ARTICLE 5**

**LOCAL DISCRIMINATION**

Section

59-501. Sales; discrimination; when unlawful.

59-502. Sales; unlawful discrimination; prima facie evidence.

59-503. Purchases; discrimination; when unlawful.

59-504. Purchases; unlawful discrimination; prima facie evidence.

59-505. Unlawful discrimination; penalty.

59-506. Unlawful discrimination; contracts void.

59-507. Attorney General, county attorneys; duty to enforce sections.

59-508. Unlawful discrimination by corporations; penalty; prosecution by Attorney General; injunction; corporations in which the public has an interest.

59-509. Repealed. Laws 1974, LB 1028, § 32.

**59-501 Sales; discrimination; when unlawful.**

Any person, firm, or company, association or corporation, foreign or domestic, doing business in the State of Nebraska and engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally, for the purpose of destroying the business of a competitor in any locality, discriminate between different sections, communities, or cities of this state by selling such commodity at a lower rate in one section, community or city than is charged for said commodity by said party in another section,

community or city, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

**Source:** Laws 1939, c. 77, § 1, p. 313; C.S.Supp.,1941, § 59-523; R.S. 1943, § 59-501.

Electricity is a commodity within the meaning of this section. State ex rel. Spillman v. Interstate Power Co., 118 Neb. 756, 226 N.W. 427 (1929). as they may demand. State v. Drayton, 82 Neb. 254, 117 N.W. 768 (1908).

Former act sustained as constitutional, but did not prevent persons dealing in commodities from selling them at such price

#### **59-502 Sales; unlawful discrimination; prima facie evidence.**

Proof that any person, firm, company, association or corporation has been discriminating between different sections, communities and cities of this state by selling a commodity at a lower rate in one section, community or city than is charged for said commodity by said party in another section, community or city, after making an allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point of production, if a raw material, and from the point of manufacture, if a manufactured product, shall be prima facie evidence that the party so discriminating is guilty of unfair discrimination.

**Source:** Laws 1939, c. 77, § 1, p. 314; C.S.Supp.,1941, § 59-523; R.S. 1943, § 59-502.

#### **59-503 Purchases; discrimination; when unlawful.**

Any person, firm, company, association or corporation, foreign or domestic, doing business in the State of Nebraska, engaged in the business of collecting or buying any product, commodity or property of any kind, that shall intentionally, for the purpose of injuring or destroying the business of a competitor in any locality, discriminate between the different sections, communities or cities of this state by buying any product, commodity or property of any kind, and paying therefor a higher rate or price in one section, community or city than is paid for the same kind of product, commodity or property by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of the transportation from the point where the same is purchased to the market where it is sold, or intended to be sold, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

**Source:** Laws 1939, c. 77, § 1, p. 314; C.S.Supp.,1941, § 59-523; R.S. 1943, § 59-503.

#### **59-504 Purchases; unlawful discrimination; prima facie evidence.**

Proof that any person, firm, company, association or corporation has been discriminating between different sections, communities and cities by buying any product, commodity or property of any kind, and paying therefor a higher rate or price in one section, community or city than is paid for the same kind of product, commodity or property by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point where the same

is purchased to the market where same is sold or intended to be sold, shall be prima facie evidence that the party so discriminating is guilty of unfair discrimination.

**Source:** Laws 1939, c. 77, § 1, p. 314; C.S.Supp.,1941, § 59-523; R.S. 1943, § 59-504.

**59-505 Unlawful discrimination; penalty.**

Any person, firm, company, association or corporation violating any of the provisions of sections 59-501 and 59-503, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same, or any individual, violating any of the provisions of said sections, shall be deemed guilty of a Class I misdemeanor.

**Source:** Laws 1939, c. 77, § 2, p. 315; C.S.Supp.,1941, § 59-524; R.S. 1943, § 59-505; Laws 1977, LB 39, § 61.

**59-506 Unlawful discrimination; contracts void.**

All contracts or agreements made in violation of any of the provisions of sections 59-501 to 59-503 shall be void.

**Source:** Laws 1939, c. 77, § 3, p. 315; C.S.Supp.,1941, § 59-525; R.S. 1943, § 59-506.

**59-507 Attorney General, county attorneys; duty to enforce sections.**

It shall be the duty of the county attorneys, in their counties, and the Attorney General to enforce the provisions of sections 59-501 to 59-508.

**Source:** Laws 1939, c. 77, § 4, p. 315; C.S.Supp.,1941, § 59-526; R.S. 1943, § 59-507.

**59-508 Unlawful discrimination by corporations; penalty; prosecution by Attorney General; injunction; corporations in which the public has an interest.**

Any corporation, joint-stock company or other association that shall have been once adjudged to have violated the provisions of sections 59-501 to 59-507, by a final judgment of any court having jurisdiction of the question and who shall thereafter violate the provisions of said sections shall no longer be allowed to engage in business in this state; *Provided*, such prohibition shall be enforced only after such corporation, joint-stock company or other association shall have been enjoined against further engaging in such business on an information or suit brought in a court of competent jurisdiction by the Attorney General on behalf of this state. The Attorney General may, unless he shall be satisfied that such corporation, joint-stock company or other association has desisted and abstained and will in the future desist and abstain from such violation, enforce the provision by proceeding, either by information or by indictment, as he may in his discretion think best. Any corporation, joint-stock company or other association which shall be charged with violating said sections, and any president, director, treasurer, officer or agent thereof, may be enjoined as a party in any proceeding, civil or criminal, to enforce said sections. If, in the judgment of the Attorney General, such corporation, joint-stock company or other association, against which proceedings may be instituted, be one on which the public is so depending that the interruption of its business will cause serious public loss or inconvenience, he may, in his

discretion, refrain from proceeding to obtain a decree, which will absolutely prevent the continuance of such business, and may apply for a limited or conditional decree or one to take effect at a future day, as the public interests shall seem to require. If, in the judgment of the court before whom such proceedings may be pending, the interruption of the business of the defendant corporation, joint-stock company, or other association will cause such serious public loss or inconvenience, the court may decline to enter an absolute decree enjoining it against proceeding with its business and may enter a conditional decree or such a decree to take effect at a future time, as justice shall require. The court may also, in its discretion, enjoin such officers, agents or servants of such corporation, joint-stock company or other association from continuing in its service and enjoin any such corporation, joint-stock company or other association from continuing their employment therein, as the case shall seem to require.

**Source:** Laws 1939, c. 77, § 5, p. 315; C.S.Supp.,1941, § 59-527; Laws 1943, c. 132, § 1, p. 444; R.S.1943, § 59-508.

**59-509 Repealed. Laws 1974, LB 1028, § 32.**

#### ARTICLE 6

#### POOLING BY BRIDGE CONTRACTORS

##### Section

- 59-601. Repealed. Laws 1974, LB 1028, § 32.
- 59-602. Repealed. Laws 1974, LB 1028, § 32.
- 59-603. Repealed. Laws 1974, LB 1028, § 32.
- 59-604. Repealed. Laws 1974, LB 1028, § 32.
- 59-605. Repealed. Laws 1974, LB 1028, § 32.
- 59-606. Repealed. Laws 1974, LB 1028, § 32.

**59-601 Repealed. Laws 1974, LB 1028, § 32.**

**59-602 Repealed. Laws 1974, LB 1028, § 32.**

**59-603 Repealed. Laws 1974, LB 1028, § 32.**

**59-604 Repealed. Laws 1974, LB 1028, § 32.**

**59-605 Repealed. Laws 1974, LB 1028, § 32.**

**59-606 Repealed. Laws 1974, LB 1028, § 32.**

#### ARTICLE 7

#### REBATE VOUCHERS

##### Section

- 59-701. Repealed. Laws 1981, LB 381, § 41.
- 59-702. Repealed. Laws 1981, LB 381, § 41.
- 59-703. Repealed. Laws 1981, LB 381, § 41.
- 59-704. Repealed. Laws 1981, LB 381, § 41.
- 59-705. Repealed. Laws 1981, LB 381, § 41.

**59-701 Repealed. Laws 1981, LB 381, § 41.**

**59-702 Repealed. Laws 1981, LB 381, § 41.**

**59-703 Repealed. Laws 1981, LB 381, § 41.**

**59-704 Repealed. Laws 1981, LB 381, § 41.**

**59-705 Repealed. Laws 1981, LB 381, § 41.**

## ARTICLE 8

### UNLAWFUL RESTRAINT OF TRADE

#### Cross References

Charitable Gift Annuity Act, see section 59-1801.

#### Section

- 59-801. Restraint of trade or commerce; unlawful; penalty.
- 59-802. Monopolizing trade or commerce; unlawful; penalty.
- 59-803. Violation; property under contract forfeited.
- 59-804. Business of corporations or other companies; conduct; investigation by Attorney General; powers.
- 59-805. Restraint of trade; underselling; penalty.
- 59-806. Holding companies; when unlawful.
- 59-807. Books of record and papers; inspection by Attorney General.
- 59-808. Prohibited acts.
- 59-809. Violation; ouster.
- 59-810. Second or subsequent violations; ouster; injunction.
- 59-811. Second or subsequent violations; duty of Attorney General.
- 59-812. Violators; actions against; joinder of parties.
- 59-813. Violators; ouster; injunctions; business affected with a public interest; decree.
- 59-814. Violators; parties to employment contract; injunction.
- 59-815. Violation; penalty.
- 59-816. Violation; company officers; personal liability.
- 59-817. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 59-818. Seeking or receiving special advantages; when unlawful; penalty.
- 59-819. Violations; jurisdiction; powers of courts.
- 59-820. Violations; civil proceedings; subpoena; may issue to any county.
- 59-821. Violations; recovery of actual or liquidated damages; attorney's fees.
- 59-821.01. Illegal overcharge or undercharge case.
- 59-822. Person, defined.
- 59-823. Violations; actions brought by state; advancement of cause; appeal.
- 59-824. Violations; proceedings; evidence; discovery; privilege not allowed.
- 59-825. Violations; proceedings; refusal to attend and testify; penalty.
- 59-826. Violations; proceedings; perjury; penalty.
- 59-827. Violations; proceedings; subornation of perjury.
- 59-828. Violations; prosecutions; duty of Attorney General and county attorney; evidence; discovery; immunity; scope and operation; proceeding by individual; costs.
- 59-829. Antitrust action; construction; federal law.
- 59-830. Actions taken pursuant to state or federal law; reliance on validity; criminal action; limitation.
- 59-831. Violations; recovery; disposition.

#### **59-801 Restraint of trade or commerce; unlawful; penalty.**

Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce, within this state, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a Class IV felony.

**Source:** Laws 1905, c. 162, § 1, p. 636; R.S.1913, § 4045; C.S.1922, § 3448; C.S.1929, § 59-801; R.S.1943, § 59-801; Laws 1977, LB 39, § 63; Laws 1983, LB 32, § 1.

1. Contracts in violation of section
2. Contracts not in violation of section
3. Miscellaneous

#### 1. Contracts in violation of section

A tying arrangement is an agreement by a party to sell one product, but only on the condition that the buyer also purchase a different, or tied, product, or agree that it will not purchase that product from another supplier. A tying arrangement violates Nebraska's unlawful restraint of trade act if the seller has appreciable economic power in the tying product market and if the arrangement affects a substantial volume of commerce in the tied market. A plaintiff alleging an unlawful tying arrangement must produce evidence of the following elements: (1) the existence of two distinct products or services; (2) sufficient economic power on the part of the defendant in the tying market to appreciably restrain competition in the tied product market, combined with the exercise of such power to coerce the purchaser to buy both items; and (3) the amount of commerce affected is not insubstantial. *Heath Consultants v. Precision Instruments*, 247 Neb. 267, 527 N.W.2d 596 (1995).

Claim that contract for construction of educational television system was in violation of this section raised but not decided. *Hamilton County Tel. Co. v. Northwestern Bell Tel. Co.*, 180 Neb. 1, 140 N.W.2d 834 (1966).

Monopolization in producing, selling, and distributing electricity is prohibited. *State ex rel. Spillman v. Interstate Power Co.*, 118 Neb. 756, 226 N.W. 427 (1929).

A combination or conspiracy between two or more persons against any person, firm, or corporation to prevent competition, which is carried into effect, is in violation of this section. *Marsh-Burke Co. v. Yost*, 98 Neb. 523, 153 N.W. 573 (1915).

A combination to prevent competition in insurance comes within prohibition of this section. *State v. American Surety Co.*, 91 Neb. 22, 135 N.W. 365, Ann. Cas. 1913B 973 (1912).

Agreement by lumber dealers to protect one another by asking higher price for same bill of lumber, or to divide territory and fix prices therein, is illegal and they can be enjoined. *State v. Adams Lumber Co.*, 81 Neb. 392, 116 N.W. 302 (1908).

Provisions of Junkin Act were applicable to combination of grain dealers even though there was another special act covering them. *State v. Omaha Elevator Co.*, 75 Neb. 637, 106 N.W. 979 (1906).

Under prior act, organization of lumber dealers to prevent competition was unlawful. *Cleland v. Anderson*, 66 Neb. 252, 92

N.W. 306 (1902), rev'd on other grounds, 75 Neb. 273, 105 N.W. 1092 (1905).

#### 2. Contracts not in violation of section

Contract with agent to sell seed corn upon a commission basis did not violate this section. *Bohy v. Pfister Hybrid Co.*, 179 Neb. 337, 138 N.W.2d 23 (1965).

Contract not to resell automobile without first offering it to vendor did not violate this section. *Stanford Motor Co. v. Westman*, 151 Neb. 850, 39 N.W.2d 841 (1949).

Refusal of dairy company to purchase milk from farmers that was hauled by plaintiff did not constitute violation of this section. *Ploog v. Roberts Dairy Co.*, 122 Neb. 540, 240 N.W. 764 (1932).

Refusal to furnish first-run films to theatre, where entire output of first-run films was already under contract, did not show conspiracy to stifle competition. *Goldberg v. Tri-States Theatre Corporation*, 126 F.2d 26 (8th Cir. 1942).

#### 3. Miscellaneous

A justifiable termination of a contractual relationship does not operate to create a liability, either under a contract theory or under the state antitrust statutes against one who terminates a contract. *Mike Pratt & Sons, Inc. v. Metalcraft, Inc.*, 222 Neb. 333, 383 N.W.2d 758 (1986).

Amendment in 1937 to this section, excepting contracts under Fair Trade Act, declared unconstitutional. *General Electric Co. v. J. L. Brandeis & Sons*, 159 Neb. 736, 68 N.W.2d 620 (1955); *McGraw Electric Co. v. Lewis & Smith Drug Co., Inc.*, 159 Neb. 703, 68 N.W.2d 608 (1955).

Where evidence fails to show an unlawful intent to conspire against and injure business of another by stifling competition action must fail for want of proof. *Hompes v. Goodrich Company*, 137 Neb. 84, 288 N.W. 367 (1939).

Indictment must allege that acts complained of were in restraint of trade within this state. *Howell v. State*, 83 Neb. 448, 120 N.W. 139 (1909).

Where agency agreement between insurance company and agency should have little or no effect on interests of policyholders, federal exemption from Sherman Act was not applicable. *Allied Financial Services, Inc. v. Foremost Ins. Co.*, 418 F.Supp. 157 (D. Neb. 1976).

### 59-802 Monopolizing trade or commerce; unlawful; penalty.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce, within this state, shall be deemed guilty of a Class IV felony.

**Source:** Laws 1905, c. 162, § 2, p. 636; R.S.1913, § 4046; C.S.1922, § 3449; C.S.1929, § 59-802; R.S.1943, § 59-802; Laws 1977, LB 39, § 64; Laws 1983, LB 32, § 2.

Monopolization consists of two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident. *Heath Consultants v. Precision Instruments*, 247 Neb. 267, 527 N.W.2d 596 (1995).

Contract not to resell automobile was not monopolistic in character. *Stanford Motor Co. v. Westman*, 151 Neb. 850, 39 N.W.2d 841 (1949).

One attempting to monopolize electricity business in state by underselling competitors at less than fair market value violates public policy. *State ex rel. Spillman v. Interstate Power Co.*, 118 Neb. 756, 226 N.W. 427 (1929).

### 59-803 Violation; property under contract forfeited.

Any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in sections 59-801 and 59-802, shall be forfeited to the state.

**Source:** Laws 1905, c. 162, § 3, p. 636; R.S.1913, § 4047; C.S.1922, § 3450; C.S.1929, § 59-803; R.S.1943, § 59-803.

**59-804 Business of corporations or other companies; conduct; investigation by Attorney General; powers.**

The Attorney General of this state may at any time require of any corporation, joint-stock company, limited liability company, or other association engaged in business within this state, any statement he or she may think fit in regard to the conduct of its business. He or she may especially require any such corporation, joint-stock company, limited liability company, or other association to give a list of all contracts or transactions entered into within the twelve months preceding such requisition in which it has sold any article or product or carried any article or product within this state at a rate less than the ordinary market price if such article or product has been sold or carried by any other person than the party to such transaction. He or she may further require the reasons for such distinction and the circumstances attending the same.

**Source:** Laws 1905, c. 162, § 5, p. 638; R.S.1913, § 4049; C.S.1922, § 3452; C.S.1929, § 59-805; Laws 1939, c. 76, § 1, p. 312; C.S.Supp.,1941, § 59-805; R.S.1943, § 59-804; Laws 1993, LB 121, § 359.

The purpose of requiring statements to be filed with the Attorney General is to aid him in enforcing the Junkin Act. State v. American Surety Co., 91 Neb. 22, 135 N.W. 365, Ann. Cas. 1913B 973 (1912).

**59-805 Restraint of trade; underselling; penalty.**

Every person, corporation, joint-stock company, limited liability company, or other association engaged in business within this state which enters into any contract, combination, or conspiracy or which gives any direction or authority to do any act for the purpose of driving out of business any other person engaged therein or which for such purpose in the course of such business sells any article or product at less than its fair market value or at a less price than it is accustomed to demand or receive therefor in any other place under like conditions or which sells any article upon a condition, contract, or understanding that it shall not be sold again by the purchaser or restrains such sale by the purchaser shall be deemed guilty of a Class IV felony.

**Source:** Laws 1905, c. 162, § 6, p. 638; R.S.1913, § 4050; C.S.1922, § 3453; C.S.1929, § 59-806; R.S.1943, § 59-805; Laws 1977, LB 39, § 65; Laws 1983, LB 32, § 3; Laws 1993, LB 121, § 360.

Claim that contract for construction of educational television system was in violation of this section raised but not decided. Hamilton County Tel. Co. v. Northwestern Bell Tel. Co., 180 Neb. 1, 140 N.W.2d 834 (1966).

Contract not to resell automobile without first offering it to vendor did not violate this section. Stanford Motor Co. v. Westman, 151 Neb. 850, 39 N.W.2d 841 (1949).

This section gives a cause of action to party injured in his business or property by any contract, combination or conspira-

cy, or direction given to do an act, for the purpose of driving party out of business. O. G. Pierce Co. v. Century Indemnity Co., 136 Neb. 78, 285 N.W. 91 (1939).

One attempting to monopolize electricity business in state by underselling competitors at less than fair market value violates public policy. State ex rel. Spillman v. Interstate Power Co., 118 Neb. 756, 226 N.W. 427 (1929).

**59-806 Holding companies; when unlawful.**

No corporation, joint-stock company, limited liability company, or other association shall engage in business within this state, a majority of whose stock

is owned by or controlled or held in trust for any manufacturing or other corporation, which, in the course of its manufacture or production, conducts its business, or any part thereof, in a manner which would be prohibited by sections 59-801 to 59-831 if it were so conducted in the course of such business within this state.

**Source:** Laws 1905, c. 162, § 7, p. 639; R.S.1913, § 4051; C.S.1922, § 3454; C.S.1929, § 59-807; R.S.1943, § 59-806; Laws 1993, LB 121, § 361; Laws 2002, LB 1278, § 1.

**59-807 Books of record and papers; inspection by Attorney General.**

All the books of record and papers of every such corporation, joint-stock company, limited liability company, or other association engaged in business within this state shall be subject to inspection by the Attorney General of this state or by any agent he or she may designate for that purpose, and such corporation, joint-stock company, limited liability company, or other association shall, at such times as he or she shall prescribe, make such further returns, verified as aforesaid as shall be by him or her prescribed, either by general regulations or by special direction.

**Source:** Laws 1905, c. 162, § 8, p. 639; R.S.1913, § 4052; C.S.1922, § 3455; C.S.1929, § 59-808; R.S.1943, § 59-807; Laws 1993, LB 121, § 362.

**59-808 Prohibited acts.**

Any president, director, treasurer, officer, corporator, partner, member, associate, or agent of such corporation, joint-stock company, limited liability company, or other association who does in its behalf anything prohibited by sections 59-801 to 59-831 or who supports, votes for, aids and abets, or takes part in doing such action by the corporation, joint-stock company, limited liability company, or other association, or any instrumentality thereof, shall be liable to the penalties by law provided.

**Source:** Laws 1905, c. 162, § 9, p. 639; R.S.1913, § 4053; C.S.1922, § 3456; C.S.1929, § 59-809; R.S.1943, § 59-808; Laws 1993, LB 121, § 363; Laws 2002, LB 1278, § 2.

**59-809 Violation; ouster.**

No corporation, joint-stock company, limited liability company, or other association which manufactures or produces any article for sale or transportation within this state and which does any of the acts or things prohibited to be done by sections 59-801 to 59-831 shall engage in business within this state.

**Source:** Laws 1905, c. 162, § 10, p. 640; R.S.1913, § 4054; C.S.1922, § 3457; C.S.1929, § 59-810; R.S.1943, § 59-809; Laws 1993, LB 121, § 364; Laws 2002, LB 1278, § 3.

**59-810 Second or subsequent violations; ouster; injunction.**

Any corporation, joint-stock company, limited liability company, or other association which has been once adjudged to have violated the provisions of sections 59-801 to 59-831 by the final judgment of any court having jurisdiction of the question in any civil suit or proceeding in which such corporation, joint-stock company, limited liability company, or other association was a party,

which thereafter violates any of such sections or which fails to make the returns herein required at the times specified shall no longer be allowed to engage in business within this state. Such prohibition shall only be enforced after such corporation, joint-stock company, limited liability company, or other association has been enjoined against further engaging in such business on an information or suit brought in a court of competent jurisdiction by the Attorney General in behalf of this state.

**Source:** Laws 1905, c. 162, § 11, p. 640; R.S.1913, § 4055; C.S.1922, § 3458; C.S.1929, § 59-811; R.S.1943, § 59-810; Laws 1993, LB 121, § 365; Laws 2002, LB 1278, § 4.

**59-811 Second or subsequent violations; duty of Attorney General.**

It shall be the duty of the Attorney General in such case, unless he or she is satisfied that such corporation, joint-stock company, limited liability company, or other association has desisted and abstained and will in the future desist and abstain from such violation, to enforce the provision by proceeding, either by information or by indictment, as he or she may in his or her discretion think best.

**Source:** Laws 1905, c. 162, § 11, p. 640; R.S.1913, § 4055; C.S.1922, § 3458; C.S.1929, § 59-811; R.S.1943, § 59-811; Laws 1993, LB 121, § 366.

**59-812 Violators; actions against; joinder of parties.**

Any corporation, joint-stock company, limited liability company, or other association which is charged with violating sections 59-801 to 59-831 and any president, director, treasurer, officer, limited liability company member, or agent thereof may be joined as a party in any proceeding, civil or criminal, to enforce such sections.

**Source:** Laws 1905, c. 162, § 11, p. 640; R.S.1913, § 4055; C.S.1922, § 3458; C.S.1929, § 59-811; R.S.1943, § 59-812; Laws 1993, LB 121, § 367; Laws 1994, LB 884, § 75; Laws 2002, LB 1278, § 5.

**59-813 Violators; ouster; injunctions; business affected with a public interest; decree.**

If, in the judgment of the Attorney General, such corporation, joint-stock company, limited liability company, or other association against which any civil proceeding may be instituted is one upon which the public is so depending that the interruption of its business will cause serious public loss or inconvenience, he or she may, in his or her discretion, refrain from proceeding to obtain a decree which will absolutely prevent the continuance of such business and may apply for a limited or conditional decree, or one to take effect at a future day, as the public interest shall seem to require. If, in the judgment of the court before whom such proceeding may be pending, the interruption of the business of the defendant corporation, joint-stock company, limited liability company, or other association will cause such serious public loss or inconvenience, the court may decline to enter an absolute decree enjoining it against proceeding with its business and may enter a modified or conditional decree or a decree to take effect at a future time as justice shall require.

**Source:** Laws 1905, c. 162, § 11, p. 640; R.S.1913, § 4055; C.S.1922, § 3458; C.S.1929, § 59-811; R.S.1943, § 59-813; Laws 1993, LB 121, § 368.

Court may enter a modified or conditional decree or a decree to take effect at a future time. *State v. American Surety Co.*, 91 Neb. 22, 135 N.W. 365, Ann. Cas. 1913B 973 (1912).

**59-814 Violators; parties to employment contract; injunction.**

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

**Source:** Laws 1905, c. 162, § 11, p. 641; R.S.1913, § 4055; C.S.1922, § 3458; C.S.1929, § 59-811; R.S.1943, § 59-814; Laws 1993, LB 121, § 369; Laws 1994, LB 884, § 76.

**59-815 Violation; penalty.**

Any corporation, joint-stock company, limited liability company, or other association, and any president, director, treasurer, officer, corporator, partner, member, associate, or agent thereof who in its behalf engages in such business in violation of sections 59-801 to 59-831 shall for each offense, in addition to such penalty for contempt as the court in case of disobedience to its lawful order may impose, be guilty of a Class IV felony.

**Source:** Laws 1905, c. 162, § 12, p. 641; R.S.1913, § 4056; C.S.1922, § 3459; C.S.1929, § 59-812; R.S.1943, § 59-815; Laws 1977, LB 39, § 66; Laws 1983, LB 32, § 4; Laws 1993, LB 121, § 370; Laws 2002, LB 1278, § 6.

**59-816 Violation; company officers; personal liability.**

Every president, treasurer, general manager, agent, or other person usually exercising the powers of such officers of any corporation, joint-stock company, limited liability company, or other association who has himself or herself, in its behalf, violated, united to violate, or voted for or consented to the violation of sections 59-801 to 59-831 shall thereafter be personally liable for all the debts and obligations of any such corporation, joint-stock company, limited liability company, or other association created while such person holds such office or agency, whether under the same or subsequent elections or appointments.

**Source:** Laws 1905, c. 162, § 13, p. 641; R.S.1913, § 4057; C.S.1922, § 3460; C.S.1929, § 59-813; R.S.1943, § 59-816; Laws 1993, LB 121, § 371; Laws 2002, LB 1278, § 7.

**59-817 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**59-818 Seeking or receiving special advantages; when unlawful; penalty.**

If any joint-stock company, corporation, limited liability company, or combination or any agent thereof solicits, accepts, or receives any such rebate, concession, or service as is hereinbefore declared to be unlawful, it shall be unlawful thereafter to transport within this state any article owned or controlled by such company, corporation, limited liability company, or combination, or produced or manufactured by it, by whomsoever the same may be owned or controlled. If any such joint-stock company, corporation, limited liability company, or combination offers, grants, or gives any special prices,

inducements, or advantages for the sale of articles produced, manufactured, owned, or controlled by it to purchasers in any particular locality in order to restrict or destroy competition in that locality in the sale of such articles, it shall be unlawful thereafter to transport within this state any article owned or controlled by it, or produced or manufactured by it, by whomsoever the same may be owned or controlled. The prohibition imposed under this section shall not apply to any article purchased bona fide before decree made in pursuance thereof against the joint-stock company, corporation, limited liability company, or combination producing, manufacturing, or theretofore owning or controlling the same, and even after decree, any such article may be relieved from the prohibition imposed under this section if the owner thereof shows to the satisfaction of the court having jurisdiction of the matter hereinafter provided that such article was purchased bona fide, without notice, and within thirty days after the entry of such decree. Any transportation company, and any officer, agent, or representative thereof, knowingly concerned in the transportation of articles within this state, contrary to the prohibitions of this section, shall be punished by a fine of not less than five thousand dollars.

**Source:** Laws 1905, c. 162, § 15, p. 642; R.S.1913, § 4059; C.S.1922, § 3462; C.S.1929, § 59-815; R.S.1943, § 59-818; Laws 1993, LB 121, § 372.

**59-819 Violations; jurisdiction; powers of courts.**

The several courts of record of this state having equity jurisdiction are hereby invested with jurisdiction to prevent and restrain all violations of sections 59-801 to 59-831 and especially the offering, granting, giving, soliciting, accepting, or receiving any such rebate, concession, or service by any person or persons and to prevent or restrain any such joint-stock company, corporation, limited liability company, association, or combination which has solicited, accepted, or received any such rebate, concession, or service or which has offered, granted, or given any special prices, inducements, or advantages in order to restrict or destroy competition in particular localities from engaging in commerce within this state. Such proceedings may be by way of complaint setting forth the cause of action and praying that the acts hereby made unlawful shall be enjoined or otherwise prohibited. When the parties complained of are duly notified of such complaint, the court shall proceed as soon as may be to the hearing and determination of the case, and upon such complaint and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just. The court may retain jurisdiction of the case after the decree for the purpose of such subsequent modification of the same as may be made to appear equitable and just in the premises.

**Source:** Laws 1905, c. 162, § 16, p. 643; R.S.1913, § 4060; C.S.1922, § 3463; C.S.1929, § 59-816; R.S.1943, § 59-819; Laws 1993, LB 121, § 373; Laws 2002, LB 1278, § 8.

**59-820 Violations; civil proceedings; subpoena; may issue to any county.**

Whenever it shall appear to the court before which any civil proceeding under sections 59-801 to 59-831 shall be pending that the ends of justice require that other parties shall be brought before the court, the court may cause them to be summoned whether they reside in the county where the court is held

or not, and subpoenas to that end may be served in any county by the sheriff thereof.

**Source:** Laws 1905, c. 162, § 17, p. 644; R.S.1913, § 4061; C.S.1922, § 3464; C.S.1929, § 59-817; R.S.1943, § 59-820; Laws 2002, LB 1278, § 9.

### **59-821 Violations; recovery of actual or liquidated damages; attorney's fees.**

Any person who is injured in his or her business or property by any other person or persons by a violation of sections 59-801 to 59-831, whether such injured person dealt directly or indirectly with the defendant, may bring a civil action in the district court in the county in which the defendant or defendants reside or are found, without respect to the amount in controversy, and shall recover actual damages or liquidated damages in an amount which bears a reasonable relation to the actual damages which have been sustained and which damages are not susceptible of measurement by ordinary pecuniary standards and the costs of suit, including a reasonable attorney's fee.

**Source:** Laws 1905, c. 162, § 18, p. 644; R.S.1913, § 4062; C.S.1922, § 3465; C.S.1929, § 59-818; R.S.1943, § 59-821; Laws 1974, LB 1028, § 1; Laws 2002, LB 1278, § 10.

Because the remedial provisions of the Junkin Act and Clayton Act are so similar, section 59-829 requires Nebraska courts to follow the federal courts' construction of the Clayton Act. *Kanne v. Visa U.S.A.*, 272 Neb. 489, 723 N.W.2d 293 (2006).

The 2002 amendment to this section did not reject the application of standing requirements to damages under this section. It simply removed the automatic bar against indirect purchaser actions announced in *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 97 S. Ct. 2061, 52 L. Ed. 2d 707 (1977). It did not eliminate separate and distinct standing requirements. *Kanne v. Visa U.S.A.*, 272 Neb. 489, 723 N.W.2d 293 (2006).

Where jury by special verdict found that defendant had conspired with plaintiff's former employee to injure plaintiff's business, restrain trade, create a monopoly, and acquire plaintiff's business by unfair business practices, this section permits plaintiff to recover a reasonable attorney fee. *Diesel Service, Inc. v. Accessory Sales, Inc.*, 210 Neb. 797, 317 N.W.2d 719 (1982).

This section provides for damages to party injured in its business or property by reason of unlawful conspiracy or combination. *O. G. Pierce Co. v. Century Indemnity Co.*, 136 Neb. 78, 285 N.W. 91 (1939).

Triple damages could not be recovered in subsequent suit when waived in original action. *Marsh-Burke Co. v. Yost*, 102 Neb. 814, 170 N.W. 172 (1918).

When plaintiff prayed for compensatory damages only and remitted part of verdict to avoid new trial, right to claim triple damages was waived thereby. *Marsh-Burke Co. v. Yost*, 98 Neb. 523, 153 N.W. 573 (1915).

Where agency agreement between insurance company and agency should have little or no effect on interests of policyholders, federal exemption from Sherman Act was not applicable. *Allied Financial Services, Inc. v. Foremost Ins. Co.*, 418 F.Supp. 157 (D. Neb. 1976).

#### **59-821.01 Illegal overcharge or undercharge case.**

In an illegal overcharge or undercharge case in which claims are asserted by both parties who dealt directly with the defendant and parties who dealt indirectly with the defendant or any combination thereof:

(1) A defendant may prove, as a partial or complete defense to a claim for damages under sections 59-801 to 59-831 and this section, that the illegal overcharge or undercharge has been passed on to others who are themselves entitled to recover so as to avoid duplication of recovery of such damages; and

(2) The court may transfer and consolidate such claims, apportion damages, and delay disbursement of damages to avoid multiplicity of suits and duplication of recovery of damages and to obtain substantial fairness.

**Source:** Laws 2002, LB 1278, § 11.

#### **59-822 Person, defined.**

The words person or persons, as used in sections 59-801 to 59-831, shall be deemed to include all corporations, associations, limited liability companies, combinations, or concerns whatsoever.

**Source:** Laws 1905, c. 162, § 19, p. 644; R.S.1913, § 4063; C.S.1922, § 3466; C.S.1929, § 59-819; R.S.1943, § 59-822; Laws 1993, LB 121, § 374; Laws 2002, LB 1278, § 12.

The word person includes a corporation. *O. G. Pierce Co. v. Century Indemnity Co.*, 136 Neb. 78, 285 N.W. 91 (1939).

**59-823 Violations; actions brought by state; advancement of cause; appeal.**

When any suit in equity is brought in any court under sections 59-801 to 59-831 in which the state is complainant, the Attorney General may file with the clerk of such court a certificate that, in his or her opinion, the case is of general public importance, a copy of which certificate shall be immediately furnished by such clerk to the judge of the court in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited and be assigned for hearing at the earliest practicable day. An appeal from the final decree of the court shall lie to the Court of Appeals and shall be taken within thirty days after the entry of such decree or final order or within thirty days after entry of the order overruling a motion for a new trial in such case.

**Source:** Laws 1905, c. 162, § 20, p. 644; R.S.1913, § 4064; C.S.1922, § 3467; C.S.1929, § 59-820; R.S.1943, § 59-823; Laws 1961, c. 305, § 2, p. 960; Laws 1987, LB 33, § 11; Laws 1991, LB 732, § 120; Laws 1999, LB 43, § 26; Laws 2002, LB 1278, § 13.

**59-824 Violations; proceedings; evidence; discovery; privilege not allowed.**

In all prosecutions, hearings, and proceedings under sections 59-801 to 59-831, whether civil or criminal, no person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and documents before the courts of this state, or in obedience to the subpoena of the same, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of such person, may tend to criminate such person or subject such person to a penalty or forfeiture.

**Source:** Laws 1905, c. 162, § 21, p. 644; R.S.1913, § 4065; C.S.1922, § 3468; C.S.1929, § 59-821; R.S.1943, § 59-824; Laws 2002, LB 1278, § 14.

**59-825 Violations; proceedings; refusal to attend and testify; penalty.**

Any person who shall neglect or refuse to make returns, attend and testify or answer any lawful requirement hereinbefore provided for, or produce books, papers, contracts, agreements, and documents, if in his or her custody, control, or power to do so, in obedience to the subpoena of the courts or lawful requirements of the Attorney General, shall be deemed guilty of a Class IV felony.

**Source:** Laws 1905, c. 162, § 21, p. 645; R.S.1913, § 4065; C.S.1922, § 3468; C.S.1929, § 59-821; R.S.1943, § 59-825; Laws 1977, LB 39, § 67; Laws 1983, LB 32, § 5.

**59-826 Violations; proceedings; perjury; penalty.**

Whoever knowingly swears to a return or report required by sections 59-801 to 59-831 that is false in any material particular, or knowingly swears to an answer to any of the requirements of such sections that is false in any material particular, shall be deemed guilty of perjury and punished as provided by the laws of this state in reference to perjury.

**Source:** Laws 1905, c. 162, § 21, p. 645; R.S.1913, § 4065; C.S.1922, § 3468; C.S.1929, § 59-821; R.S.1943, § 59-826; Laws 2002, LB 1278, § 15.

**59-827 Violations; proceedings; subornation of perjury.**

Whoever shall knowingly prepare, or cause to be prepared, a report, return, or answer required by sections 59-801 to 59-831 that is false, as aforesaid, shall be guilty of subornation of perjury and punished by law.

**Source:** Laws 1905, c. 162, § 21, p. 645; R.S.1913, § 4065; C.S.1922, § 3468; C.S.1929, § 59-821; R.S.1943, § 59-827; Laws 2002, LB 1278, § 16.

**59-828 Violations; prosecutions; duty of Attorney General and county attorney; evidence; discovery; immunity; scope and operation; proceeding by individual; costs.**

(1) It is hereby made the duty of the Attorney General and the county attorney of each county under the direction of the Attorney General to institute and prosecute such proceedings as may be necessary to carry into effect sections 59-801 to 59-831. No person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under such sections. No person testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

(2) It shall be lawful for any person to institute proceedings pursuant to sections 59-801 to 59-831, at his or her own expense and by his or her own attorney, but in the action so brought by such person no recovery for costs and disbursements shall be had against the state.

**Source:** Laws 1905, c. 162, § 22, p. 645; R.S.1913, § 4066; C.S.1922, § 3469; C.S.1929, § 59-822; R.S.1943, § 59-828; Laws 1974, LB 1028, § 2; Laws 2002, LB 1278, § 17.

Attorney General is not authorized to bring action in name of state in ordinary labor disputes, but may do so to restrain willful and illegal acts affecting public generally. State v. Employers of Labor, 102 Neb. 768, 169 N.W. 717 (1918).

**59-829 Antitrust action; construction; federal law.**

When any provision of sections 59-801 to 59-831 and sections 84-211 to 84-214 or any provision of Chapter 59 is the same as or similar to the language of a federal antitrust law, the courts of this state in construing such sections or chapter shall follow the construction given to the federal law by the federal courts.

**Source:** Laws 1974, LB 1028, § 3; Laws 2002, LB 1278, § 18.

Because the remedial provisions of the Junkin Act and Clayton Act are so similar, this section requires Nebraska courts to follow the federal courts' construction of the Clayton Act. Kanne v. Visa U.S.A., 272 Neb. 489, 723 N.W.2d 293 (2006).

The purpose of this section is to achieve uniform application of the state and federal laws regarding monopolistic practices. The goal is to establish a uniform standard of conduct so that businesses will know what conduct is permitted and to protect

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the consumer from illegal conduct. *Arthur v. Microsoft Corp.*, 267 Neb. 586, 676 N.W.2d 29 (2004). *Consultants v. Precision Instruments*, 247 Neb. 267, 527 N.W.2d 596 (1995).

Federal cases interpreting federal legislation which is nearly identical to a state act constitute persuasive authority. *Heath*

**59-830 Actions taken pursuant to state or federal law; reliance on validity; criminal action; limitation.**

No criminal action may be maintained under sections 59-801 to 59-831 against any person, corporation, organization, limited liability company, or association for acting pursuant to and under the authority of any state or federal law. It is the purpose of this section to reaffirm that a person may rely on the validity of any state or federal law until declared invalid.

**Source:** Laws 1977, LB 524, § 1; Laws 1993, LB 121, § 375; Laws 2002, LB 1278, § 19.

**59-831 Violations; recovery; disposition.**

When the Attorney General, on behalf of a state agency or political subdivision, is authorized to investigate, file suit, or otherwise take action in connection with violations under sections 59-801 to 59-831, any recovery of damages or costs by judgment, court decree, settlement in or out of court, or other final result shall be subject to the following:

(1) Upon recovery of damages or any monetary payment except criminal penalties, the costs, expenses, or billings incurred by any state agency or political subdivision in any investigation or other action arising out of a violation under sections 59-801 to 59-831 shall be sought out in any judgment, court decree, settlement in or out of court, or other final result. Any recovered costs shall be deposited by the Attorney General in the fund from which such costs were expended; and

(2) When the Attorney General makes recovery pursuant to sections 59-801 to 59-831 on behalf of a state agency or political subdivision of any money, funds, securities, or other things of value in the nature of civil damages or other, except criminal penalties, whether such recovery shall be by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, such money, funds, securities, or other things of value shall be deposited by the Attorney General in the fund from which the funds which are being recovered were expended.

**Source:** Laws 1983, LB 32, § 7; Laws 2002, LB 1278, § 20.

**ARTICLE 9**

**REGULATION OF PUBLIC MARKETS**

Section

59-901. Repealed. Laws 1974, LB 1028, § 32.

59-902. Repealed. Laws 1974, LB 1028, § 32.

59-903. Repealed. Laws 1974, LB 1028, § 32.

59-904. Repealed. Laws 1974, LB 1028, § 32.

**59-901 Repealed. Laws 1974, LB 1028, § 32.**

**59-902 Repealed. Laws 1974, LB 1028, § 32.**

**59-903 Repealed. Laws 1974, LB 1028, § 32.**

**59-904 Repealed. Laws 1974, LB 1028, § 32.**

**ARTICLE 10  
DAIRY INDUSTRY**

Section

59-1001. Repealed. Laws 1974, LB 1028, § 32.  
59-1002. Repealed. Laws 1974, LB 1028, § 32.

**59-1001 Repealed. Laws 1974, LB 1028, § 32.**

**59-1002 Repealed. Laws 1974, LB 1028, § 32.**

**ARTICLE 11  
FAIR TRADE ACT**

Section

59-1101. Repealed. Laws 1959, c. 280, § 1.  
59-1102. Repealed. Laws 1959, c. 280, § 1.  
59-1103. Repealed. Laws 1959, c. 280, § 1.  
59-1104. Repealed. Laws 1959, c. 280, § 1.  
59-1105. Repealed. Laws 1959, c. 280, § 1.  
59-1106. Repealed. Laws 1959, c. 280, § 1.  
59-1107. Repealed. Laws 1959, c. 280, § 1.  
59-1108. Repealed. Laws 1959, c. 280, § 1.

**59-1101 Repealed. Laws 1959, c. 280, § 1.**

**59-1102 Repealed. Laws 1959, c. 280, § 1.**

**59-1103 Repealed. Laws 1959, c. 280, § 1.**

**59-1104 Repealed. Laws 1959, c. 280, § 1.**

**59-1105 Repealed. Laws 1959, c. 280, § 1.**

**59-1106 Repealed. Laws 1959, c. 280, § 1.**

**59-1107 Repealed. Laws 1959, c. 280, § 1.**

**59-1108 Repealed. Laws 1959, c. 280, § 1.**

**ARTICLE 12  
UNFAIR SALES ACT**

Section

59-1201. Repealed. Laws 1972, LB 1410, § 3.  
59-1202. Repealed. Laws 1972, LB 1410, § 3.  
59-1203. Repealed. Laws 1972, LB 1410, § 3.  
59-1204. Repealed. Laws 1972, LB 1410, § 3.  
59-1205. Repealed. Laws 1972, LB 1410, § 3.  
59-1206. Repealed. Laws 1972, LB 1410, § 3.

**59-1201 Repealed. Laws 1972, LB 1410, § 3.**

**59-1202 Repealed. Laws 1972, LB 1410, § 3.**

**59-1203 Repealed. Laws 1972, LB 1410, § 3.**

**59-1204 Repealed. Laws 1972, LB 1410, § 3.**

**59-1205 Repealed. Laws 1972, LB 1410, § 3.**

**59-1206 Repealed. Laws 1972, LB 1410, § 3.**

### ARTICLE 13

### MONOPOLY RELATING TO MUSICAL COMPOSITIONS

#### Section

59-1301. Repealed. Laws 1945, c. 139, § 9.  
59-1302. Repealed. Laws 1945, c. 139, § 9.  
59-1303. Repealed. Laws 1945, c. 139, § 9.  
59-1304. Repealed. Laws 1945, c. 139, § 9.  
59-1305. Repealed. Laws 1945, c. 139, § 9.  
59-1306. Repealed. Laws 1945, c. 139, § 9.  
59-1307. Repealed. Laws 1945, c. 139, § 9.  
59-1308. Repealed. Laws 1945, c. 139, § 9.  
59-1309. Repealed. Laws 1945, c. 139, § 9.  
59-1310. Repealed. Laws 1945, c. 139, § 9.  
59-1311. Repealed. Laws 1945, c. 139, § 9.  
59-1312. Repealed. Laws 1945, c. 139, § 9.  
59-1313. Repealed. Laws 1945, c. 139, § 9.  
59-1314. Repealed. Laws 1945, c. 139, § 9.  
59-1315. Repealed. Laws 1945, c. 139, § 9.  
59-1316. Repealed. Laws 1945, c. 139, § 9.  
59-1317. Repealed. Laws 1945, c. 139, § 9.  
59-1318. Repealed. Laws 1945, c. 139, § 9.  
59-1319. Repealed. Laws 1945, c. 139, § 9.  
59-1320. Repealed. Laws 1945, c. 139, § 9.

**59-1301 Repealed. Laws 1945, c. 139, § 9.**

**59-1302 Repealed. Laws 1945, c. 139, § 9.**

**59-1303 Repealed. Laws 1945, c. 139, § 9.**

**59-1304 Repealed. Laws 1945, c. 139, § 9.**

**59-1305 Repealed. Laws 1945, c. 139, § 9.**

**59-1306 Repealed. Laws 1945, c. 139, § 9.**

**59-1307 Repealed. Laws 1945, c. 139, § 9.**

**59-1308 Repealed. Laws 1945, c. 139, § 9.**

**59-1309 Repealed. Laws 1945, c. 139, § 9.**

**59-1310 Repealed. Laws 1945, c. 139, § 9.**

**59-1311 Repealed. Laws 1945, c. 139, § 9.**

**59-1312 Repealed. Laws 1945, c. 139, § 9.**

**59-1313 Repealed. Laws 1945, c. 139, § 9.**

**59-1314 Repealed. Laws 1945, c. 139, § 9.**

**59-1315 Repealed. Laws 1945, c. 139, § 9.**

**59-1316 Repealed. Laws 1945, c. 139, § 9.**

**59-1317 Repealed. Laws 1945, c. 139, § 9.**

**59-1318 Repealed. Laws 1945, c. 139, § 9.**

**59-1319 Repealed. Laws 1945, c. 139, § 9.**

**59-1320 Repealed. Laws 1945, c. 139, § 9.**

#### ARTICLE 14

#### MUSICAL COMPOSITIONS

##### Section

59-1401. Terms, defined.

59-1402. Repealed. Laws 1985, LB 67, § 1.

59-1403. License; tax; Secretary of State; rules and regulations; adopt and publish.

59-1404. Proprietors; assigns; licensees; benefits.

59-1405. Discrimination in price; price changes; exceptions.

59-1406. Violations; penalty.

##### **59-1401 Terms, defined.**

As used in sections 59-1401 to 59-1406, person means any individual, resident or nonresident of this state, and every domestic, foreign, or alien partnership, limited liability company, society, association, or corporation and the words performing rights refer to public performance for profit.

**Source:** Laws 1945, c. 139, § 1, p. 439; Laws 1993, LB 121, § 376.

##### **59-1402 Repealed. Laws 1985, LB 67, § 1.**

##### **59-1403 License; tax; Secretary of State; rules and regulations; adopt and publish.**

From and after August 10, 1945, there is hereby levied and there shall be collected a tax for the act or privilege of selling, licensing or otherwise disposing in this state of performing rights in any musical composition, which has been copyrighted under the laws of the United States, in an amount equal to three percent of the gross receipts of all such sales, licenses or other dispositions of performing rights in this state payable to the Secretary of State on or before March 15, 1946, with respect to all such gross receipts for the portion of the calendar year 1945 from August 10, 1945, and annually thereafter, on or before March 15 of each succeeding year with respect to the gross receipts of the preceding calendar year. At the time of paying the said tax the Secretary of State shall issue a receipt therefor in duplicate, one of which shall be given to the taxpayer and one filed with the State Treasurer at the time the tax collected is paid by the Secretary of State to the state treasury. The Secretary of State shall adopt and publish rules and regulations not in conflict herewith, as well as a form of return and any other forms necessary to carry out the provisions of this section.

**Source:** Laws 1945, c. 139, § 3, p. 440; Laws 1947, c. 253, § 1, p. 831.

##### **59-1404 Proprietors; assigns; licensees; benefits.**

Upon compliance with the provisions of sections 59-1401 to 59-1406 the proprietors, their assigns and licensees, of musical compositions copyrighted under the laws of the United States shall be entitled to all the benefits thereof.

**Source:** Laws 1945, c. 139, § 4, p. 440.

**59-1405 Discrimination in price; price changes; exceptions.**

All persons who sell, license the use of or in any manner whatsoever dispose of, in this state, the performing rights in or to any copyrighted musical composition shall refrain from discriminating in price or terms between licensees similarly situated; *Provided, however*, that differentials based upon applicable business factors which justify different prices or terms shall not be considered discriminations within the meaning of this section; *and provided further*, that nothing contained in this section shall prevent price changes from time to time by reason of changing conditions affecting the market for or marketability of performing rights.

**Source:** Laws 1945, c. 139, § 5, p. 440.

**59-1406 Violations; penalty.**

Any person violating sections 59-1401 to 59-1406 shall be fined an amount not less than one hundred dollars and not more than one thousand dollars.

**Source:** Laws 1945, c. 139, § 6, p. 441.

**ARTICLE 15  
CIGARETTE SALES**

Cross References

Vending machines, use restricted, see section 28-1429.02.

(a) UNFAIR CIGARETTE SALES ACT

Section

- 59-1501. Act, how cited.
- 59-1502. Terms, defined.
- 59-1503. Sale of cigarettes; unlawful acts; enumerated.
- 59-1504. Sale of cigarettes; cost to retailer; filing with division.
- 59-1505. Sale of cigarettes; cost to wholesaler; filing with division.
- 59-1506. Sale of cigarettes; advertising, offers for sale, sales; combination sales.
- 59-1507. Sale of cigarettes; sale by wholesaler to another wholesaler; sale price; limitation.
- 59-1508. Sale of cigarettes; transactions excepted.
- 59-1509. Sale of cigarettes; transactions permitted to meet lawful competition.
- 59-1510. Sale of cigarettes; contracts void.
- 59-1511. Sale of cigarettes; admissible evidence.
- 59-1512. Sale of cigarettes; sales outside ordinary channels.
- 59-1513. Sale of cigarettes; cost survey.
- 59-1514. Cigarette tax division; rules and regulations.
- 59-1515. Sale of cigarettes; actions; remedies.
- 59-1516. Revocation of license; procedure; appeal.
- 59-1517. Cigarette tax division; enforcement of sections.
- 59-1518. Cigarette tax division; powers vested by other laws.

(b) GREY MARKET SALES

- 59-1519. Terms, defined.
- 59-1520. Prohibited acts.
- 59-1521. Exemptions.
- 59-1522. Violation; penalty.
- 59-1523. Disciplinary actions; contraband.

## Section

59-1524. Deceptive trade practice.

59-1525. Enforcement.

## (a) UNFAIR CIGARETTE SALES ACT

**59-1501 Act, how cited.**

Sections 59-1501 to 59-1518 shall be known and may be cited as the Unfair Cigarette Sales Act.

**Source:** Laws 1965, c. 364, § 1, p. 1184.

**59-1502 Terms, defined.**

As used in the Unfair Cigarette Sales Act, unless the context otherwise requires:

(1) Person shall mean and include any individual, firm, association, company, partnership, limited liability company, corporation, joint-stock company, club, agency, syndicate, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary, or conservator;

(2) Cigarettes shall mean and include any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco;

(3) Sale shall mean any transfer for a consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means whatsoever;

(4) Wholesaler shall include any person who:

(a) Purchases cigarettes directly from the manufacturer;

(b) Purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers or to other persons for the purpose of bona fide resale to retail dealers or to other persons for the purpose of resale only; or

(c) Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing in the Unfair Cigarette Sales Act shall prevent a person from qualifying in different capacities as both a wholesaler and retailer under the applicable provisions of the act;

(5) Retailer shall mean and include any person who operates a store, stand, booth, or concession for the purpose of making sales of cigarettes at retail, including sales through vending machines;

(6) Sell at retail, sale at retail, and retail sales shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use, including sales through vending machines;

(7) Sell at wholesale, sale at wholesale, and wholesale sales shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale;

(8) Basic cost of cigarettes shall mean the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, without subtracting any discounts, to which shall be added the full value of any stamps which may be required by any cigarette tax act of this state and by ordinance of any municipality of this state in effect or hereafter enacted, if not already included by the manufacturer in his or her list price;

(9) Division shall mean the cigarette tax division of the Tax Commissioner; and

(10) Business day shall mean any day other than a Sunday or legal holiday.

**Source:** Laws 1965, c. 364, § 2, p. 1184; Laws 1967, c. 378, § 1, p. 1187; Laws 1987, LB 730, § 26; Laws 1993, LB 121, § 377; Laws 2008, LB898, § 1.

Cross References

Cigarette tax, see Chapter 77, article 26.

**59-1503 Sale of cigarettes; unlawful acts; enumerated.**

It shall be unlawful and a violation of sections 59-1501 to 59-1518:

(1) For any retailer, wholesaler or other person with intent to injure competitors or destroy or substantially lessen competition (a) to advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost as defined in sections 59-1501 to 59-1518, to such a retailer or wholesaler, as the case may be, or (b) to offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatsoever in connection with the sale of cigarettes, if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by such wholesaler or retailer in the ordinary course of his trade or business; *Provided*, that for the purpose of sections 59-1501 to 59-1518, a so-called tie-in sale of cigarettes, whereby in conjunction with the purchase of cigarettes, at a price which would not otherwise be less than cost to the vendor, the purchaser is offered other merchandise or other thing of value, without charge or at a charge less than the fair and reasonable retail value of such other merchandise or thing of value, such transaction shall be deemed a rebate or concession; or

(2) For any retailer, with intent to injure competitors or destroy or substantially lessen competition, (a) to induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than cost to wholesaler as defined in sections 59-1501 to 59-1518, or (b) to induce or attempt to induce or to procure or attempt to procure any rebate or concession of any kind or nature whatsoever in connection with the purchase of cigarettes.

Any retailer or wholesaler or agent thereof who violates the provisions of this section is a disorderly person and shall be guilty of a Class V misdemeanor.

Evidence of advertisement, offering to sell or sale of cigarettes by any retailer or wholesaler at less than cost to him or evidence of any offer of a rebate in price or the giving of a rebate in price or an offer of a concession or the giving of a concession of any kind or nature whatsoever in connection with the sale of cigarettes, if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or

concession may lawfully be given which is sold by such wholesaler or retailer in the ordinary course of his trade or business, or the inducing or attempt to induce or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer shall be prima facie evidence of intent to injure competition and to destroy or substantially lessen competition.

**Source:** Laws 1965, c. 364, § 3, p. 1186; Laws 1977, LB 39, § 68.

**59-1504 Sale of cigarettes; cost to retailer; filing with division.**

(1) Cost to the retailer shall mean the basic cost of cigarettes to the retailer plus the cost of doing business by the retailer, as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising; *Provided*, that any retailer who purchases from the manufacturer at or less than or at about the price normally and usually charged for purchases in wholesale quantities shall, in determining cost to the retailer, pursuant to this subsection, add the cost of doing business by the wholesaler, as defined in section 59-1505, to the basic cost of cigarettes to such retailer, as well as the cost of doing business by the retailer.

(2) In the absence of the filing with the division of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer shall be presumed to be eight percent of the basic cost of cigarettes to the retailer.

(3) In the absence of the filing with the division of satisfactory proof of a lesser or higher cost of doing business, the cost of doing business by the retailer, who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchase by a retailer but also, in whole or in part, the discounts ordinarily allowed upon purchases by a wholesaler, shall be presumed to be eight percent of the sum of the basic cost of cigarettes and the cost of doing business by the wholesaler.

**Source:** Laws 1965, c. 364, § 4, p. 1187.

**59-1505 Sale of cigarettes; cost to wholesaler; filing with division.**

(1) Cost to the wholesaler shall mean the basic cost of cigarettes to the wholesaler plus the cost of doing business by the wholesaler, as evidenced by the standards and methods of accounting regularly employed by him or her in his or her allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor costs, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising.

(2) In the absence of the filing with the division of satisfactory proof of a lesser or higher cost of doing business by the wholesaler making the sale, the cost of doing business by the wholesaler shall be presumed to be four and three-quarters percent of the basic cost of cigarettes to the wholesaler.

**Source:** Laws 1965, c. 364, § 5, p. 1188; Laws 2008, LB898, § 2.

**59-1506 Sale of cigarettes; advertising, offers for sale, sales; combination sales.**

In all advertisements, offers for sale or sales involving two or more items, at least one of which items is cigarettes, at a combined price, and in all advertisements, offers for sale or sales involving the giving of any concession of any kind whatsoever, whether it be coupons or otherwise, if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by such wholesaler or retailer in the ordinary course of his trade or business, the retailer's or wholesaler's selling price shall not be below the cost to the retailer or the cost to the wholesaler, respectively, of the cigarettes included in such transactions, and the invoice cost, whether the same be paid by the retailer, the wholesaler or any other person, of all other articles, products, commodities and concessions included in such transactions, to which invoice cost shall be added the cost of doing business in the case of the wholesaler and the retailer, respectively, as such cost is defined in sections 59-1504 and 59-1505.

**Source:** Laws 1965, c. 364, § 6, p. 1189.

**59-1507 Sale of cigarettes; sale by wholesaler to another wholesaler; sale price; limitation.**

When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter cost to the wholesaler, as provided by section 59-1505, except that no such sale shall be made at a price less than the basic cost of cigarettes, as defined in section 59-1502, but the latter wholesaler, upon resale to a retailer or for consumption or use, shall be deemed to be the wholesaler governed by the provisions of sections 59-1504 and 59-1505.

**Source:** Laws 1965, c. 364, § 7, p. 1189.

**59-1508 Sale of cigarettes; transactions excepted.**

The provisions of sections 59-1501 to 59-1518 shall not apply to sales at retail or sales at wholesale made (1) as an isolated transaction and not in the usual course of business; (2) where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and such advertising, offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold; (3) where cigarettes are advertised, offered for sale, or sold as imperfect or damaged, and such advertising, offer to sell or sale shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold; (4) where cigarettes are sold upon the final liquidation of a business; or (5) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

**Source:** Laws 1965, c. 364, § 8, p. 1189.

**59-1509 Sale of cigarettes; transactions permitted to meet lawful competition.**

(1) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article in this state at cost to him as a retailer as prescribed in sections 59-1501 to 59-1518. Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler as prescribed in sections 59-1501 to 59-1518. The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in section 59-1508 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankruptcy sale be considered the price of a competitor within the meaning of this section.

(2) In the absence of proof of the price of a competitor, under this section, the lowest cost to the retailer, or the lowest cost to the wholesaler, as the case may be, determined by any cost survey, made pursuant to section 59-1513, may be deemed the price of a competitor within the meaning of this section.

**Source:** Laws 1965, c. 364, § 9, p. 1190.

**59-1510 Sale of cigarettes; contracts void.**

Any contract, expressed or implied, made by any person in violation of any of the provisions of sections 59-1501 to 59-1518, is declared to be an illegal and void contract and no recovery thereon shall be made.

**Source:** Laws 1965, c. 364, § 10, p. 1190.

**59-1511 Sale of cigarettes; admissible evidence.**

(1) In determining cost to the retailer and cost to the wholesaler the division or a court shall receive and consider as bearing on the good faith of such cost, evidence tending to show that any person complained against under any of the provisions of sections 59-1501 to 59-1518 purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the good faith of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(2) Merchandise given free or payment made to a retailer or wholesaler by the manufacturer thereof for display, or advertising, or promotion purposes, or otherwise, shall not be considered in determining the cost of cigarettes to the retailer or wholesaler.

**Source:** Laws 1965, c. 364, § 11, p. 1191.

**59-1512 Sale of cigarettes; sales outside ordinary channels.**

In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of such cigarettes purchased at a forced, bankrupt, or closeout sale, or other sale outside the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased through the ordinary channels of trade.

**Source:** Laws 1965, c. 364, § 12, p. 1191.

**59-1513 Sale of cigarettes; cost survey.**

Where a cost survey, pursuant to recognized statistical and cost-accounting practices, has been made for the trading area in which the offense is committed, to establish the lowest cost to the retailer and the lowest cost to the wholesaler, such cost survey shall be deemed competent evidence to be used in proving the cost to the person complained against within the provisions of sections 59-1501 to 59-1518.

**Source:** Laws 1965, c. 364, § 13, p. 1191.

**59-1514 Cigarette tax division; rules and regulations.**

The division may adopt rules and regulations for the enforcement of the provisions of sections 59-1501 to 59-1518 and may undertake a cost survey as provided for in section 59-1513.

**Source:** Laws 1965, c. 364, § 14, p. 1191.

**59-1515 Sale of cigarettes; actions; remedies.**

(1) An action may be maintained in any court of equitable jurisdiction to prevent, restrain or enjoin a violation or threatened violation of any of the provisions of sections 59-1501 to 59-1518. Such an action may be instituted by any person injured by any violation or threatened violation of sections 59-1501 to 59-1518 or by the Attorney General, upon the request of the division. If in such action a violation or threatened violation of the provisions of sections 59-1501 to 59-1518 shall be established, the court shall enjoin and restrain, or otherwise prohibit such violation or threatened violation. In such action, it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in such action, in addition to such injunctive relief and costs of suit, including reasonable attorney's fees, shall be entitled to recover from the defendant the actual damages sustained by such plaintiff.

(2) If no injunctive relief is sought or required, any person injured by a violation of sections 59-1501 to 59-1518 may maintain an action for damages and costs of suit in any court of competent jurisdiction.

**Source:** Laws 1965, c. 364, § 15, p. 1192.

**59-1516 Revocation of license; procedure; appeal.**

(1) In addition to sections 59-1503 and 59-1515, the division may, after notice and hearing, suspend or revoke for any violation of the Unfair Cigarette Sales Act the license or licenses of any person, licensed under the provisions of Chapter 28 or Chapter 77, article 26, and notice of hearing shall be given as provided in the Administrative Procedure Act.

(2) Any person whose license or licenses have been so revoked may apply to the division at the expiration of sixty days for a reinstatement of his or her license or licenses. Such license or licenses may be reinstated by the division if it shall appear to the satisfaction of the division that the licensee will comply with the Unfair Cigarette Sales Act and the rules and regulations adopted and promulgated under the act.

(3) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or her or upon other premises

controlled by him or her or others or in any other manner or form whatever. No disciplinary proceedings or action shall be barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the provisions of Chapter 28 or Chapter 77, article 26.

(4) Any person aggrieved by any decision, order, or finding of the division may appeal the decision, order, or finding, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1965, c. 364, § 16, p. 1192; Laws 1988, LB 352, § 102.

**Cross References**

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

**Cigarette tax**, see Chapter 77, article 26.

**Licensing provisions**, see sections 28-1420 to 28-1429.02.

**59-1517 Cigarette tax division; enforcement of sections.**

In order to effectuate the purposes of sections 59-1501 to 59-1518 it shall be the duty of the division to carry out the enforcement provisions of sections 59-1501 to 59-1518. In accordance with the laws of this state the division may, within the limits of available appropriations, employ and fix the duties and compensation of such inspectors and other personnel necessary to carry out the provisions of sections 59-1501 to 59-1518.

**Source:** Laws 1965, c. 364, § 17, p. 1193.

**59-1518 Cigarette tax division; powers vested by other laws.**

All of the powers vested in the division by the provisions of any law heretofore or hereafter to be enacted, shall be available to the division in the enforcement of the Unfair Cigarette Sales Act.

**Source:** Laws 1965, c. 364, § 18, p. 1193.

(b) GREY MARKET SALES

**59-1519 Terms, defined.**

For purposes of sections 59-1519 to 59-1525:

- (1) Cigarettes has the same meaning as in section 77-2601;
- (2) Package has the same meaning as in 15 U.S.C. 1332(4), as such section existed on May 1, 2001; and
- (3) Person has the same meaning as in section 77-2601.

**Source:** Laws 2001, LB 358, § 1.

**59-1520 Prohibited acts.**

It is unlawful for any person to:

(1) Sell or distribute in this state, acquire, hold, own, possess, or transport for sale or distribution in this state, or import or cause to be imported into this state for sale or distribution in this state, any cigarettes that do not comply with all requirements imposed by or pursuant to federal law and regulations, including, but not limited to:

(a) The filing of ingredients lists pursuant to section 7 of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1335a, as such section existed on May 1, 2001;

(b) The permanent imprinting on the primary packaging of the precise package warning labels in the precise format specified in section 4 of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333, as such section existed on May 1, 2001;

(c) The rotation of label statements pursuant to section 4(c) of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333(c), as such section existed on May 1, 2001;

(d) The restrictions on the importation, transfer, and sale of previously exported tobacco products pursuant to section 9302 of Public Law 105-33, the Balanced Budget Act of 1997, as such section existed on May 1, 2001;

(e) The requirements of Title IV of Public Law 106-476, the Imported Cigarette Compliance Act of 2000, as the act existed on May 1, 2001; and

(f) The federal trademark and copyright laws;

(2) Alter a package of cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:

(a) Any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording; or

(b) Any health warning that is not the precise package warning statement in the precise format specified in section 4 of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333, as such section existed on May 1, 2001;

(3) Affix any tax stamps or meter impression required pursuant to sections 77-2601 to 77-2615 to the package of any cigarettes that does not comply with the requirements of subdivision (1) of this section or that is altered in violation of subdivision (2) of this section; and

(4) Import or reimport into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States.

**Source:** Laws 2001, LB 358, § 2.

#### **59-1521 Exemptions.**

Sections 59-1519 to 59-1525 shall not apply to cigarettes allowed to be imported or brought into the United States for personal use or cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b), as such section existed on May 1, 2001.

**Source:** Laws 2001, LB 358, § 3.

#### **59-1522 Violation; penalty.**

Any person that commits any of the acts prohibited by section 59-1520, either knowing or having reason to know he or she is doing so, is guilty of a Class IV felony.

**Source:** Laws 2001, LB 358, § 4.

#### **59-1523 Disciplinary actions; contraband.**

(1) The cigarette tax division of the Tax Commissioner may, after notice and hearing, revoke or suspend for any violation of section 59-1520 the license or licenses of any person licensed under the provisions of sections 28-1418 to 28-1429 or sections 77-2601 to 77-2622.

(2) Cigarettes that are acquired, held, owned, possessed, transported, sold, or distributed in or imported into this state in violation of section 59-1520 are declared to be contraband goods and are subject to seizure and forfeiture. Any cigarettes so seized and forfeited shall be destroyed. Such cigarettes shall be declared to be contraband goods whether the violation of section 59-1520 is knowing or otherwise.

**Source:** Laws 2001, LB 358, § 5.

**59-1524 Deceptive trade practice.**

A violation of section 59-1520 shall constitute a deceptive trade practice under the Uniform Deceptive Trade Practices Act and, in addition to any remedies or penalties set forth in sections 59-1519 to 59-1525, shall be subject to any remedies or penalties available for a violation under the Uniform Deceptive Trade Practices Act.

**Source:** Laws 2001, LB 358, § 6.

**Cross References**

Uniform Deceptive Trade Practices Act, see section 87-306.

**59-1525 Enforcement.**

(1) Sections 59-1519 to 59-1525 shall be enforced by the cigarette tax division of the Tax Commissioner, except that at the request of the division or the division’s duly authorized agent, the Nebraska State Patrol and any peace officer shall enforce the provisions of sections 59-1519 to 59-1525. The Attorney General has concurrent power with the county attorney or other prosecuting attorney of the state to enforce sections 59-1519 to 59-1525.

(2) For the purpose of enforcing sections 59-1519 to 59-1525, the division and any agency delegated enforcement responsibility pursuant to subsection (1) of this section may request information from any state or local agency and may share information with, and request information from, any federal agency and any other state or local agency.

**Source:** Laws 2001, LB 358, § 7.

**ARTICLE 16**

**CONSUMER PROTECTION ACT**

Section	
59-1601.	Terms, defined.
59-1602.	Unfair competition; practices; unlawful.
59-1603.	Contracts, combinations, conspiracies in restraint of trade; unlawful.
59-1604.	Monopolies and attempted monopolies; unlawful.
59-1605.	Transactions and agreements not to use or deal in commodities or services of competitor; unlawful; when.
59-1606.	Acquisition of corporate stock by another corporation to lessen competition; unlawful; exceptions; judicial order to divest.
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59-1608.01.	Enforcement of act; venue.

§ 59-1601

**MONOPOLIES AND UNLAWFUL COMBINATIONS**

Section

- 59-1608.02. Repealed. Laws 2006, LB 1061, § 29.
- 59-1608.03. Recovery under act; Attorney General; duties.
- 59-1608.04. State Settlement Cash Fund; created; use; investment.
- 59-1608.05. State Settlement Trust Fund; created; use; investment.
- 59-1609. Civil action for damages.
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- 59-1611. Demand to produce documentary materials for inspection; contents; service; unauthorized disclosure; return; modification; vacation; use; penalty.
- 59-1612. Limitation of action.
- 59-1613. Final judgment or decree; prima facie evidence in civil action; exception.
- 59-1614. Civil penalties; Attorney General; duties.
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- 59-1618. Agricultural products; producers; associations; form; requirements.
- 59-1619. Agricultural associations; monopolies; restraint of trade; Attorney General; complaint; notice of hearing.
- 59-1620. Contracts and agreements in restraint of trade; void; voidable.
- 59-1621. Conspiracy in restraint of trade; findings; prima facie evidence.
- 59-1622. Officers; liable for debts and obligations; when.
- 59-1623. Act, how cited.

**59-1601 Terms, defined.**

For purposes of the Consumer Protection Act, unless the context otherwise requires:

- (1) Person shall mean natural persons, corporations, trusts, unincorporated associations, partnerships, and limited liability companies;
- (2) Trade and commerce shall mean the sale of assets or services and any commerce directly or indirectly affecting the people of the State of Nebraska; and
- (3) Assets shall mean any property, tangible or intangible, real, personal, or mixed, and wherever situated, and any other thing of value.

**Source:** Laws 1974, LB 1028, § 8; Laws 1993, LB 121, § 378.

The Consumer Protection Act is equitable in nature. State ex rel. Stenberg v. Consumer's Choice Foods, 276 Neb. 481, 755 N.W.2d 583 (2008).

**59-1602 Unfair competition; practices; unlawful.**

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce shall be unlawful.

**Source:** Laws 1974, LB 1028, § 9.

It was a violation of the Consumer Protection Act when consumers were led to believe they would receive a free freezer or another appliance by entering into a contract for food. State ex rel. Stenberg v. Consumer's Choice Foods, 276 Neb. 481, 755 N.W.2d 583 (2008).

To be actionable under the Nebraska Consumer Protection Act, the unfair or deceptive act or practice must have an impact

upon the public interest. Nelson v. Lusterstone Surfacing Co., 258 Neb. 678, 605 N.W.2d 136 (2000).

Attorney General may bring an action to recover a civil penalty for a violation of this section. State ex rel. Stenberg v. American Midlands, 244 Neb. 887, 509 N.W.2d 633 (1994).

**59-1603 Contracts, combinations, conspiracies in restraint of trade; unlawful.**

Any contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce shall be unlawful.

**Source:** Laws 1974, LB 1028, § 10.

A conspiracy need not be established by direct evidence of the acts charged, but may, and generally must, be proved by a number of indefinite acts, conditions, and circumstances which vary according to the purposes to be accomplished. State ex rel. Douglas v. Associated Grocers, 214 Neb. 79, 332 N.W.2d 690 (1983).

**59-1604 Monopolies and attempted monopolies; unlawful.**

It shall be unlawful for any person to monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of trade or commerce.

**Source:** Laws 1974, LB 1028, § 11.

As related to a course of action for any person injured in violation of this section, section 59-1609 contemplates an action by indirect purchasers. Arthur v. Microsoft Corp., 267 Neb. 586, 676 N.W.2d 29 (2004). the people of Nebraska to bring a civil action to recover damages. Arthur v. Microsoft Corp., 267 Neb. 586, 676 N.W.2d 29 (2004).

This section allows any person who is injured by a violation of sections 59-1602 to 59-1606 which directly or indirectly affects

**59-1605 Transactions and agreements not to use or deal in commodities or services of competitor; unlawful; when.**

It shall be unlawful for any person to lease or sell or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or services of a competitor of the lessor or seller, when the effect of such lease, sale, or contract for such sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

**Source:** Laws 1974, LB 1028, § 12.

**59-1606 Acquisition of corporate stock by another corporation to lessen competition; unlawful; exceptions; judicial order to divest.**

(1) It shall be unlawful for any corporation to acquire, directly or indirectly, the whole or any part of the stock or assets of another corporation when the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

(2) This section shall not apply to corporations which purchase such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition; nor shall anything contained in this section prevent a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

(3) In addition to any other remedy provided by the Consumer Protection Act, the district court may order any corporation to divest itself of the stock or assets held contrary to this section, in the manner and within the time fixed by such order.

**Source:** Laws 1974, LB 1028, § 13; Laws 2002, LB 1278, § 21.

**59-1607 Labor not an article of commerce.**

The labor of a human being shall not be a commodity or article of commerce. Nothing contained in the Consumer Protection Act shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof.

**Source:** Laws 1974, LB 1028, § 14; Laws 2002, LB 1278, § 22.

**59-1608 Attorney General; restrain prohibited acts; costs; restoration of property.**

(1) The Attorney General may bring an action in the name of the state against any person to restrain and prevent the doing of any act prohibited by the Consumer Protection Act. The prevailing party may, in the discretion of the court, recover the costs of such action including a reasonable attorney's fee.

(2) The court may make such additional orders or judgments as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any act prohibited in the Consumer Protection Act.

**Source:** Laws 1974, LB 1028, § 15; Laws 2002, LB 1278, § 23.

Restoration of the purchase price under the Nebraska Consumer Protection Act rests within the discretion of the trial court; its ruling will not be disturbed on appeal in the absence of an abuse of that discretion. *State ex rel. Douglas v. Schroeder*, 222 Neb. 473, 384 N.W.2d 626 (1986).

The awarding and amount of an attorney fee under the Nebraska Consumer Protection Act rest in the sound discretion

of the trial court; the Nebraska Supreme Court will only interfere where the allowance is clearly excessive or insufficient. *State ex rel. Douglas v. Schroeder*, 222 Neb. 473, 384 N.W.2d 626 (1986).

The Nebraska Consumer Protection Act is equitable in nature; as such, trials thereunder are to the court. *State ex rel. Douglas v. Schroeder*, 222 Neb. 473, 384 N.W.2d 626 (1986).

**59-1608.01 Enforcement of act; venue.**

In the enforcement of the Consumer Protection Act, the Attorney General may bring an action in the name of the state in the district court of the county in which the alleged violator resides or has his or her principal place of business or in Lancaster County.

**Source:** Laws 1983, LB 32, § 6; Laws 2002, LB 1278, § 24.

**59-1608.02 Repealed. Laws 2006, LB 1061, § 29.**

**59-1608.03 Recovery under act; Attorney General; duties.**

When the Attorney General, on behalf of a state agency or political subdivision, is authorized to investigate, file suit, or otherwise take action in connection with violations under the Consumer Protection Act, any recovery of damages or costs by judgment, court decree, settlement in or out of court, or other final result shall be subject to the following:

(1) Upon recovery of damages or any monetary payment, except criminal penalties, the costs, expenses, or billings incurred by any state agency or political subdivision in any investigation or other action arising out of a violation under the act shall be sought out in any judgment, court decree, settlement in or out of court, or other final result. Any recovered costs shall be deposited by the Attorney General in the fund from which such costs were expended;

(2) When the Attorney General makes recovery pursuant to the act on behalf of a state agency or political subdivision of any money, funds, securities, or

other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, such money, funds, securities, or other things of value shall be deposited by the Attorney General in the fund from which the funds which are being recovered were expended;

(3) Except as otherwise provided by law, the State Settlement Cash Fund shall consist of all recoveries received pursuant to the act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General for the benefit of the state or the general welfare of its citizens, but excluding all funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments; and

(4) Except as otherwise provided by law, the State Settlement Trust Fund shall consist of all recoveries received pursuant to the act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General, but to include only those funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments.

**Source:** Laws 2006, LB 1061, § 3.

**59-1608.04 State Settlement Cash Fund; created; use; investment.**

The State Settlement Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. Except as otherwise provided by law, the fund shall consist of all recoveries received pursuant to the Consumer Protection Act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General for the benefit of the state or the general welfare of its citizens, but excluding all funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments. All money in the fund shall be subject to legislative review and shall be appropriated and expended for any allowable legal purposes as determined by the Legislature. The fund shall only be appropriated to a separate and distinct budget program and such appropriations shall only be expended from a separate and distinct budget subprogram and shall not be commingled with any other revenue or expenditure. Transfers may be made from the fund to the General Fund and the State DNA Sample and Data Base Fund at the direction of the Legislature. To provide necessary financial accountability and management oversight, revenue from individual settlement agreements or other separate sources credited to the State Settlement Cash Fund may be tracked and accounted for within the state accounting

system through the use of separate and distinct funds, subfunds, or any other available accounting mechanism specifically approved by the Accounting Administrator for use by the Department of Justice. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2006, LB 1061, § 4; Laws 2009, First Spec. Sess., LB3, § 34; Laws 2010, LB190, § 7.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**59-1608.05 State Settlement Trust Fund; created; use; investment.**

The State Settlement Trust Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. Except as otherwise provided by law, the fund shall consist of all recoveries received pursuant to the Consumer Protection Act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery shall be by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General, but to include only those funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments. All money in the State Settlement Trust Fund shall be subject to legislative review, but shall not be subject to legislative appropriation. The fund shall be expended consistent with any legal restrictions placed on the funds. The fund shall be paid from the same budget program used to record revenue and expenditures of the State Settlement Cash Fund, except that the fund shall only be expended from a separate and distinct budget subprogram and shall not be commingled with any other revenue or expenditure. To provide necessary financial accountability and management oversight, revenue from individual settlement agreements or other separate sources credited to the fund may be tracked and accounted for within the state accounting system through the use of separate and distinct funds, subfunds, or any other available accounting mechanism specifically approved by the Accounting Administrator for use by the Department of Justice. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2006, LB 1061, § 5.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**59-1609 Civil action for damages.**

Any person who is injured in his or her business or property by a violation of sections 59-1602 to 59-1606, whether such injured person dealt directly or indirectly with the defendant, or any person so injured because he or she refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of sections 59-1603 to 59-1606, may bring a civil action in

the district court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee, and the court may in its discretion, increase the award of damages to an amount which bears a reasonable relation to the actual damages which have been sustained and which damages are not susceptible of measurement by ordinary pecuniary standards; except that such increased award for violation of section 59-1602 shall not exceed one thousand dollars. For the purpose of this section, person shall include the counties, the municipalities, and all political subdivisions of this state.

Whenever the State of Nebraska is injured by reason of a violation of sections 59-1603 to 59-1606, it may sue therefor in the district court to recover the actual damages sustained by it and to recover the costs of the suit including a reasonable attorney's fee.

**Source:** Laws 1974, LB 1028, § 16; Laws 2002, LB 1278, § 26.

As related to a cause of action for any person injured in violation of section 59-1604, this section contemplates an action by indirect purchasers. Arthur v. Microsoft Corp., 267 Neb. 586, 676 N.W.2d 29 (2004).

**59-1609.01 Illegal overcharge or undercharge case.**

In an illegal overcharge or undercharge case in which claims are asserted by both parties who dealt directly with the defendant and parties who dealt indirectly with the defendant or any combination thereof:

(1) A defendant may prove, as a partial or complete defense to a claim for damages under sections 59-1602 to 59-1606, that the illegal overcharge or undercharge has been passed on to others who are themselves entitled to recover so as to avoid duplication of recovery of such damages; and

(2) The court may transfer and consolidate such claims, apportion damages, and delay disbursement of damages to avoid multiplicity of suits and duplication of recovery of damages and to obtain substantial fairness.

**Source:** Laws 2002, LB 1278, § 27.

**59-1610 Assurance of discontinuance of prohibited act; approval of court; not considered admission.**

In the enforcement of the Consumer Protection Act, the Attorney General may accept an assurance of discontinuance of any act or practice deemed in violation of the Consumer Protection Act, from any person who engages in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his or her principal place of business, or in Lancaster County.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose, but proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of the Consumer Protection Act.

**Source:** Laws 1974, LB 1028, § 17; Laws 2002, LB 1278, § 28.

**59-1611 Demand to produce documentary materials for inspection; contents; service; unauthorized disclosure; return; modification; vacation; use; penalty.**

(1) Whenever the Attorney General believes that any person may be in possession, custody, or control of any original or copy of any book, record,

report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated, which he or she believes to be relevant to the subject matter of an investigation of a possible violation of sections 59-1602 to 59-1606, the Attorney General may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying thereof. This section shall not be applicable to criminal prosecutions.

(2) Each such demand shall:

(a) State the statute and section or sections thereof the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) Describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

(c) Prescribe a return date within which the documentary material shall be produced; and

(d) Identify the members of the Attorney General's staff to whom such documentary material shall be made available for inspection and copying.

(3) No such demand shall:

(a) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such person is not a natural person, to any officer of the person to be served;

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if such person has no place of business in this state, to his or her principal office or place of business.

(5) Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the Attorney General.

(6) No documentary material produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a district court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, other than an authorized employee of the Attorney General, without the consent of the person who produced such material, except that under such reasonable terms and conditions as the Attorney General shall prescribe, the copies of such documentary material shall be available for inspection and copying by the person who produced such material or any duly

authorized representative of such person. The Attorney General or any assistant attorney general may use such copies of documentary material as he or she determines necessary in the enforcement of the Consumer Protection Act, including presentation before any court, except that any such material which contains trade secrets shall not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing such material.

(7) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for or to modify or set aside a demand issued pursuant to subsection (1) of this section, stating good cause, may be filed in the district court for Lancaster County, or in such other county where the parties reside. A petition by the person on whom the demand is served, stating good cause, to require the Attorney General or any person to perform any duty imposed by the provisions of this section, and all other petitions in connection with a demand, may be filed in the district court for Lancaster County or in the county where the parties reside.

(8) Whenever any person fails to comply with any civil investigative demand for documentary material duly served upon him or her under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county such petition shall be filed in the county in which such person maintains his or her principal place of business or in such other county as may be agreed upon by the parties to such petition. Whenever any petition is filed in the district court of any county under this section, such court shall have jurisdiction to hear and determine the matter so presented and to enter such order as may be required to carry into effect the provisions of this section. Disobedience of any order entered under this section by any court shall be punished as a contempt thereof.

**Source:** Laws 1974, LB 1028, § 18; Laws 2002, LB 1278, § 29.

**59-1612 Limitation of action.**

Any action to enforce a claim for damages under section 59-1609 shall be forever barred unless commenced within four years after the cause of action accrues; *Provided*, that whenever any action is brought by the Attorney General for a violation of sections 59-1602 to 59-1606, except actions for the recovery of a civil penalty for violation of an injunction or actions under section 59-1609, the running of such statute of limitations, with respect to every private right of action for damages under section 59-1609 which is based in whole or part on any matter complained of in the action by the Attorney General, shall be suspended during the pendency thereof.

**Source:** Laws 1974, LB 1028, § 19.

**59-1613 Final judgment or decree; prima facie evidence in civil action; exception.**

A final judgment or decree rendered in any action brought under section 59-1608 by the state to the effect that a defendant has violated sections 59-1602

to 59-1606 shall be prima facie evidence against such defendant in any action brought by any party against such defendant under section 59-1609 as to all matters as to which such judgment or decree would be an estoppel as between the parties thereto; *Provided*, that this section shall not apply to consent judgments or decrees when the court makes no finding of illegality.

**Source:** Laws 1974, LB 1028, § 20.

**59-1614 Civil penalties; Attorney General; duties.**

Any person who violates section 59-1603 or 59-1604 or the terms of any injunction issued as provided in the Consumer Protection Act shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

Any person who violates section 59-1602 shall pay a civil penalty of not more than two thousand dollars for each violation, except that such penalty shall not apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium who publishes, prints, or distributes advertising in good faith without knowledge of its false, deceptive, or misleading character and no such good faith publication, printing, or distribution shall be considered a violation of section 59-1602.

For the purpose of this section, the district court which issues any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the state may petition for the recovery of civil penalties.

With respect to violations of sections 59-1603 and 59-1604, the Attorney General, acting in the name of the state, may seek recovery of such penalties in a civil action.

**Source:** Laws 1974, LB 1028, § 21; Laws 1980, LB 186, § 1; Laws 2002, LB 1278, § 30.

**59-1615 Dissolution, suspension, or forfeiture of corporate franchise.**

Upon petition by the Attorney General, the court may, in its discretion, order the dissolution, or suspension or forfeiture of franchise, of any corporation which violates section 59-1603 or 59-1604 or the terms of any injunction issued as provided in the Consumer Protection Act.

**Source:** Laws 1974, LB 1028, § 22; Laws 2002, LB 1278, § 31.

**59-1616 Personal service of process outside state.**

Personal service of any process in an action under the Consumer Protection Act may be made upon any person outside the state if such person has engaged in conduct in violation of the act which has had impact in this state which the act prohibits.

**Source:** Laws 1974, LB 1028, § 23; Laws 2002, LB 1278, § 32.

**59-1617 Exempted transactions.**

(1) Except as provided in subsection (2) of this section, the Consumer Protection Act shall not apply to actions or transactions otherwise permitted, prohibited, or regulated under laws administered by the Director of Insurance, the Public Service Commission, the Federal Energy Regulatory Commission, or

any other regulatory body or officer acting under statutory authority of this state or the United States. The Consumer Protection Act and federal antitrust laws shall not extend to or apply to (a) any actions or transactions on the part of any municipality or group of municipalities while engaged in regulating natural gas rates pursuant to the State Natural Gas Regulation Act or section 16-679 or 17-528.02 or as otherwise permitted by law or (b) any actions or transactions on the part of any public power and irrigation district, public power district, electric membership association, or joint authority created pursuant to the Joint Public Power Authority Act or of any agency created pursuant to the Municipal Cooperative Financing Act, cooperative, or municipality engaged in furnishing electrical service to customers at retail or wholesale if such actions or transactions are otherwise permitted by law.

(2) Actions and transactions prohibited or regulated under the laws administered by the Director of Insurance shall be subject to section 59-1602 and all statutes which provide for the implementation and enforcement of section 59-1602. Actions and transactions prohibited or regulated under the laws administered by the Board of Funeral Directing and Embalming or administered by the Department of Agriculture and actions and transactions relating to loan brokers which are prohibited or regulated pursuant to sections 45-189 to 45-191.11 and administered by the Department of Banking and Finance shall be subject to the Consumer Protection Act.

No penalty or remedy shall result from a violation of the Consumer Protection Act except as expressly provided in such act.

**Source:** Laws 1974, LB 1028, § 24; Laws 1980, LB 94, § 18; Laws 1981, LB 487, § 46; Laws 1982, LB 751, § 2; Laws 1985, LB 193, § 1; Laws 1987, LB 663, § 24; Laws 1993, LB 270, § 14; Laws 1993, LB 187, § 2; Laws 1999, LB 828, § 6; Laws 2003, LB 790, § 59.

**Cross References**

**Joint Public Power Authority Act**, see section 70-1401.  
**Municipal Cooperative Financing Act**, see section 18-2401.  
**State Natural Gas Regulation Act**, see section 66-1801.

The issuance of a certificate of deposit was exempted from the purview of the Consumer Protection Act under subsection (1) of this section because the bank was heavily regulated and the certificate of deposit form was indirectly approved by the Director of Banking and Finance, whose charge was to constructively aid banks in maintaining proper banking standards and efficiency. *Wrede v. Exchange Bank of Gibbon*, 247 Neb. 907, 531 N.W.2d 523 (1995).

Generally, institutions that are governed by the Nebraska Department of Banking and Finance or the Nebraska State Real Estate Commission are exempt from the provisions of the Consumer Protection Act. *Little v. Gillette*, 218 Neb. 271, 354 N.W.2d 147 (1984).

Under the provisions of this statute, where the Banking Act requires the director of the Department of Banking and Finance

to "constructively aid banks in maintaining proper banking standards and efficiency", a bank is exempt from the Consumer Protection Act by reason of its failure to follow customary and standard banking practices. *Hydroflo Corp. v. First Nat. Bank of Omaha*, 217 Neb. 20, 349 N.W.2d 615 (1984).

Under the provisions of this section, an installment loan by an industrial loan and investment company, regulated by the Nebraska Department of Banking and Finance, is exempt from the Consumer Protection Act, sections 59-1601 et seq. *McCaul v. American Savings Co.*, 213 Neb. 841, 331 N.W.2d 795 (1983).

Nebraska Consumer Protection Act, sections 59-1601 to 59-1623, does not apply to an installment loan made by a licensee under the installment loan act, sections 45-114 to 45-158. *Kuntzelman v. Avco Financial Services of Nebraska, Inc.*, 206 Neb. 130, 291 N.W.2d 705 (1980).

**59-1618 Agricultural products; producers; associations; form; requirements.**

Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut growers, or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing such products in intrastate commerce. Such associations may have marketing agencies in common, and the associations and their members may make the

necessary contracts and agreements to effect such purposes. The associations shall be operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

(1) That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

(2) That the association does not pay dividends on stock or membership capital in excess of eight percent per annum.

Such association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

**Source:** Laws 1974, LB 1028, § 25.

**59-1619 Agricultural associations; monopolies; restraint of trade; Attorney General; complaint; notice of hearing.**

If the Attorney General shall have reason to believe that any association described in section 59-1618 monopolizes or restrains trade to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached or in which shall be contained a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade.

**Source:** Laws 1974, LB 1028, § 26.

**59-1620 Contracts and agreements in restraint of trade; void; voidable.**

All contracts and agreements made in restraint of trade by coconspirators in violation of the provisions of section 59-1603, 59-1604, or 59-1605 shall be void. All contracts and agreements made between a conspirator and an innocent party in violation of the provisions of section 59-1603, 59-1604, or 59-1605 shall be voidable by the innocent party.

**Source:** Laws 1974, LB 1028, § 27.

**59-1621 Conspiracy in restraint of trade; findings; prima facie evidence.**

Upon a finding in district court that a conspiracy in restraint of trade existed in an action brought pursuant to section 59-1603 or 59-1604, that finding shall constitute prima facie evidence of the existence of the conspiracy in subsequent civil actions involving the conspiracy.

**Source:** Laws 1974, LB 1028, § 28.

**59-1622 Officers; liable for debts and obligations; when.**

Every president, treasurer, general manager, agent, or other person exercising the powers of such office of any corporation, joint-stock company, or other association, who has himself, in its behalf, knowingly violated, united to violate, or consented to the violation of the provisions of section 59-1603, 59-1604, or 59-1605, shall thereafter be personally liable for all debts and obligations of any such corporation, joint-stock company, or other association created while such

person holds such office or agency and which were incurred in the furtherance of that violation.

**Source:** Laws 1974, LB 1028, § 29.

**59-1623 Act, how cited.**

Sections 59-1601 to 59-1622 shall be known and may be cited as the Consumer Protection Act.

**Source:** Laws 1974, LB 1028, § 30; Laws 2002, LB 1278, § 33; Laws 2006, LB 1061, § 2.

**ARTICLE 17**

**SELLER-ASSISTED MARKETING PLAN**

Section

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**59-1701 Legislative intent and findings; seller-assisted marketing plans.**

(1) The Legislature finds and declares that the widespread sale of seller-assisted marketing plans, often connected with the sale of vending machines, vending racks, or work-at-home paraphernalia, has created numerous problems in Nebraska for purchasers which are inimical to good business practice. Often purchasers of seller-assisted marketing plans are individuals inexperienced in business matters who use their life savings to purchase the seller-assisted marketing plan in the hope that they will earn enough money in addition to retirement income or salary to become or remain self-sufficient. Many purchasers are the elderly who are seeking a way to supplement their fixed incomes. The initial payment is usually in the form of a purchase of overpriced equipment or products. Nebraska purchasers have suffered substantial losses when they have failed to receive full and complete information regarding the seller-assisted marketing plan, the amount of money they can reasonably expect to earn, and the previous experience of the seller-assisted marketing plan seller. Seller-assisted marketing plan sellers have a significant impact upon the economy and well-being of this state and its local communities. The provisions of the Seller-Assisted Marketing Plan Act relating to seller-assisted marketing plans are necessary for the public welfare.

(2) It is the intent of the act to provide each prospective seller-assisted marketing plan purchaser with the information necessary to make an intelligent decision regarding seller-assisted marketing plans being offered, to safeguard the public against deceit and financial hardship, to insure, foster, and encourage competition and fair dealing in the sale of seller-assisted marketing plans by requiring adequate disclosure, to prohibit representations that tend to mislead, and to prohibit or restrict unfair contract terms. The act shall be construed liberally in order to achieve such purposes.

**Source:** Laws 1979, LB 180, § 1; Laws 1993, LB 218, § 2.

**59-1701.01 Act, how cited.**

Sections 59-1701 to 59-1762 shall be known and may be cited as the Seller-Assisted Marketing Plan Act.

**Source:** Laws 1993, LB 218, § 1; Laws 2003, LB 217, § 41.

**59-1702 Definitions; where found.**

For purposes of the Seller-Assisted Marketing Plan Act, unless the context otherwise requires, the definitions found in sections 59-1703 to 59-1714.01 shall be used.

**Source:** Laws 1979, LB 180, § 2; Laws 1993, LB 218, § 3.

**59-1703 Seller-assisted marketing plan, defined.**

Seller-assisted marketing plan shall mean the sale or lease or offer for sale or lease of any product, equipment, supplies, services, license, or any combination thereof which will be used by or on behalf of the purchaser to begin or maintain a business when:

(1) The seller of the plan has advertised or in other manner solicited the purchase or lease of the plan; and

(2) The seller has represented directly or indirectly or orally or in writing that:

(a) The seller or a person recommended or specified by the seller will provide the purchaser with or assist the purchaser in finding locations for the use or operation of vending machines, vending routes, display racks, display cases, or other similar devices on premises neither owned nor leased by the seller or the purchaser;

(b) The seller or a person recommended or specified by the seller will provide the purchaser with or will assist the purchaser in finding outlets or accounts for the purchaser's products or services;

(c) The seller or a person specified by the seller will or is likely to purchase any or all of the products made, produced, fabricated, grown, bred, or modified by the purchaser using, in whole or in part, the product, supplies, equipment, or services which were initially sold or leased or offered for sale or lease to the purchaser by the seller;

(d) The purchaser will, is likely to, or can derive income from the business which exceeds the initial payment paid by the purchaser for participation in the plan;

(e) There is a market for the product, equipment, supplies, or services which were initially sold or leased or offered for sale or lease to the purchaser by the seller;

(f) The seller will refund all or part of the initial payment paid to the seller or will repurchase any of the products, equipment, or supplies provided by the seller or a person recommended or specified by the seller, if the purchaser is dissatisfied with the business; or

(g) The seller or a person recommended or specified by the seller will provide advice or training pertaining to the sale of any products, equipment, supplies, or services or use of any licensed material and the advice or training includes, but is not limited to, preparing or providing (i) promotional literature, brochures, pamphlets, or advertising materials, (ii) training regarding the promotion, operation, or management of the seller-assisted marketing plan, or (iii) operational, managerial, technical, or financial guidelines or assistance.

**Source:** Laws 1979, LB 180, § 3; Laws 1993, LB 218, § 4; Laws 1995, LB 599, § 16; Laws 2003, LB 217, § 42.

**59-1704 Person, defined.**

Person shall mean any individual, corporation, partnership, limited liability company, joint venture, or business entity.

**Source:** Laws 1979, LB 180, § 4; Laws 1993, LB 121, § 379.

**59-1705 Seller, defined.**

Seller shall mean a person who sells or leases or offers to sell or lease a seller-assisted marketing plan and:

(1) Has sold, leased, represents, or implies that the seller has sold or leased, whether in Nebraska or elsewhere, at least five seller-assisted marketing plans within twenty-four months prior to a solicitation; or

(2) Intends, represents, or implies that the seller intends to sell or lease, whether in Nebraska or elsewhere, at least five seller-assisted marketing plans within twelve months following a solicitation. If the seller intends to sell four or less seller-assisted marketing plans within the time period stated in this subdivision, the seller, in order to be excluded from the provisions of the Seller-Assisted Marketing Plan Act, shall notify each purchaser in writing at the time of sale of its intention to sell only four or less seller-assisted marketing plans.

**Source:** Laws 1979, LB 180, § 5; Laws 1983, LB 461, § 1; Laws 1993, LB 218, § 5.

**59-1706 Purchaser, defined.**

Purchaser shall mean a person who is solicited to become obligated or does become obligated on a seller-assisted marketing plan contract.

**Source:** Laws 1979, LB 180, § 6.

**59-1707 Equipment, defined.**

Equipment shall mean machines, all electrical devices, video or audio devices, molds, display racks, vending machines, coin-operated game machines, machines which dispense products, and display units of all kinds.

**Source:** Laws 1979, LB 180, § 7.

**59-1708 Supplies, defined.**

Supplies shall mean any and all materials used to produce, grow, breed, or make any product or item.

**Source:** Laws 1979, LB 180, § 8.

**59-1709 Product, defined.**

Product shall mean any tangible chattel, including food or living animals, which the purchaser intends to:

- (1) Sell or lease to the general public;
- (2) Use to perform a service for the general public;
- (3) Resell or attempt to resell to the seller of the seller-assisted marketing plan; or
- (4) Provide or attempt to provide to the seller of the seller-assisted marketing plan so that such seller might resell the product to the general public.

**Source:** Laws 1979, LB 180, § 9.

**59-1710 Services, defined.**

Services shall mean any assistance, guidance, direction, work, labor, or services provided by the seller to initiate or maintain the seller-assisted marketing plan.

**Source:** Laws 1979, LB 180, § 10.

**59-1711 Seller-assisted marketing plan contract or contract, defined.**

Seller-assisted marketing plan contract or contract shall mean any contract or agreement which obligates a purchaser to a seller.

**Source:** Laws 1979, LB 180, § 11.

**59-1712 Initial payment, defined.**

Initial payment shall mean the total amount a purchaser is obligated to pay under the terms of the seller-assisted marketing plan contract prior to or at the time of delivery of the equipment, supplies, products, or services or within six months of the purchaser commencing operation of the seller-assisted marketing plan. If the contract sets forth a specific total sale price for purchase of the seller-assisted marketing plan which total price is to be paid partially as a downpayment and then in specific monthly payments, the initial payment shall mean the entire total sale price.

**Source:** Laws 1979, LB 180, § 12.

**59-1713 Buy-back or secured investment, defined.**

Buy-back or secured investment shall mean any representation which implies in any manner that the purchaser's initial payment is protected from loss.

**Source:** Laws 1979, LB 180, § 13.

**59-1714 Ongoing business, defined.**

Ongoing business shall mean one which for at least six months previous to the sale:

(1) Has been operated from a specific given location;  
(2) Has been open for business to the general public; and  
(3) Has had all equipment and supplies necessary for operating the business located at the specific given location.

**Source:** Laws 1979, LB 180, § 14.

**59-1714.01 License, defined.**

License shall mean the right or permission to use (1) material or personal property, including computer programs, protected under the copyright or patent laws of the United States or any foreign government and (2) a trademark, service mark, or trade name registered under Nebraska law or the law of any other state, of the United States, or of any foreign government.

**Source:** Laws 1993, LB 218, § 7.

**59-1715 Seller-assisted marketing plan; securities excluded.**

A seller-assisted marketing plan shall not include a security as defined by subdivision (15) of section 8-1101.

**Source:** Laws 1979, LB 180, § 15; Laws 1993, LB 216, § 12; Laws 1997, LB 335, § 13.

**59-1716 Seller-assisted marketing plan; real estate or insurance transactions; excluded.**

A seller-assisted marketing plan shall not include any transaction for which either the seller, purchaser, lessor, or lessee is licensed pursuant to and the transaction is governed by the State Real Estate Commission or the Department of Insurance.

**Source:** Laws 1979, LB 180, § 16.

**59-1717 Seller-assisted marketing plan; sales under certain license; excluded.**

A seller-assisted marketing plan shall not include a license granted by a general merchandise retailer which allows the licensee to sell goods, equipment, supplies, products, or services to the general public under the retailer's trademark, trade name, or service mark when the general merchandise retailer has been doing business continuously for five years prior to the granting of the license.

**Source:** Laws 1979, LB 180, § 17.

**59-1718 Seller-assisted marketing plan; sale or lease to ongoing business enterprises; excluded.**

A seller-assisted marketing plan shall not include a sale or lease to an ongoing business enterprise which also sells or leases equipment, products, or supplies or performs services which are not supplied by the seller and which the purchaser does not utilize with the equipment, products, supplies, or services of the seller.

**Source:** Laws 1979, LB 180, § 18; Laws 1993, LB 218, § 6.

**59-1718.01 Seller-assisted marketing plan; sales under five hundred dollars; excluded.**

A seller-assisted marketing plan shall not include the sale of a business opportunity for which the immediate cash payment made by the purchaser does not exceed five hundred dollars and the payment is made for the not-for-profit sale of sales demonstration equipment, material, or samples for use in making sales and not for resale or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

**Source:** Laws 1993, LB 218, § 8.

**59-1719 Seller-assisted marketing plan; sale of an ongoing business; excluded.**

A seller-assisted marketing plan shall not include the sale of an ongoing business.

**Source:** Laws 1979, LB 180, § 19.

**59-1720 Seller-assisted marketing plan; certain sale, lease, or offer; excluded.**

A seller-assisted marketing plan shall not include a sale, lease, or offer to sell or lease to a purchaser: (1) Who has for a period of at least six months previously bought products, supplies, services, or equipment which were sold under the same trademark or trade name or which were produced by the seller; and (2) who has received on resale of such product, supplies, services, or equipment an amount which is at least equal to the amount of the initial payment.

**Source:** Laws 1979, LB 180, § 20.

**59-1721 Seller-assisted marketing plan; renewal or extension of existing plan; excluded.**

A seller-assisted marketing plan shall not include the renewal or extension of an existing seller-assisted marketing plan contract.

**Source:** Laws 1979, LB 180, § 21.

**59-1722 Transaction; seller complied with Federal Trade Commission trade regulation rule; exempt; exception; conditions; fee.**

(1) Any transaction in which the seller has complied with the Federal Trade Commission trade regulation rule titled Disclosure Requirements and Prohibition Concerning Franchises and Business Opportunity Ventures, 16 C.F.R. 436, shall be exempt from the Seller-Assisted Marketing Plan Act, except that such transactions shall be subject to subdivision (1)(d) of section 59-1757, those provisions regulating or prescribing the use of the phrase buy-back or secured investment or similar phrases as set forth in sections 59-1726 to 59-1728 and 59-1751, and all sections which provide for their enforcement. The exemption shall only apply if:

(a) The seller uses a disclosure document prepared in accordance with either the Federal Trade Commission trade regulation rule titled Disclosure Requirements and Prohibition Concerning Franchises and Business Opportunity Ventures, 16 C.F.R. 436, or the then current guidelines for the preparation of the Uniform Franchise Offering Circular adopted by the North American Securities Administration Association;

(b) Before placing any advertisement in a Nebraska-based publication, offering for sale to any prospective purchaser in Nebraska, or making any represen-

tations 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.

**59-1722.01 Transaction; exemption from act; provisions applicable.**

Any transaction in which the purchaser makes or will become obligated to make a total initial payment of an amount not exceeding five hundred dollars shall be exempt from the Seller-Assisted Marketing Plan Act, except that such transactions shall be subject to section 59-1751, to subdivision (1)(d) of section 59-1757, and to those provisions in the act 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.

**Source:** Laws 2003, LB 217, § 44.

**59-1723 Seller-assisted marketing plan; sale, lease, or offer; occurs; when.**

(1) An offer to sell or offer to lease a seller-assisted marketing plan shall occur in this state whenever:

(a) The offer to sell or offer to lease is made in this state;

(b) The purchaser resides in this state at the time of the offer; or

(c) The offer to sell or offer to lease either originates from this state or is directed by the seller or lessor to this state and received at the place to which it is directed.

(2) A sale or lease of a seller-assisted marketing plan shall occur in this state whenever:

(a) The offer to sell or offer to lease is accepted in this state;

(b) The purchaser resides in this state at the time of the sale; or

(c) The acceptance is communicated to a seller situated in this state.

**Source:** Laws 1979, LB 180, § 23.

**59-1724 Marketing plan; seller; disclosure document; list of sellers; file; update; fees.**

(1)(a) Before placing any advertisement, making any other solicitation, making any sale, or making any representations to any prospective purchaser in Nebraska, the seller shall file with the Department of Banking and Finance a copy of a disclosure document prepared pursuant to sections 59-1733 to 59-1740 and pay a filing fee of one hundred dollars.

(b) The seller shall file an amended document with the department whenever a material change in the information occurs and shall pay a fee of fifty dollars for filing each such document.

(c) If the seller continues to solicit seller-assisted marketing plans in Nebraska, he or she shall annually file an updated disclosure document and pay a renewal fee of fifty dollars on or before the anniversary date of the initial filing for the particular seller-assisted marketing plan.

(d) In addition to the disclosure document, the seller shall file a list of the names and resident addresses of those individuals who sell the seller-assisted marketing plan on behalf of the seller. The list of sales representatives shall be updated through a new filing every six months. No fee shall be required to be paid for any filing which includes only an updated list of sales representatives.

(2) All funds collected by the department under this section shall be remitted to the State Treasurer for credit to the Securities Act Cash Fund.

**Source:** Laws 1979, LB 180, § 24; Laws 1993, LB 218, § 10.

**59-1725 Marketing plan; violations; investigations; director; powers.**

(1)(a) The Director of Banking and Finance in his or her discretion may make such investigations within or without this state as he or she deems necessary to determine whether any person has violated or is about to violate any provision of the Seller-Assisted Marketing Plan Act or any rule, regulation, or order of the director or to aid in the enforcement of the act or in the adoption or promulgation of rules, regulations, and forms under the act. In the discretion of the director, the actual expense of any such investigation may be charged to the person who is the subject of the investigation.

(b) The director may publish information concerning any violation of the act or any rule, regulation, or order of the director.

(c) For the purpose of any investigation or proceeding under the act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(2)(a) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him or her to appear before the director or the officer designated by the director to produce documentary evidence if so ordered or to give evidence touching the matter under investiga-

tion or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(b) The request for order of compliance may be addressed to either (i) the district court of Lancaster County or the district court in the county where service may be obtained on the person refusing to testify or produce if the person is within this state or (ii) the appropriate district court of this state having jurisdiction over the person refusing to testify or produce if the person is outside this state.

**Source:** Laws 1979, LB 180, § 25; Laws 1983, LB 461, § 2; Laws 1993, LB 218, § 11.

**59-1725.01 Seller-assisted marketing plan; cease and desist order; fine; injunction; procedures; appeal.**

(1) The Director of Banking and Finance may summarily order a seller or any officer, director, employee, or agent of such seller to cease and desist from the further offer or sale of any seller-assisted marketing plan by the seller if the director finds:

(a) There has been a substantial failure to comply with any of the provisions of the Seller-Assisted Marketing Plan Act;

(b) The offer or sale of the plan would constitute misrepresentation to or deceit or fraud upon the purchasers; or

(c) Any person identified in the required disclosure document has been convicted of an offense described in subdivision (2)(a) of section 59-1735 or is subject to an order or has had a civil judgment entered against him or her as described in subdivision (2)(b) or (c) of section 59-1735, and the involvement of such person in the sale or management of the seller-assisted marketing plan creates an unreasonable risk to prospective purchasers.

(2) If the director believes, whether or not based upon an investigation conducted under section 59-1725, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Seller-Assisted Marketing Plan Act or any rule, regulation, or order of the director, the director may:

(a) Issue a cease and desist order;

(b) Impose a fine not to exceed five 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 Seller-Assisted Marketing Plan 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)(a) Any fine and costs imposed under this section shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the Department of Banking and Finance and remitted to the State Treasurer. Costs shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund.

(b) If a person fails to pay the administrative fine or investigation costs referred to in this section, a lien in the amount of such fine and costs may be

imposed upon all assets and property of such person in this state and may be recovered by suit by the director. Failure of the person to pay such fine and costs shall constitute a separate violation of the act.

(5) Upon entry of an order pursuant to this section, the director shall, in writing, 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 after the issuance of the order. Upon receipt of such 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 218, § 12; Laws 2001, LB 53, § 109.

**Cross References**

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

**59-1726 Marketing plan; seller; use of certain phrases; prohibited.**

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not:

(1) Use the phrase buy-back or secured investment or similar phrase orally or in writing when soliciting, offering, leasing, or selling a seller-assisted marketing plan if the security is the value of the equipment, supplies, products, or services supplied by the seller to the purchaser; or

(2) Use the phrase buy-back or secured investment or similar phrase orally or in writing when soliciting, offering, leasing, or selling a seller-assisted marketing plan unless there are no restrictions or qualifications whatsoever preventing or limiting a purchaser from being able to invoke the buy-back or secured portion of the seller-assisted marketing plan contract at any time the purchaser desires during the one-year period following the contract date.

**Source:** Laws 1979, LB 180, § 26.

**59-1727 Marketing plan; buy-back or security investment provision; invoked; entitlement.**

Upon invocation of the buy-back or security investment provision under section 59-1726, the minimum amount a purchaser shall be entitled to have returned to him or her is the full amount of his or her initial payment, less the money actually received by him or her from the operation of the seller-assisted marketing plan. The amount actually received shall be either the amount the purchaser actually obtained from the seller for any product resold to the seller

or the amount of money the general public pays for use of the purchaser's product, equipment, supplies, or services, less any amount the purchaser has paid the owner or manager of the location at which the purchaser's products, equipment, supplies, or services are placed.

**Source:** Laws 1979, LB 180, § 27.

**59-1728 Marketing plan; payment secured; buy-back arrangement; representations; prohibited; exception.**

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not represent that a purchaser's initial payment is secured in any manner or to any degree or that the seller provides a buy-back arrangement unless the seller has, in conformity with section 59-1751, either obtained a surety bond issued by a surety company admitted to do business in this state or established a trust account.

**Source:** Laws 1979, LB 180, § 28; Laws 1995, LB 599, § 17.

**59-1729 Marketing plan; earning potential claim; substantiated by data.**

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not represent that the seller-assisted marketing plan provides income or earning potential of any kind unless the seller has data to substantiate the claims of income or earning potential and discloses this data to the purchaser at the time the claim is made, if made in person, or if made through written or telephonic communication, at the first in-person communication thereafter and, when disclosed, the data is left with the purchaser. A mathematical computation of the number of sales, multiplied by the amount of profit per sale to reach a projected income figure is not sufficient data to substantiate an income or earning potential claim. The data left by the seller must at least disclose:

- (1) The length of time the seller has been selling the particular seller-assisted marketing plan being offered;
- (2) The number and percentage such number represents of the total number of purchasers who form the basis for the income or earning potential representation; and
- (3) The number of purchasers known to the seller to have made at least the same sales, income, or profits as those represented.

**Source:** Laws 1979, LB 180, § 29.

**59-1730 Marketing plan; advertising; commercial symbol; requirements.**

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not use the trademark, service mark, trade name, logotype, advertising, or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller in regard to the seller-assisted marketing plan, unless the nature of the seller's relationship to such other business entity is set forth immediately adjacent to and in type size equal to or larger than that used to depict the commercial symbol of such other business. If a member of a trade association, the seller may use the logo or

registration mark of the trade association in advertisements and materials without regard to this section.

**Source:** Laws 1979, LB 180, § 30.

**59-1731 Marketing plan; advertisement; name and address of seller; required.**

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not place or cause to be placed any advertisement for a seller-assisted marketing plan which does not include the actual business name of the seller, and if it differs, the name under which the seller-assisted marketing plan is operated and the street address of the principal place of business of the seller.

**Source:** Laws 1979, LB 180, § 31.

**59-1732 Seller-assisted marketing plan; potential purchaser; seller provide disclosure document.**

In the first in-person communication with a potential purchaser or in the first written response to an inquiry by a potential purchaser wherein the seller-assisted marketing plan is described, the seller shall provide the prospective purchaser a written disclosure document which contains the disclosure information required by sections 59-1733 to 59-1740. Such disclosure document shall contain a cover sheet entitled in at least sixteen-point boldface capital letters DISCLOSURE REQUIRED BY NEBRASKA LAW. Under the title shall appear, in boldface of at least ten-point type, the statement: The State of Nebraska has not reviewed and does not approve, recommend, endorse, or sponsor any seller-assisted marketing plan. The information contained in this disclosure has not been checked by the state. If you have any questions about this purchase, see an attorney or other financial advisor before you sign a contract or agreement.

Nothing shall appear on the cover sheet except the title and the statement required by this section. A disclosure document prepared pursuant to sections 59-1733 to 59-1740 shall include a statement which either positively or negatively responds to each disclosure item required by sections 59-1733 and 59-1735 by use of a statement which fully incorporates the information required by the item. This disclosure document shall be given to the potential purchaser and held by the potential purchaser for at least forty-eight hours prior to the execution of a seller-assisted marketing contract or at least forty-eight hours prior to the receipt of any consideration.

**Source:** Laws 1979, LB 180, § 32; Laws 1983, LB 461, § 3; Laws 1993, LB 218, § 13; Laws 1995, LB 599, § 18.

**59-1733 Disclosure document; information; requirements.**

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

(1) The name of the seller, the name under which the seller is doing or intends to do business, the seller's principal business address, the seller's business form, including identification of the state under whose laws the seller is organized or incorporated, and the name, principal business address, and business form of any parent or affiliated company that will engage in business

transactions with purchasers or accept responsibility for statements made by the seller;

(2) A statement of the initial payment charged or, when not known, a statement of approximate initial payment charged, and a statement of the amount of the initial payment to be paid to a person inducing, directly or indirectly, a purchaser to contract for the seller-assisted marketing plan;

(3) A full and detailed description of the actual services the seller will or may undertake to perform for the purchaser;

(4) The following legend shall be included in the disclosure document when the seller makes any statement concerning earnings or range of earnings that may be made through the seller-assisted marketing plan:

No guarantee of earnings or ranges of earnings can be made. The number of purchasers who have earned through this business an amount in excess of the amount of their initial payment is at least . . . . ., which represents . . . . . percent of the total number of purchasers of this seller-assisted marketing plan;

(5) A complete description of any training provided by or through the seller or any person recommended or specified by the seller, including the length of the training and a statement of any costs associated with the training which the purchaser will be responsible for paying;

(6) A complete description of any services to be performed by the seller or any person recommended or specified by the seller in connection with the placement of the equipment, product, or supplies at a location from which they will be sold or used, the full nature of those services, including a statement identifying any third party the seller may hire for such services and the nature of any agreement between the seller and the third party, as well as the nature of the agreements to be made with the owner or manager of the location at which the purchaser's equipment, product, or supplies will be placed and any costs associated with such placement services which the purchaser will be responsible for paying;

(7) A statement completely and clearly disclosing the entire and precise nature of any arrangement (a) whereby the seller agrees to buy back the product, supplies, or equipment initially sold or (b) whereby the initial payment is secured, that the seller represented orally or in writing to exist when soliciting or offering for sale or lease or selling or leasing a seller-assisted marketing plan;

(8) A statement setting forth (a) the total number of seller-assisted marketing plans, which are the same as the plan described in the disclosure document, that have been set up or organized by the seller, (b) the number of such seller-assisted marketing plans in existence at the end of the preceding year, (c) the names, addresses, and telephone numbers of the ten seller-assisted marketing plan purchasers nearest the prospective purchaser's intended location. If less than ten seller-assisted marketing plan purchasers exist, the total number of purchasers shall be used, and (d) the total number of seller-assisted marketing plans the seller intends to set up in Nebraska and across the nation within the next twelve months; and

(9) Any other information which the Department of Banking and Finance may require by rule, regulation, or order, to be disclosed for the protection of purchasers.

**Source:** Laws 1979, LB 180, § 33; Laws 1983, LB 461, § 4; Laws 1993, LB 218, § 14; Laws 1995, LB 599, § 19; Laws 2001, LB 53, § 110.

**59-1734 Repealed. Laws 1983, LB 461, § 10.**

**59-1735 Disclosure document; contents; requirements.**

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

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

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

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

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

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

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

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

(b) A listing of each such person's educational background, including the names and addresses of schools attended, dates of attendance, and degrees received.

**Source:** Laws 1979, LB 180, § 35; Laws 1983, LB 461, § 5; Laws 1993, LB 218, § 15; Laws 1993, LB 121, § 380; Laws 1994, LB 884, § 77; Laws 1995, LB 599, § 20.

**59-1736 Seller; officers, directors, partners, managers; conviction or judgment; disclosure.**

The statements required by subdivision (2) of section 59-1735 shall set forth the court, the date of the conviction or of the judgment and, when involved, the

name of the governmental agency that brought the action resulting in the conviction or judgment.

**Source:** Laws 1979, LB 180, § 36.

**59-1737 Disclosure document; disclose period of time plan sold or offered.**

The disclosure document required by section 59-1732 shall contain the length of time the seller of the plan has sold seller-assisted marketing plans, and the length of time the seller has sold the specific seller-assisted marketing plan being offered to the purchaser.

**Source:** Laws 1979, LB 180, § 37; Laws 1983, LB 461, § 6.

**59-1738 Disclosure document; disclose existence of bond or trust account.**

If the seller is required to secure a bond or establish a trust account pursuant to the requirements of sections 59-1726 to 59-1728, the disclosure document required by section 59-1732 shall state either:

(1) Seller has secured a bond issued by . . . . ., (name and address of surety company) a surety company admitted to do business in this state. Before signing a contract to purchase this seller-assisted marketing plan, you should check with the surety company to determine the bond's current status; or

(2) Seller has deposited with the Department of Banking and Finance information regarding its trust account. Before signing a contract to purchase this seller-assisted marketing plan, you should check with the Department of Banking and Finance to determine the current status of the trust account.

**Source:** Laws 1979, LB 180, § 38; Laws 1983, LB 461, § 7.

**59-1739 Disclosure document; contain financial information; verification.**

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

**Source:** Laws 1979, LB 180, § 39; Laws 1983, LB 461, § 8; Laws 1993, LB 121, § 381; Laws 1994, LB 884, § 78.

**59-1740 Disclosure document; contain unexecuted copy of marketing plan contract.**

The disclosure document required by section 59-1732 shall contain an unexecuted copy of the entire seller-assisted marketing plan contract.

**Source:** Laws 1979, LB 180, § 40; Laws 1983, LB 461, § 9.

**59-1741 Seller-assisted marketing plan; contract for sale or lease; written; copy to purchaser.**

Every contract for sale or lease of a seller-assisted marketing plan in this state shall be in writing and shall be subject to the provisions of the Seller-Assisted Marketing Plan Act. A copy of the fully completed contract and all other documents the seller requires the purchaser to sign shall be given to the purchaser at the time such documents are signed.

**Source:** Laws 1979, LB 180, § 41; Laws 1993, LB 218, § 16.

**59-1742 Marketing plan contract; contents; requirements.**

Every seller-assisted marketing plan contract shall set forth in at least ten-point type or equivalent size if handwritten, the following:

(1) The terms and conditions of payment including the initial payment, additional payments, and downpayment required;

(2) A full and detailed description of the acts or services the seller will undertake to perform for the purchaser;

(3) The seller's principal business address and the name and address of its agent in the State of Nebraska authorized to receive service of process;

(4) The business form of the seller, whether a corporation, partnership, limited liability company, or otherwise;

(5) The delivery date or, when the contract provides for a staggered delivery of items to the purchaser, the approximate delivery date of those products, equipment, or supplies the seller is to deliver to the purchaser to enable the purchaser to begin or maintain his or her business and whether the products, equipment, or supplies are to be delivered to the purchaser's home or business address or are to be placed or caused to be placed by the seller at locations owned or managed by persons other than the purchaser;

(6) A complete description of the nature of the buy-back or security arrangement, if the seller has represented orally or in writing when selling or leasing, soliciting, or offering a seller-assisted marketing plan that there is a buy-back or that the initial payment is secured; and

(7) A statement which accurately sets forth a purchaser's right to void the contract under the circumstances and in the manner set forth in sections 59-1752 to 59-1755.

**Source:** Laws 1979, LB 180, § 42; Laws 1993, LB 121, § 382.

**59-1743 Marketing plan contract; purchaser; right to cancel; when.**

The purchaser shall have the right to cancel a seller-assisted marketing plan contract for any reason at any time within three business days of the date the purchaser and the seller sign the contract pursuant to section 59-1744. The notice of the right to cancel and the procedures to be followed when a contract is canceled shall comply with sections 59-1743 and 59-1744.

**Source:** Laws 1979, LB 180, § 43.

**59-1744 Marketing plan contract; contain notice of right to cancel.**

Every seller-assisted marketing plan contract shall set forth immediately above the place at which the purchaser signs the contract in at least ten-point type the following:

You have three business days in which you may cancel this contract for any reason by mailing or delivering written notice to the seller-assisted marketing plan seller. The three business days shall expire on . . . . ., (last date to mail or deliver notice) and notice of cancellation should be mailed to . . . . ., (seller-assisted marketing plan seller's name and business street address). If you choose to mail your notice, it must be placed in the United States mail properly addressed, first-class postage prepaid, and postmarked before midnight of the above date. If you choose to deliver your notice to the seller directly, it must be delivered to him or her by the end of his or her normal business day on the above date. Within five business days of receipt of the notice of cancellation, the seller shall return to the purchaser all sums paid by the purchaser to the seller pursuant to this contract. Within five business days after receipt of all such sums, the purchaser shall make available at his or her address or at the place at which they were caused to be located, all equipment, products, and supplies provided to the purchaser pursuant to this contract. Upon demand of the seller, such equipment, products, and supplies shall be made available at the time the purchaser receives full repayment by cash, money order, or certified check.

**Source:** Laws 1979, LB 180, § 44.

**59-1745 Marketing plan contract; execution of certain notes prohibited.**

No seller-assisted marketing plan contract shall require or entail the execution of any note or series of notes by the purchaser which, when separately negotiated, will cut off as to third parties any right of action or defense which the purchaser may have against the seller.

**Source:** Laws 1979, LB 180, § 45.

**59-1746 Marketing plan contract; downpayment; conditions.**

If the contract referred to in section 59-1741 provides for a downpayment to be paid to the seller, the downpayment shall not exceed twenty percent of the initial payment amount. In no event shall the contract payment schedule provide for the seller to receive more than twenty percent of the initial payment before delivery to the purchaser, or to the place at which they are to be located, the equipment, supplies, or products, unless all sums in excess of twenty percent are placed in an escrow account which cannot be released until the purchaser notifies the escrow agent in writing of the delivery of such equipment, supplies, or products. Notification of delivery by the purchaser to the escrow agent shall not be unreasonably withheld.

**Source:** Laws 1979, LB 180, § 46.

**59-1747 Marketing plan contract; assignee; rights, defenses.**

Any assignee of the seller-assisted marketing plan contract or the seller's rights is subject to all equities, rights, and defenses of the purchaser against the seller.

**Source:** Laws 1979, LB 180, § 47.

**59-1748 Reference to compliance with act; prohibited.**

No seller shall make or authorize the making of any reference to its compliance with the Seller-Assisted Marketing Plan Act.

**Source:** Laws 1979, LB 180, § 48; Laws 1993, LB 218, § 17.

**59-1749 Marketing plan; seller; records required.**

Every seller subject to the Seller-Assisted Marketing Plan Act shall at all times keep and maintain a complete set of books, records, and accounts of seller-assisted marketing plan sales made by the seller. All documents relating to each specific seller-assisted marketing plan sold or leased shall be maintained for four years after the date of the seller-assisted marketing plan contract.

**Source:** Laws 1979, LB 180, § 49; Laws 2003, LB 217, § 43.

**59-1750 Seller-assisted marketing plan; service of process.**

Selling or offering to sell a seller-assisted marketing plan in this state shall constitute sufficient contact with this state for the exercise of personal jurisdiction over the seller in any action arising under the Seller-Assisted Marketing Plan Act.

**Source:** Laws 1979, LB 180, § 50; Laws 1983, LB 447, § 77; Laws 1993, LB 218, § 18.

**59-1751 Seller; surety bond or trust account; establish; procedures.**

If, pursuant to section 59-1728, a seller must obtain a surety bond or establish a trust account, the following procedures shall apply:

(1) If a bond is obtained, a copy of it shall be filed with the Department of Banking and Finance, and if a trust account is established, notification of the depository, the trustee, and the account number shall be filed with the Department of Banking and Finance;

(2) The bond or trust account required shall run in favor of the State of Nebraska for the benefit of any person who is damaged by any violation of the Seller-Assisted Marketing Plan Act or by the seller's breach of a contract subject to the act or of any obligation arising therefrom. The bond or trust account shall also run in favor of any person damaged by such practices;

(3) Any person claiming against the bond or trust account for a violation of the act may maintain an action at law against the seller and the surety or trustee. The aggregate liability of the surety or trustee to all persons damaged by a seller's violation of the act shall in no event exceed the amount of the bond or trust account; and

(4) The bond or the trust account shall be in an amount equal to the total amount of the initial payment of all seller-assisted marketing plan contracts which the seller has entered into during the previous year or three hundred thousand dollars, whichever is less, but in no case shall the amount be less than fifty thousand dollars. The amount required shall be adjusted twice a year. Such adjustment shall occur no later than the tenth day of the first month of the seller's fiscal year and no later than the tenth day of the seventh month of the seller's fiscal year. A seller need only establish a bond or trust account in the amount of fifty thousand dollars at the commencement of business and during

the first six months the seller is in business. By the tenth day of the seller's seventh month in business, the amount of the bond shall be established as provided for in this section as if the seller had been in business for a year.

**Source:** Laws 1979, LB 180, § 51; Laws 1993, LB 218, § 19.

**59-1752 Seller; noncompliance with act; contract; voidable; purchaser; remedies.**

If (1) a seller uses any untrue or misleading statements relating to a seller-assisted marketing plan, (2) a seller fails to provide the disclosure documents or disclose any of the information required by sections 59-1732 to 59-1740, or (3) the contract does not comply with the requirements of the Seller-Assisted Marketing Plan Act, then within one year of the date of the contract at the election of the purchaser upon written notice to the seller, the contract shall be voidable by the purchaser and unenforceable by the seller or his or her assignee as contrary to public policy and the purchaser shall be entitled to receive from the seller all sums paid to the seller when the purchaser is able to return all equipment, supplies, or products delivered by the seller. When such complete return cannot be made, the purchaser shall be entitled to receive from the seller all sums paid to the seller less the fair market value at the time of delivery of the equipment, supplies, or products not returned by the purchaser, but delivered by the seller. Upon the receipt of such sums, the purchaser shall make available to the seller, at the purchaser's address or at the places at which they are located at the time the purchaser gives notice pursuant to this section, the products, equipment, or supplies received by the purchaser from the seller.

**Source:** Laws 1979, LB 180, § 52; Laws 1993, LB 218, § 20.

**59-1753 Seller; inadvertent defects; cure; purchaser; rights.**

If the seller inadvertently has failed to make any of the disclosures required by sections 59-1732 to 59-1740 or the contract inadvertently fails to comply with the requirements of the Seller-Assisted Marketing Plan Act, the seller may cure such inadvertent defect by providing the purchaser with the correct disclosure documents or contract if at the time of providing such correct disclosures or contract the seller also informs the purchaser in writing that because of the seller's error, the purchaser shall have an additional fifteen-day period after receipt of the correct disclosures or contract within which to cancel the contract and receive a full return of all money paid in exchange for return of whatever equipment, supplies, or products the purchaser has. If the purchaser does not cancel the contract within fifteen days after receipt of the correct disclosures or contract, he or she may not in the future exercise his or her right to void the contract under this section and sections 59-1752, 59-1754, and 59-1755 due to such noncompliance with the disclosure or contract requirements of the act.

**Source:** Laws 1979, LB 180, § 53; Laws 1993, LB 218, § 21.

**59-1754 Seller; failure to deliver products; contract voidable.**

If a seller fails to deliver the equipment, supplies, or products within thirty days of the delivery date stated in the contract, unless such delivery delay is beyond the control of the seller, then at any time prior to delivery or within thirty days after delivery, at the election of the purchaser upon written notice to

the seller, the contract shall be voidable by the purchaser and unenforceable by the seller or his or her assignee.

**Source:** Laws 1979, LB 180, § 54.

**59-1755 Purchaser rights; cumulative.**

The rights of the purchaser set forth in sections 59-1752 to 59-1754 shall be cumulative to all other rights under the Seller-Assisted Marketing Plan Act or otherwise.

**Source:** Laws 1979, LB 180, § 55; Laws 1993, LB 218, § 22.

**59-1756 Purchaser; waiver of rights; unenforceable.**

Any waiver by a purchaser of the provisions of the Seller-Assisted Marketing Plan Act shall be deemed contrary to public policy and shall be void and unenforceable. Any attempt by a seller to have a purchaser waive rights given by the act shall be a violation of the act.

**Source:** Laws 1979, LB 180, § 56; Laws 1993, LB 218, § 23.

**59-1757 Prohibited acts; violation; penalty; enforcement.**

(1) No person shall, in connection with the offer, purchase, lease, or sale of any seller-assisted marketing plan:

(a) Use the trademark, service mark, trade name, logotype, or advertising or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller in regard to the business opportunity unless it is clear from the circumstances that the owner of the commercial symbol has knowledge of and consents to such use and is not involved in the sale of the business opportunity;

(b) Make any claim or representation in advertising or promotional material or in any oral sales presentation, solicitation, or discussion between the seller and a prospective purchaser which is inconsistent with the information required to be disclosed by the Seller-Assisted Marketing Plan Act;

(c) Make or cause to be made any representation to any prospective purchaser that the Department of Banking and Finance has found any document filed under the act to be true, complete, and not misleading or has passed in any way upon the merits of or recommended or given approval to any seller-assisted marketing plan; or

(d) Directly or indirectly (i) employ any device, scheme, or artifice to defraud, (ii) make any untrue statement of a material fact or omit to state a material fact, or (iii) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) Any person, including, but not limited to, the seller, a salesperson, agent, or representative of the seller, or an independent contractor who attempts to sell or lease or sells or leases a seller-assisted marketing plan, who willfully violates any provision of the act or any order issued pursuant to section 59-1725.01 in connection with the offer, purchase, lease, or sale of any seller-assisted marketing plan shall be guilty of a Class IV felony.

(3) The Director of Banking and Finance may refer such evidence as is available concerning violations of the Seller-Assisted Marketing Plan Act or any

order of the director to the Attorney General or county attorney who may, with or without reference from the director, initiate criminal proceedings pursuant to the act.

**Source:** Laws 1979, LB 180, § 57; Laws 1993, LB 218, § 24.

**59-1758 Violation; action for recovery of damages; award; statute of limitations.**

(1) Any purchaser injured by a violation of the Seller-Assisted Marketing Plan Act or by the seller's breach of a contract subject to the act or of any obligation arising from the sale or lease of the seller-assisted marketing plan may bring an action for recovery of damages. Judgment shall be entered for actual damages suffered by the purchaser, plus reasonable attorney's fees and costs. When the purchaser is able to return all the equipment, supplies, or products delivered by the seller, the actual damages awarded shall not be less than the amount of the initial payment. When such complete return cannot be made, the actual damages awarded shall not be less than the amount of the initial payment less the fair market value at the time of delivery of the equipment, supplies, or products that cannot be returned but were actually delivered by the seller.

(2) Any action brought pursuant to this section shall be commenced within five years of the date of the sale of the seller-assisted marketing plan.

**Source:** Laws 1979, LB 180, § 58; Laws 1993, LB 218, § 25.

**59-1758.01 Burden of proof.**

In any proceeding under the provisions of the Seller-Assisted Marketing Plan Act, the burden of proving an exemption or an exclusion from a definition or from the provisions of the act shall be upon the person claiming it.

**Source:** Laws 1993, LB 218, § 26; Laws 2003, LB 217, § 45.

**59-1759 Remedies; not exclusive.**

The provisions of the Seller-Assisted Marketing Plan Act are not exclusive. The remedies provided for violation of any provision of the act or for conduct prescribed by any provision of the act shall be in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

**Source:** Laws 1979, LB 180, § 59; Laws 1993, LB 218, § 28.

**59-1760 Statutory or common-law rights; available.**

Nothing in the Seller-Assisted Marketing Plan Act shall limit any statutory or common-law rights of the Attorney General, any county attorney, or any city attorney, or any other person. If any act or practice prescribed under the Seller-Assisted Marketing Plan Act also constitutes a cause of action in common law or a violation of another statute, the purchaser may assert such common-law or statutory cause of action under the procedures and with the remedies provided for in such other law.

**Source:** Laws 1979, LB 180, § 60; Laws 1993, LB 218, § 29.

**59-1761 Unfair competition and deceptive practices statutes; applicable.**

Actions and transaction prohibited by the Seller-Assisted Marketing Plan Act shall be subject to section 59-1602 and all statutes which provide for the implementation and enforcement of such section.

**Source:** Laws 1979, LB 180, § 61; Laws 1993, LB 218, § 30.

**59-1762 Director of Banking and Finance; powers; rules and regulations.**

In addition to specific authority granted elsewhere in the Seller-Assisted Marketing Plan Act, the Director of Banking and Finance may adopt and promulgate rules, regulations, orders, or forms as are necessary to carry out the act. No rule, regulation, order, or form may be adopted unless the director finds that the action is necessary or appropriate in the public interest or for the protection of purchasers and potential purchasers and is consistent with the purposes fairly intended by the policy and provisions of the act. All rules, regulations, orders, and forms of the director and the Department of Banking and Finance shall be published.

**Source:** Laws 1993, LB 218, § 27.

**ARTICLE 18**

**CHARITABLE GIFT ANNUITY ACT**

Section

59-1801. Act, how cited.

59-1802. Terms, defined.

59-1803. Issuance of annuity; how construed.

**59-1801 Act, how cited.**

Sections 59-1801 to 59-1803 shall be known and may be cited as the Charitable Gift Annuity Act.

**Source:** Laws 1996, LB 972, § 1.

**59-1802 Terms, defined.**

For purposes of the Charitable Gift Annuity Act:

(1) Charitable gift annuity means a charitable gift annuity described by section 501(m)(5) and section 514(c)(5) of the Internal Revenue Code that is issued prior to, on, or after March 26, 1996, by a charitable organization that, on the date of the annuity agreement, has been in continuous operation for at least three years or is the successor or affiliate of a charitable organization that has been in continuous operation for at least three years; and

(2) Charitable organization means any entity described in section 170(c) or section 501(c)(3) of the Internal Revenue Code.

**Source:** Laws 1996, LB 972, § 2.

**59-1803 Issuance of annuity; how construed.**

Issuance of a charitable gift annuity does not constitute:

- (1) Engaging in business as a trust company subject to the Nebraska Trust Company Act;
- (2) Engaging in the business of insurance subject to Chapter 44;
- (3) Engaging in an act in violation of sections 59-801 to 59-831;
- (4) Engaging in an act in violation of the Viatical Settlements Act; or

(5) Engaging in an act in violation of the Uniform Deceptive Trade Practices Act. Conduct other than issuance of a charitable gift annuity, including the marketing of a charitable gift annuity, is not exempt from application of the Uniform Deceptive Trade Practices Act pursuant to this subdivision.

**Source:** Laws 1996, LB 972, § 3; Laws 1998, LB 1321, § 98; Laws 2001, LB 52, § 57; Laws 2002, LB 1278, § 34.

**Cross References**

**Nebraska Trust Company Act**, see section 8-201.01.

**Uniform Deceptive Trade Practices Act**, see section 87-306.

**Viatical Settlements Act**, see section 44-1101.

## MOTOR VEHICLES

# CHAPTER 60 MOTOR VEHICLES

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## ARTICLE 1

### MOTOR VEHICLE CERTIFICATE OF TITLE ACT

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**60-101 Act, how cited.**

Sections 60-101 to 60-197 shall be known and may be cited as the Motor Vehicle Certificate of Title Act.

**Source:** Laws 2005, LB 276, § 1; Laws 2006, LB 663, § 1; Laws 2006, LB 1061, § 6; Laws 2007, LB286, § 1; Laws 2009, LB49, § 5; Laws 2009, LB202, § 10; Laws 2010, LB650, § 3.

**60-102 Definitions, where found.**

For purposes of the Motor Vehicle Certificate of Title Act, unless the context otherwise requires, the definitions found in sections 60-103 to 60-136.01 shall be used.

**Source:** Laws 2005, LB 276, § 2; Laws 2007, LB286, § 2; Laws 2010, LB650, § 4.

**60-103 All-terrain vehicle, defined.**

All-terrain vehicle means any motorized off-highway device which (1) is fifty inches or less in width, (2) has a dry weight of nine hundred pounds or less, (3) travels on three or more low-pressure tires, (4) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger, (5) has a seat or saddle designed to be straddled by the operator, and (6) has handlebars or any other steering assembly for steering control.

**Source:** Laws 2005, LB 276, § 3.

**60-104 Assembled vehicle, defined.**

Assembled vehicle means a vehicle that is materially altered from its construction by the removal, addition, or substitution of new or used major component parts. Its make shall be assembled, and its model year shall be the year in which the vehicle was assembled. Assembled vehicle also includes a specially constructed vehicle.

**Source:** Laws 2005, LB 276, § 4.

**60-105 Body, defined.**

Body means that portion of a vehicle which determines its shape and appearance and is attached to the frame.

**Source:** Laws 2005, LB 276, § 5.

**60-106 Bus, defined.**

Bus means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

**Source:** Laws 2005, LB 276, § 6.

**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 September 1, 2001, 42 U.S.C. 5401 et seq.

**Source:** Laws 2005, LB 276, § 7; Laws 2008, LB797, § 1.

**60-108 Collector, defined.**

Collector means the owner of one or more vehicles of historical interest who collects, purchases, acquires, trades, or disposes of such vehicles or parts thereof for his or her own use in order to preserve, restore, and maintain a vehicle or vehicles for hobby purposes.

**Source:** Laws 2005, LB 276, § 8.

**60-109 Commercial trailer, defined.**

Commercial trailer means any trailer or semitrailer which has a gross weight, including load thereon, of more than nine thousand pounds and which is designed, used, or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property. Commercial trailer does not include cabin trailers, farm trailers, fertilizer trailers, or utility trailers.

**Source:** Laws 2005, LB 276, § 9.

**60-110 Department, defined.**

Department means the Department of Motor Vehicles.

**Source:** Laws 2005, LB 276, § 10.

**60-111 Designated county official, defined.**

Until the implementation date designated under section 23-186 by the director, designated county official means the county official, other than the county clerk, designated by a county board to provide services pursuant to section 23-186. On and after the implementation date designated under section 23-186 by the director, designated county official means the county treasurer.

**Source:** Laws 2005, LB 276, § 11; Laws 2009, LB49, § 6.

**60-112 Director, defined.**

Director means the Director of Motor Vehicles.

**Source:** Laws 2005, LB 276, § 12.

**60-113 Electric personal assistive mobility device, defined.**

Electric personal assistive mobility device means a self-balancing, two-non-tandem-wheeled device, designed to transport only one person and containing an electric propulsion system with an average power of seven hundred fifty watts or one horsepower, whose maximum speed on a paved level surface, when powered solely by such a propulsion system and while being ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour.

**Source:** Laws 2005, LB 276, § 13.

**60-114 Farm trailer, defined.**

Farm trailer means a trailer or semitrailer belonging to a farmer or rancher and used wholly and exclusively to carry supplies to or from the owner's farm or ranch, used by a farmer or rancher to carry his or her own agricultural products as defined in section 60-304 to or from storage or market, or used by a farmer or rancher for hauling of supplies or agricultural products in exchange of services.

**Source:** Laws 2005, LB 276, § 14; Laws 2007, LB286, § 3.

**60-115 Fertilizer trailer, defined.**

Fertilizer trailer means any trailer, including gooseneck applicators or trailers, designed and used exclusively to carry or apply agricultural fertilizer or agricultural chemicals and having a gross weight, including load thereon, of twenty thousand pounds or less.

**Source:** Laws 2005, LB 276, § 15.

**60-116 Frame, defined.**

Frame means that portion of a vehicle upon which other components are affixed, such as the engine, body, or transmission.

**Source:** Laws 2005, LB 276, § 16.

**60-117 Historical vehicle, defined.**

Historical vehicle means a motor vehicle or trailer which is thirty or more years old, which is essentially unaltered from the original manufacturer's specifications, and which is, because of its significance, being collected, preserved, restored, or maintained by a collector as a leisure pursuit.

**Source:** Laws 2005, LB 276, § 17; Laws 2006, LB 663, § 2; Laws 2007, LB286, § 4.

**60-118 Inspection, defined.**

Inspection means an identification inspection conducted pursuant to section 60-146.

**Source:** Laws 2005, LB 276, § 18.

**60-119 Kit vehicle, defined.**

Kit vehicle means a vehicle assembled by a person other than a generally recognized manufacturer of vehicles by the use of a replica purchased from an authorized manufacturer and accompanied by a manufacturer's statement of origin. The term kit vehicle does not include glider kits.

**Source:** Laws 2005, LB 276, § 19.

**60-119.01 Low-speed vehicle, defined.**

Low-speed vehicle means a vehicle that (1) cannot travel more than twenty-five miles per hour on a paved, level surface, (2) complies with 49 C.F.R. part 571, as such part existed on January 1, 2007, or (3) is designated by the manufacturer as an off-road or low-speed vehicle.

**Source:** Laws 2007, LB286, § 5.

**60-120 Major component part, defined.**

Major component part means an engine, with or without accessories, a transmission, a cowl, a door, a frame, a body, a rear clip, or a nose.

**Source:** Laws 2005, LB 276, § 20.

**60-121 Minibike, defined.**

Minibike means a two-wheel device which has a total wheel and tire diameter of less than fourteen inches or an engine-rated capacity of less than forty-five cubic centimeters displacement or any other two-wheel device primarily designed by the manufacturer for off-road use only. Minibike does not include an electric personal assistive mobility device.

**Source:** Laws 2005, LB 276, § 21.

**60-121.01 Minitruck, defined.**

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with

headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

**Source:** Laws 2010, LB650, § 5.

**60-122 Moped, defined.**

Moped means a bicycle with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than thirty miles per hour on level ground.

**Source:** Laws 2005, LB 276, § 22.

**60-123 Motor vehicle, defined.**

Motor vehicle means any vehicle propelled by any power other than muscular power. Motor vehicle does not include (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, utility-type vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, (9) electric personal assistive mobility devices, and (10) low-speed vehicles.

**Source:** Laws 2005, LB 276, § 23; Laws 2006, LB 765, § 1; Laws 2007, LB286, § 6; Laws 2010, LB650, § 6.

**60-124 Motorcycle, defined.**

Motorcycle means any motor vehicle having a seat or saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground.

**Source:** Laws 2005, LB 276, § 24.

**60-125 Nose, defined.**

Nose means that portion of the body of a vehicle from the front to the firewall when acquired or transferred as a complete unit.

**Source:** Laws 2005, LB 276, § 25.

**60-126 Parts vehicle, defined.**

Parts vehicle means a vehicle generally in nonoperable condition which is owned by a collector to furnish parts that are usually not obtainable from

normal sources, thus enabling a collector to preserve, restore, and maintain a historical vehicle.

**Source:** Laws 2005, LB 276, § 26.

**60-127 Patrol, defined.**

Patrol means the Nebraska State Patrol.

**Source:** Laws 2005, LB 276, § 27.

**60-128 Rear clip, defined.**

Rear clip means two or more of the following, all dismantled from the same vehicle: A quarter panel or fender; a floor panel assembly; or a trunk lid or gate.

**Source:** Laws 2005, LB 276, § 28.

**60-129 Semitrailer, defined.**

Semitrailer means any trailer so constructed that some part of its weight and that of its load rests upon or is carried by the towing vehicle.

**Source:** Laws 2005, LB 276, § 29.

**60-130 Situs, defined.**

Situs means the tax district where a vehicle is stored and kept for the greater portion of the calendar year. For a vehicle used or owned by a student, the situs is at the place of residence of the student if different from the place at which he or she is attending school.

**Source:** Laws 2005, LB 276, § 30.

**60-131 Specially constructed vehicle, defined.**

Specially constructed vehicle means a vehicle which was not originally constructed under a distinctive name, make, model, or type by a manufacturer of vehicles. The term specially constructed vehicle includes kit vehicle.

**Source:** Laws 2005, LB 276, § 31.

**60-132 Superintendent, defined.**

Superintendent means the Superintendent of Law Enforcement and Public Safety.

**Source:** Laws 2005, LB 276, § 32.

**60-133 Trailer, defined.**

Trailer means any device without motive power designed for carrying persons or property and being towed by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

**Source:** Laws 2005, LB 276, § 33.

**60-134 Truck, defined.**

Truck means any motor vehicle designed, used, or maintained primarily for the transportation of property or designated as a truck by the manufacturer.

**Source:** Laws 2005, LB 276, § 34; Laws 2007, LB286, § 7.

**60-135 Utility trailer, defined.**

Utility trailer means a trailer having a gross weight, including load thereon, of nine thousand pounds or less.

**Source:** Laws 2005, LB 276, § 35.

**60-135.01 Utility-type vehicle, defined.**

(1) Utility-type vehicle means any motorized off-highway device which (a) is not less than forty-eight inches nor more than seventy-four inches in width, (b) is not more than one hundred thirty-five inches, including the bumper, in length, (c) has a dry weight of not less than nine hundred pounds nor more than two thousand pounds, (d) travels on four or more low-pressure tires, and (e) is equipped with a steering wheel and bench or bucket-type seating designed for at least two people to sit side-by-side.

(2) Utility-type vehicle does not include golf carts or low-speed vehicles.

**Source:** Laws 2010, LB650, § 7.

**60-136 Vehicle, defined.**

Vehicle means a motor vehicle, all-terrain vehicle, utility-type vehicle, mini-bike, trailer, or semitrailer.

**Source:** Laws 2005, LB 276, § 36; Laws 2010, LB650, § 8.

**60-136.01 Vehicle identification number, defined.**

Vehicle identification number means a series of English letters or Arabic or Roman numerals assigned to a vehicle for identification purposes.

**Source:** Laws 2007, LB286, § 8.

**60-137 Act; applicability.**

(1) The Motor Vehicle Certificate of Title Act applies to all vehicles as defined in the act, except:

(a) Farm trailers;

(b) Low-speed vehicles;

(c) Well-boring apparatus, backhoes, bulldozers, and front-end loaders; and

(d) Trucks and buses from other jurisdictions required to pay registration fees under the Motor Vehicle Registration Act, except a vehicle registered or eligible to be registered as part of a fleet of apportionable vehicles under section 60-3,198.

(2) All new all-terrain vehicles and minibikes sold on or after January 1, 2004, shall be required to have a certificate of title. An owner of an all-terrain vehicle or minibike sold prior to such date may apply for a certificate of title for such all-terrain vehicle or minibike as provided in rules and regulations of the department.

(3) An owner of a utility trailer may apply for a certificate of title upon compliance with the Motor Vehicle Certificate of Title Act.

(4)(a) Every owner of a manufactured home or mobile home shall obtain a certificate of title for the manufactured home or mobile home prior to affixing it to real estate.

(b) If a manufactured home or mobile home has been affixed to real estate and a certificate of title was not issued before it was so affixed, the owner of such manufactured home or mobile home shall apply for and be issued a certificate of title at any time for surrender and cancellation as provided in section 60-169.

(5) All new utility-type vehicles sold on or after January 1, 2011, shall be required to have a certificate of title. An owner of a utility-type vehicle sold prior to such date may apply for a certificate of title for such utility-type vehicle as provided in rules and regulations of the department.

**Source:** Laws 2005, LB 276, § 37; Laws 2006, LB 765, § 2; Laws 2007, LB286, § 9; Laws 2008, LB953, § 2; Laws 2010, LB650, § 9.

**Cross References**

**Motor Vehicle Registration Act**, see section 60-301.

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

Under the Nebraska Certificate of Title Act, a certificate of title is the exclusive method provided by statute for the transfer

of title to an automobile, but it is not conclusive of ownership. *First Nat. Bank & Trust Co. v. Ohio Cas. Ins. Co.*, 196 Neb. 595, 244 N.W.2d 209 (1976).

Certificate of Title Act applies to all motor vehicles required to be licensed with specified exceptions. *Bank of Keystone v. Kayton*, 155 Neb. 79, 50 N.W.2d 511 (1951).

**60-138 Manufacturer’s or importer’s certificate; vehicle identification number.**

No manufacturer, importer, dealer, or other person shall sell or otherwise dispose of a new vehicle to a dealer to be used by such dealer for purposes of display and resale without (1) delivering to such dealer a duly executed manufacturer’s or importer’s certificate with such assignments as may be necessary to show title in the purchaser and (2) having affixed to the vehicle its vehicle identification number if it is not already affixed. No dealer shall purchase or acquire a new vehicle without obtaining from the seller such manufacturer’s or importer’s certificate.

**Source:** Laws 2005, LB 276, § 38.

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for

such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

**60-139 Certificate of title; vehicle identification number; required; when.**

Except as provided in section 60-137, 60-138, or 60-142.01, no person shall sell or otherwise dispose of a vehicle without (1) delivering to the purchaser or transferee of such vehicle a certificate of title with such assignments thereon as are necessary to show title in the purchaser and (2) having affixed to the vehicle its vehicle identification number if it is not already affixed. No person shall bring into this state a vehicle for which a certificate of title is required in Nebraska, except for temporary use, without complying with the Motor Vehicle Certificate of Title Act.

No purchaser or transferee shall receive a certificate of title which does not contain such assignments as are necessary to show title in the purchaser or transferee. Possession of a certificate of title which does not comply with this requirement shall be prima facie evidence of a violation of this section, and such purchaser or transferee, upon conviction, shall be subject to the penalty provided by section 60-180.

**Source:** Laws 2005, LB 276, § 39; Laws 2006, LB 663, § 3.

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

Policies of motor vehicle liability insurance were construed in the light of the provisions of this and two succeeding sections. *Turpin v. Standard Reliance Ins. Co.*, 169 Neb. 233, 99 N.W.2d 26 (1959).

Upon sale of motor vehicle, seller must deliver to purchaser a certificate of title. *State Farm Mutual Auto Ins. Co. v. Drawbaugh*, 159 Neb. 149, 65 N.W.2d 542 (1954).

Licensed automobile dealer is required to have mortgage lien noted on certificate of title. *Bank of Keystone v. Kayton*, 155 Neb. 79, 50 N.W.2d 511 (1951).

Seller is required to deliver certificate of title to purchaser in order to pass title. *Loyal's Auto Exchange, Inc. v. Munch*, 153 Neb. 628, 45 N.W.2d 913 (1951).

### 60-140 Acquisition of vehicle; proof of ownership; effect.

Except as provided in section 60-164, no person acquiring a vehicle from the owner thereof, whether such owner is a manufacturer, importer, dealer, or entity or person, shall acquire any right, title, claim, or interest in or to such vehicle until the acquiring person has had delivered to him or her physical possession of such vehicle and (1) a certificate of title or a duly executed manufacturer's or importer's certificate with such assignments as are necessary to show title in the purchaser, (2) a written instrument as required by section 60-1417, or (3) an affidavit and notarized bill of sale as provided in section 60-142.01. No waiver or estoppel shall operate in favor of such person against a person having physical possession of such vehicle and such documentation. No court shall recognize the right, title, claim, or interest of any person in or to a vehicle, for which a certificate of title has been issued in Nebraska, sold, disposed of, mortgaged, or encumbered, unless there is compliance with this section. Beginning on the implementation date of the electronic title and lien system designated by the director pursuant to section 60-164, an electronic certificate of title record shall be evidence of an owner's right, title, claim, or interest in a vehicle.

**Source:** Laws 2005, LB 276, § 40; Laws 2006, LB 663, § 4; Laws 2009, LB202, § 11.

1. Necessity of procurement
2. Effect as evidence
3. Miscellaneous

#### 1. Necessity of procurement

One who purchases an automobile and obtains possession thereof but does not obtain a duly assigned certificate of title thereto acquires no ownership interest in the automobile. *Boren v. State Farm Mut. Auto. Ins. Co.*, 225 Neb. 503, 406 N.W.2d 640 (1987).

Where automobiles are wrongfully sold by an agent, but no certificate of title is given, the owner of the certificate of title retains ownership and control of the automobiles. *Wolfson Car Leasing Co., Inc. v. Weberg*, 200 Neb. 420, 264 N.W.2d 178 (1978).

To be protected, issuance of certificate must be based upon a proper background of authority. *Allstate Ins. Co. v. Enzolera*, 164 Neb. 38, 81 N.W.2d 588 (1957).

A certificate of title is essential to sustain an allegation of general ownership of an automobile in a replevin action. *State Farm Mutual Auto Ins. Co. v. Drawbaugh*, 159 Neb. 149, 65 N.W.2d 542 (1954).

A purchaser who receives possession of an automobile without obtaining a certificate of title acquires no title or ownership. *Loyal's Auto Exchange, Inc. v. Munch*, 153 Neb. 628, 45 N.W.2d 913 (1951).

Certificate of title for a motor vehicle is a security within the meaning of 18 U.S.C. section 2311 (1976). *United States v. Daly*, 716 F.2d 1499 (9th Cir. 1983).

#### 2. Effect as evidence

A certificate of title is prima facie evidence, but is not conclusive proof of ownership between either a buyer and seller or a buyer and manufacturer of an allegedly defective motor vehicle. *Hanson v. General Motors Corp.*, 241 Neb. 81, 486 N.W.2d 223 (1992).

As between the buyer and seller of a motor vehicle, the certificate of title is prima facie evidence, but is not conclusive proof, of ownership under the Nebraska certificate of title sections. *Alford v. Neal*, 229 Neb. 67, 425 N.W.2d 325 (1988).

A certificate of title to a motor vehicle is generally conclusive evidence of ownership of the vehicle, and exceptions to this rule apply only to prevent fraud and coercion. *Kinkenon v. Hue*, 207 Neb. 698, 301 N.W.2d 77 (1981).

Execution of a certificate of title is the exclusive method of conveying ownership of a motor vehicle, but the certificate is not in itself conclusive evidence of ownership. *Weiss v. Union Ins. Co.*, 202 Neb. 469, 276 N.W.2d 88 (1979).

If dealer had actual possession of motor vehicle and a manufacturer's certificate, his name need not be shown as assignee in certificate to prove ownership. *State v. Oltjenbruns*, 187 Neb. 694, 193 N.W.2d 744 (1972).

Plaintiff did not show grounds why wife's name on title to car, which established ownership, should be removed. *Forman v. Anderson*, 183 Neb. 715, 163 N.W.2d 894 (1969).

Certificate of title was conclusive on question of ownership of motor vehicle. *Turpin v. Standard Reliance Ins. Co.*, 169 Neb. 233, 99 N.W.2d 26 (1959).

A certificate of title is generally conclusive evidence of ownership. *Terry Bros. & Meves v. National Auto Ins. Co.*, 160 Neb. 110, 69 N.W.2d 361 (1955).

Certificate of title is not conclusive of ownership. *Snyder v. Lincoln*, 156 Neb. 190, 55 N.W.2d 614 (1952); *Snyder v. Lincoln*, 150 Neb. 580, 35 N.W.2d 483 (1948).

Certificate of title was evidence of ownership of motor vehicle. *Garbark v. Newman*, 155 Neb. 188, 51 N.W.2d 315 (1952).

### 3. Miscellaneous

Proof of possession of a vehicle, together with a bill of sale which complies with section 60-1417 (Reissue 1978), is sufficient to prove ownership of the vehicle under this section. *Worley v. Schaefer*, 228 Neb. 484, 423 N.W.2d 748 (1988).

A buyer in the ordinary course of business who purchases from a dealer having the authority to expose vehicles for sale pursuant to the entrustment section of the U.C.C., section 2-403, does not fall within the intended purview of this section. *Dugdale of Nebraska v. First State Bank*, 227 Neb. 729, 420 N.W.2d 273 (1988).

Absent notarization of the seller's signature on the certificate of title, the certificate is not duly executed and ownership may not yet pass to the buyer; a purchaser who receives possession of an automobile without also obtaining a certificate of title properly notarized and duly executed in accordance with the statutes then in effect acquires no right, title, claim, or interest in or to the motor vehicle. *State Farm Mut. Auto. Ins. Co. v. Fitzgerald*, 214 Neb. 226, 334 N.W.2d 168 (1983).

Where plaintiff did not file a security agreement or lien and did not simultaneously have legal title and physical possession as required by section 60-105, R.R.S.1943, it did not meet its burden of proof for a replevin action. *The Cornhusker Bank of Omaha v. McNamara*, 205 Neb. 504, 288 N.W.2d 287 (1980).

For there to be delivery of an executed certificate of title to a motor vehicle, there must be an intent on the part of the grantor that the instrument operate as a monument of title to take effect presently and an acceptance of the instrument by the grantee with the intent to take title. *Weiss v. Union Ins. Co.*, 202 Neb. 469, 276 N.W.2d 88 (1979).

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

Under the Nebraska Certificate of Title Act, a certificate of title is the exclusive method provided by statute for the transfer of title to an automobile, but it is not conclusive of ownership. *First Nat. Bank & Trust Co. v. Ohio Cas. Ins. Co.*, 196 Neb. 595, 244 N.W.2d 209 (1976).

An agreement which fully complied with the provisions of section 60-1417, R.S.Supp.,1967, constituted a valid agreement of sale and excluded insurance coverage of transferor of automobile. *Dyas v. Morris*, 194 Neb. 773, 235 N.W.2d 636 (1975).

Where mortgagee failed to have lien noted upon certificate of title, it was not entitled to recover against innocent purchaser of automobile. *First Nat. Bank v. Provident Finance Co.*, 176 Neb. 45, 125 N.W.2d 78 (1963).

Liability of county clerk for erroneously issuing a certificate of title is for a failure to exercise due diligence. *Burns v. Commonwealth Trailer Sales*, 163 Neb. 308, 79 N.W.2d 563 (1956).

Dealer is required to have chattel mortgage noted on certificate of title. *Bank of Keystone v. Kayton*, 155 Neb. 79, 50 N.W.2d 511 (1951).

A provision in an automobile liability insurance policy providing automatic insurance on a newly acquired automobile is effective from the date of acquisition of the newly acquired automobile notwithstanding the existence of infirmities in the title thereto. *Blixt v. Home Mutual Ins. Co.*, 145 Neb. 717, 18 N.W.2d 78 (1945).

### 60-141 Dealer; inventory; certificates required; when.

A dealer need not apply for certificates of title for any vehicles in stock or acquired for stock purposes, but upon transfer of such vehicle in stock or acquired for stock purposes, the dealer shall give the transferee a reassignment of the certificate of title on such vehicle or an assignment of a manufacturer's or importer's certificate. If all reassignments on the manufacturer's or importer's certificate have been used, the dealer may attach a dealer assignment form prescribed by the department prior to any subsequent transfer. If all reassignments on the dealer assignment form or the certificate of title have been used, the dealer shall obtain title in the dealer's name prior to any subsequent transfer. No dealer shall execute a reassignment on or transfer ownership by way of a manufacturer's statement of origin unless the dealer is franchised by the manufacturer of the vehicle.

**Source:** Laws 2005, LB 276, § 41; Laws 2008, LB756, § 2.

Purchasers, other than dealers, must acquire certificate of title. *State Farm Mutual Auto Ins. Co. v. Drawbaugh*, 159 Neb. 149, 65 N.W.2d 542 (1954).

Concluding proviso does not exempt dealer from having mortgage lien noted on certificate of title. *Bank of Keystone v. Kayton*, 155 Neb. 79, 50 N.W.2d 511 (1951).

A motor vehicle mortgage lien, not shown on certificate of title, is not valid against subsequent holder of mortgage lien shown on the certificate. *Securities Credit Corp. v. Pindell*, 153 Neb. 298, 44 N.W.2d 501 (1950).

### 60-142 Historical vehicle or parts vehicle; sale or transfer.

The sale or trade and subsequent legal transfer of ownership of a historical vehicle or parts vehicle shall not be contingent upon any condition that would require the historical vehicle or parts vehicle to be in operating condition at the time of the sale or transfer of ownership.

**Source:** Laws 2005, LB 276, § 42; Laws 2006, LB 663, § 5.

**60-142.01 Vehicle manufactured prior to 1940; transfer of title; requirements.**

If the owner does not have a certificate of title for a vehicle which was manufactured prior to 1940 and which has not had any major component part replaced, the department shall search its records for evidence of issuance of a Nebraska certificate of title for such vehicle at the request of the owner. If no certificate of title has been issued for such vehicle in the thirty-year period prior to application, the owner may transfer title to the vehicle by giving the transferee a notarized bill of sale, an affidavit in support of the application for title, a statement that an inspection has been conducted on the vehicle, and a statement from the department that no certificate of title has been issued for such vehicle in the thirty-year period prior to application. The transferee may apply for a certificate of title pursuant to section 60-149 by presenting the documentation described in this section in lieu of a certificate of title.

**Source:** Laws 2006, LB 663, § 6.

**60-142.02 Application for certificate of title indicating year, make, and model originally designated by manufacturer; procedure.**

If the owner does not have a certificate of title for a vehicle manufactured more than thirty years prior to application for a certificate of title and one or more major component parts have been replaced with one or more replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of the vehicle, the owner may apply for a certificate of title indicating that the year, make, and model of the vehicle is that originally designated by the manufacturer by presenting a notarized bill of sale for each major component part replaced, an affidavit in support of the application for title, a statement that an inspection has been conducted on the vehicle, a statement from a car club representative pursuant to section 60-142.03, and a vehicle identification number as described in section 60-148.

**Source:** Laws 2006, LB 663, § 7.

**60-142.03 Recognized car club; qualified car club representative; department; powers and duties.**

(1) For purposes of this section, car club means an organization that has members with knowledge of and expertise pertaining to authentic vehicles and that has members with knowledge of and expertise pertaining to the restoration and preservation of specific makes and models of vehicles using replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for a specific year, make, and model of vehicle.

(2) To become a recognized car club, a car club shall apply to the department. For a car club to become recognized, it must be a nonprofit organization with established bylaws and at least twenty members. The applicant shall provide a copy of the bylaws and a membership list to the department. The department shall determine if a car club qualifies as a recognized car club. The determination of the department shall be final and nonappealable.

(3) A member of a recognized car club may apply to the department to become a qualified car club representative. Each qualified car club representative shall be designated by the president or director of the local chapter of the recognized car club of which he or she is a member. The department shall

identify and maintain a list of qualified car club representatives. A qualified car club representative may apply to be placed on the list of qualified car club representatives by providing the department with his or her name, address, and telephone number, the name, address, and telephone number of the recognized car club he or she represents, a copy of the designation of the representative by the president or director of the local chapter of the recognized car club, and such other information as may be required by the department. The department may place a qualified car club representative on the list upon receipt of a completed application and may provide each representative with information for inspection of vehicles and parts. The determination of the department regarding designation of an individual as a qualified car club representative and placement on the list of qualified car club representatives shall be final and nonappealable. The department shall distribute the list to county clerks and designated county officials.

(4) When a qualified car club representative inspects vehicles and replacement parts, he or she shall determine whether all major component parts used in the assembly of a vehicle are original or essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of vehicle, including the appropriate engine, body material, body shape, and other requirements as prescribed by the department. After such inspection, the representative shall provide the owner with a statement in the form prescribed by the department which includes the findings of the inspection. No qualified car club representative shall charge any fee for the inspection or the statement. No qualified car club representative shall provide a statement for any vehicle owned by such representative or any member of his or her immediate family.

(5) The director may summarily remove a person from the list of qualified car club representatives upon written notice. Such person may reapply for inclusion on the list upon presentation of suitable evidence satisfying the director that the cause for removal from the list has been corrected, eliminated, no longer exists, or will not affect or interfere with the person's judgment or qualifications for inspection of vehicles to determine whether or not any replacement parts are essentially the same in design and material to that originally supplied by the original manufacturer for the specific year, make, and model of vehicle.

(6) The department may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2006, LB 663, § 8.

**60-142.04 Assembled vehicle; application for certificate of title; procedure.**

The owner of (1) an assembled vehicle or (2) a vehicle which was manufactured or assembled more than thirty years prior to application for a certificate of title with one or more major component parts replaced by replacement parts, other than replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of vehicle, may apply for a certificate of title by presenting a certificate of title for one major component part, a notarized 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 2006, LB 663, § 9.

**60-142.05 Kit vehicle; application for certificate of title; procedure.**

The owner of a kit vehicle may apply for a certificate of title by presenting a manufacturer's statement of origin for the kit, a notarized bill of sale for all major component parts not in the kit, 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 2006, LB 663, § 10.

**60-142.06 Certificate of title as assembled vehicle; application for certificate of title indicating year, make, and model; procedure.**

An owner of a vehicle which has previously been issued a certificate of title as an assembled vehicle in this state may have the vehicle inspected by a qualified car club representative who shall determine whether or not any modifications or replacement parts are essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of vehicle and obtain a statement as provided in section 60-142.03. The owner may apply for a certificate of title indicating the year, make, and model of the vehicle by presenting the statement and an application for certificate of title to the department. After review of the application, the department shall issue the certificate of title to the owner if the vehicle meets the specifications provided in section 60-142.02.

**Source:** Laws 2006, LB 663, § 11.

**60-142.07 Minitruck; application for certificate of title; contents of certificate.**

If a minitruck does not have a manufacturer's vehicle identification number, the owner of the minitruck may apply for a certificate of title by presenting (1)(a) a manufacturer's statement of origin for the minitruck or (b)(i) a bill of sale or a manufacturer's or importer's certificate for a minitruck purchased before January 1, 2011, or a manufacturer's or importer's certificate for a minitruck purchased on or after January 1, 2011, and (ii) an affidavit by the owner affirming ownership for the minitruck, (2) a statement that an inspection has been conducted on the minitruck, and (3) a vehicle identification number as described in section 60-148. The certificate of title shall indicate the make and model year of the minitruck. If the model year cannot be determined, the model year of the minitruck shall be the year application for title was made.

**Source:** Laws 2010, LB650, § 10.

**60-143 Vehicle with modification or deviation from original specifications; how treated.**

An owner of a vehicle with a modification or deviation from the original specifications may be permitted to apply for a certificate of title under sections 60-142.01 to 60-142.03 if such modification or deviation is of historic nature

and essentially the same in design and material to that originally supplied by the manufacturer for vehicles of that era or if the modification or deviation could be considered to be in the category of safety features. Safety-related modifications include hydraulic brakes, sealed-beam headlights, and occupant protection systems as defined in section 60-6,265. A modification or deviation involving accessories shall be limited to those accessories available in the era to which the vehicle belongs.

**Source:** Laws 2005, LB 276, § 43; Laws 2006, LB 663, § 12.

**60-144 Certificate of title; issuance; filing; application; form.**

(1)(a) Except as provided in subdivisions (b), (c), and (d) of this subsection, the county clerk or designated county official shall be responsible for issuing and filing certificates of title for vehicles, and each county shall issue and file such certificates of title using the vehicle titling and registration computer system prescribed by the department. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(b) The department shall issue and file certificates of title for Nebraska-based fleet vehicles. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(c) The department shall issue and file certificates of title for state-owned vehicles. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(d) The department shall issue certificates of title pursuant to section 60-142.06. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(2) If the owner of an all-terrain vehicle, a utility-type vehicle, or a minibike resides in Nebraska, the application shall be filed with the county clerk or designated county official of the county in which the owner resides.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, if a vehicle, other than an all-terrain vehicle, a utility-type vehicle, or a minibike, has situs in Nebraska, the application shall be filed with the county clerk or designated county official of the county in which the vehicle has situs.

(b) If a motor vehicle dealer licensed under the Motor Vehicle Industry Regulation Act, applies for a certificate of title for a vehicle, the application may be filed with the county clerk or designated county official of any county.

(4) If the owner of a vehicle is a nonresident, the application shall be filed in the county in which the transaction is consummated.

(5) The application shall be filed within thirty days after the delivery of the vehicle.

(6) All applicants registering a vehicle pursuant to section 60-3,198 shall file the application for a certificate of title with the Division of Motor Carrier Services of the department. The division shall deliver the certificate to the applicant if there are no liens on the vehicle. If there are any liens on the vehicle, the division shall deliver or mail the certificate of title to the holder of the first lien on the day of issuance. All certificates of title issued by the division

shall be issued in the manner prescribed for the county clerk or designated county official 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.

#### Cross References

**Motor Vehicle Industry Regulation Act**, see section 60-1401.

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

Under the Nebraska Certificate of Title Act, a certificate of title is the exclusive method provided by statute for the transfer of title to an automobile, but it is not conclusive of ownership. *First Nat. Bank & Trust Co. v. Ohio Cas. Ins. Co.*, 196 Neb. 595, 244 N.W.2d 209 (1976).

In the absence of even an assignment of certificate of title, title to motor vehicle remained in person named in certificate of title. *Turpin v. Standard Reliance Ins. Co.*, 169 Neb. 233, 99 N.W.2d 26 (1959).

If applicant is a nonresident, application for certificate must be filed in county in which transaction is consummated. *Universal C.I.T. Credit Corp. v. Vogt*, 165 Neb. 611, 86 N.W.2d 771 (1957).

Legislature contemplated that form provided must be fully and properly executed. *Loyal's Auto Exchange, Inc. v. Munch*, 153 Neb. 628, 45 N.W.2d 913 (1951).

### **60-145 Motor vehicle used as taxi or limousine; disclosure on face of certificate of title required.**

For any motor vehicle which is to be used as a taxi or limousine, the application and the certificate of title shall show on the face thereof that such vehicle is being used or has been used as a taxi or limousine and such subsequent certificates of title shall show the same information.

**Source:** Laws 2005, LB 276, § 45; Laws 2007, LB286, § 10.

### **60-146 Application; identification inspection required; exceptions; form; procedure; additional inspection authorized.**

(1) An application for a certificate of title for a vehicle shall include a statement that an identification inspection has been conducted on the vehicle unless (a) the title sought is a salvage branded certificate of title or a nontransferable certificate of title, (b) the surrendered ownership document is a Nebraska certificate of title, a manufacturer's statement of origin, an importer's statement of origin, a United States Government Certificate of Release of a vehicle, or a nontransferable certificate of title, (c) the application contains a statement that the vehicle is to be registered under section 60-3,198, (d) the vehicle is a cabin trailer, (e) the title sought is the first title for the vehicle sold directly by the manufacturer of the vehicle to a dealer franchised by the manufacturer, or (f) the vehicle was sold at an auction authorized by the manufacturer and purchased by a dealer franchised by the manufacturer of the vehicle.

(2) The department shall prescribe a form to be executed by a dealer and submitted with an application for a certificate of title for vehicles exempt from inspection pursuant to subdivision (1)(e) or (f) of this section. The form shall clearly identify the vehicle and state under penalty of law that the vehicle is exempt from inspection.

(3) The statement that an identification inspection has been conducted shall be furnished by the county sheriff of any county or by any other holder of a certificate of training issued pursuant to section 60-183, shall be in a format as determined by the department, and shall expire ninety days after the date of the inspection. The county clerk or designated county official shall accept a

certificate of inspection, approved by the superintendent, from an officer of a state police agency of another state.

(4) The identification inspection shall include examination and notation of the then current odometer reading, if any, and a comparison of the vehicle identification number with the number listed on the ownership records, except that if a lien is registered against a vehicle and recorded on the vehicle's ownership records, the county clerk or designated county official shall provide a copy of the ownership records for use in making such comparison. If such numbers are not identical, if there is reason to believe further inspection is necessary, or if the inspection is for a Nebraska assigned number, the person performing the inspection shall make a further inspection of the vehicle which may include, but shall not be limited to, examination of other identifying numbers placed on the vehicle by the manufacturer and an inquiry into the numbering system used by the state issuing such ownership records to determine ownership of a vehicle. The identification inspection shall also include a statement that the vehicle identification number has been checked for entry in the National Crime Information Center and the Nebraska Crime Information Service. In the case of an assembled vehicle, the identification inspection shall include, but not be limited to, an examination of the records showing the date of receipt and source of each major component part. No identification inspection shall be conducted unless all major component parts are properly attached to the vehicle in the correct location.

(5) If there is cause to believe that odometer fraud exists, written notification shall be given to the office of the Attorney General. If after such inspection the sheriff or his or her designee determines that the vehicle is not the vehicle described by the ownership records, no statement shall be issued.

(6) The department, county clerk, or designated county official 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.

**60-147 Mobile home or cabin trailer; application; contents; mobile home transfer statement.**

(1) An application for a certificate of title for a mobile home or cabin trailer shall be accompanied by a certificate that states that sales or use tax has been paid on the purchase of the mobile home or cabin trailer or that the transfer of title was exempt from sales and use taxes. The county clerk or designated county official shall issue a certificate of title for a mobile home or cabin trailer but shall not deliver the certificate of title unless the certificate required under this subsection accompanies the application for certificate of title for the mobile home or cabin trailer, except that the failure of the application to be accompanied by such certificate shall not prevent the notation of a lien on the certificate of title to the mobile home or cabin trailer pursuant to section 60-164.

(2) An application for a certificate of title to a mobile home shall be accompanied by a mobile home transfer statement prescribed by the Tax Commissioner. The mobile home transfer statement shall be filed by the applicant with the county clerk or designated county official of the county of application for title. The county clerk or designated county official shall issue a certificate of title to a mobile home but shall not deliver the certificate of title

unless the mobile home transfer statement accompanies the application for title, except that the failure to provide the mobile home transfer statement shall not prevent the notation of a lien on the certificate of title to the mobile home pursuant to section 60-164 and delivery to the holder of the first lien.

**Source:** Laws 2005, LB 276, § 47; Laws 2007, LB166, § 1; Laws 2007, LB334, § 9; Laws 2009, LB202, § 13.

**60-148 Assignment of distinguishing identification number; when.**

(1) Whenever a person applies for a certificate of title for a vehicle, the department shall assign a distinguishing identification number to the vehicle if the vehicle identification number is destroyed, obliterated, or missing. The owner of such a vehicle to which such number is assigned shall have such number affixed to such vehicle as provided in subsection (2) of this section and sign an affidavit on a form prepared by the department that such number has been attached. Before the certificate of title for an assigned number is released to the applicant by the county clerk or designated county official, the applicant shall also provide a statement that an inspection has been conducted.

(2) The department shall develop a metallic assigned vehicle identification number plate which can be permanently secured to a vehicle by rivets or a permanent sticker or other form of marking or identifying the vehicle with the distinguishing identification number as determined by the director. All distinguishing identification numbers shall contain seventeen characters in conformance with national standards. When the manufacturer's vehicle identification number is known, it shall be used by the department as the assigned number. In the case of an assembled all-terrain vehicle, utility-type vehicle, or minibike or assembled vehicle, the department shall use a distinguishing identification number. The department shall, upon application by an owner, provide the owner with a number plate or a permanent sticker or other form of marking or identification displaying a distinguishing identification number or the manufacturer's number.

(3) Any vehicle to which a distinguishing identification number is assigned shall be titled under such distinguishing identification number when titling of the vehicle is required under the Motor Vehicle Certificate of Title Act.

**Source:** Laws 2005, LB 276, § 48; Laws 2006, LB 663, § 14; Laws 2010, LB650, § 12.

**60-149 Application; documentation required.**

(1)(a) If a certificate of title has previously been issued for a vehicle in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned except as otherwise provided in the Motor Vehicle Certificate of Title Act.

(b) Except for manufactured homes or mobile homes as provided in subsection (2) of this section, if a certificate of title has not previously been issued for the vehicle in this state or if a certificate of title is unavailable pursuant to subsection (4) of section 52-1801, the application shall be accompanied by:

(i) A manufacturer's or importer's certificate except as otherwise provided in subdivision (vii) of this subdivision;

(ii) A duly certified copy of the manufacturer's or importer's certificate;

(iii) An affidavit by the owner affirming ownership in the case of an all-terrain vehicle, a utility-type vehicle, or a minibike;

(iv) A certificate of title from another state;

(v) A court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the law of the state from which the vehicle was brought into this state does not have a certificate of title law;

(vi) Documentation prescribed in section 60-142.01, 60-142.02, 60-142.04, or 60-142.05; or

(vii) A manufacturer's or importer's certificate and an affidavit by the owner affirming ownership in the case of a minitruck.

(c) If the application for a certificate of title in this state is accompanied by a valid certificate of title issued by another state which meets that state's requirements for transfer of ownership, then the application may be accepted by this state.

(d) If a certificate of title has not previously been issued for the vehicle in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 60-167.

(2)(a) If the application for a certificate of title for a manufactured home or a mobile home is being made in accordance with subdivision (4)(b) of section 60-137 or if the certificate of title for a manufactured home or a mobile home is unavailable pursuant to section 52-1801, the application shall be accompanied by proof of ownership in the form of:

(i) A duly assigned manufacturer's or importer's certificate;

(ii) A certificate of title from another state;

(iii) A court order issued by a court of record;

(iv) Evidence of ownership as provided for in section 30-24,125, 52-601.01 to 52-605, 60-1901 to 60-1911, or 60-2401 to 60-2411; or

(v) Assessment records for the manufactured home or mobile home from the county assessor and an affidavit by the owner affirming ownership.

(b) If the applicant cannot produce proof of ownership described in subdivision (a) of this subsection, he or she may submit to the department such evidence as he or she may have, and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize the county clerk or designated county official to issue a certificate of title, as the case may be.

(3) For purposes of this section, certificate of title includes a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle. Only a salvage branded certificate of title shall be issued to any vehicle conveyed upon a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle.

(4) The county clerk or designated county official shall retain the evidence of title presented by the applicant and on which the certificate of title is issued.

**Source:** Laws 2005, LB 276, § 49; Laws 2006, LB 663, § 15; Laws 2010, LB650, § 13; Laws 2010, LB933, § 1.

Certificate of title, based upon a duplicate issued in another state, is not protected. Allstate Ins. Co. v. Enzolera, 164 Neb. 38, 81 N.W.2d 588 (1957).

**60-150 Application; county clerk or designated county official; duties.**

The county clerk or designated county official shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records available. If he or she is satisfied that the applicant is the owner of such vehicle and that the application is in the proper form, the county clerk or designated county official shall issue a certificate of title over his or her signature and sealed with the appropriate seal.

**Source:** Laws 2005, LB 276, § 50.

Duty of county clerk is to use due diligence in ascertaining whether or not the facts stated in the application are true. Burns v. Commonwealth Trailer Sales, 163 Neb. 308, 79 N.W.2d 563 (1956).

**60-151 Certificate of title obtained in name of purchaser; exceptions.**

The certificate of title for a vehicle shall be obtained in the name of the purchaser upon application signed by the purchaser, except that (1) for titles to be held by husband and wife, applications may be accepted upon the signature of either one as a signature for himself or herself and as agent for his or her spouse and (2) for an applicant providing proof that he or she is a handicapped or disabled person as defined in section 18-1738, applications may be accepted upon the signature of the applicant's parent, legal guardian, foster parent, or agent.

**Source:** Laws 2005, LB 276, § 51.

**60-152 Certificate of title; issuance; delivery of copies; seal; county clerk or designated official; powers and duties.**

(1) The county clerk or designated county official shall issue a certificate of title for a vehicle in duplicate and retain one copy in his or her office. An electronic copy, in a form prescribed by the department, shall be transmitted on the day of issuance to the department. The county clerk or designated county official shall sign and affix the appropriate seal to the original certificate of title and, if there are no liens on the vehicle, deliver the certificate to the applicant. If there are one or more liens on the vehicle, the certificate of title shall be handled as provided in section 60-164 or 60-165.

(2) The county clerks or county treasurers of the various counties shall adopt a circular seal with the words County Clerk of . . . . . (insert name) County or County Treasurer of . . . . . (insert name) County thereon. Such seal shall be used by the county clerk or county treasurer or the deputy or legal authorized agent of such officer, without charge to the applicant, on any certificate of title, application for certificate of title, duplicate copy, assignment or reassignment, power of attorney, statement, or affidavit pertaining to the issuance of a Nebraska certificate of title. The designated county official or the deputy or legal authorized agent of such officer shall use the seal of the county, without charge to the applicant, on any such document.

(3) The department shall prescribe a uniform method of numbering certificates of title.

(4) The county clerk or designated county official shall (a) file all certificates of title according to rules and regulations adopted and promulgated by the department, (b) maintain in the office indices for such certificates of title, (c) be authorized to destroy all previous records five years after a subsequent transfer

has been made on a vehicle, and (d) be authorized to destroy all certificates of title and all supporting records and documents which have been on file for a period of five years or more from the date of filing the certificate or a notation of lien, whichever occurs later.

**Source:** Laws 2005, LB 276, § 52; Laws 2007, LB286, § 12; Laws 2009, LB202, § 14.

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

Legislature contemplated that form provided must be fully and properly executed. *Loyal's Auto Exchange, Inc. v. Munch*, 153 Neb. 628, 45 N.W.2d 913 (1951).

### **60-153 Certificate of title; form; contents; secure power-of-attorney form.**

(1) A certificate of title shall be printed upon safety security paper to be selected by the department. The certificate of title, manufacturer's statement of origin, and assignment of manufacturer's certificate shall be upon forms prescribed by the department and may include, but shall not be limited to, county of issuance, date of issuance, certificate of title number, previous certificate of title number, vehicle identification number, year, make, model, and body type of the vehicle, name and residential and mailing address of the owner, acquisition date, issuing county clerk's or designated county official's signature and official seal, and sufficient space for the notation and release of liens, mortgages, or encumbrances, if any. A certificate of title issued on or after September 1, 2007, shall include the words "void if altered". A certificate of title that is altered shall be deemed a mutilated certificate of title. The certificate of title of an all-terrain vehicle, utility-type vehicle, or minibike shall include the words "not to be registered for road use".

(2) An assignment of certificate of title shall appear on each certificate of title and shall include, but not be limited to, a statement that the owner of the vehicle assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the owner or the owner's parent, legal guardian, foster parent, or agent in the case of an owner who is a handicapped or disabled person as defined in section 18-1738.

(3) A reassignment by a dealer shall appear on each certificate of title and shall include, but not be limited to, a statement that the dealer assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the dealer or designated representative. Reassignments shall be printed on the reverse side of each certificate of title as many times as convenient.

(4) The department may prescribe a secure power-of-attorney form and may contract with one or more persons to develop, provide, sell, and distribute secure power-of-attorney forms in the manner authorized or required by the federal Truth in Mileage Act of 1986 and any other federal law or regulation. Any secure power-of-attorney form authorized pursuant to a contract shall conform to the terms of the contract and be in strict compliance with the requirements of the department.

**Source:** Laws 2005, LB 276, § 53; Laws 2007, LB286, § 13; Laws 2010, LB650, § 14.

Execution of a certificate of title is the exclusive method of conveying ownership of a motor vehicle, but the certificate is not in itself conclusive evidence of ownership. *Weiss v. Union Ins. Co.*, 202 Neb. 469, 276 N.W.2d 88 (1979).

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

Certificate of title may be issued upon a manufacturer's certificate. *Turpin v. Standard Reliance Ins. Co.*, 169 Neb. 233, 99 N.W.2d 26 (1959).

Application for certificate of title conformed to requirements of this section. *State Farm Mutual Auto Ins. Co. v. Drawbaugh*, 159 Neb. 149, 65 N.W.2d 542 (1954).

Assignment of certificate of title must be sworn to in order to be valid. *Loyal's Auto Exchange, Inc. v. Munch*, 153 Neb. 628, 45 N.W.2d 913 (1951).

Form of certificate of title to motor vehicle prescribed by this section provides headings and space for the notation of liens thereon. *Securities Credit Corp. v. Pindell*, 153 Neb. 298, 44 N.W.2d 501 (1950).

### 60-154 Fees.

(1)(a) For each original certificate of title issued by a county for a motor vehicle or trailer, the fee shall be ten dollars. Three dollars and twenty-five cents shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars shall be remitted to the State Treasurer for credit to the General Fund. Seventy-five cents shall be remitted to the State Treasurer for credit as follows: Twenty cents to the Motor Vehicle Fraud Cash Fund; forty-five cents to the Nebraska State Patrol Cash Fund; and ten cents to the Nebraska Motor Vehicle Industry Licensing Fund.

(b) For each original certificate of title issued by a county for an all-terrain vehicle, a utility-type vehicle, or a minibike, the fee shall be ten dollars. Three dollars and twenty-five cents shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars shall be remitted to the State Treasurer for credit to the General Fund. Seventy-five cents shall be remitted to the State Treasurer for credit as follows: Twenty cents to the Motor Vehicle Fraud Cash Fund; and fifty-five cents to the Nebraska State Patrol Cash Fund.

(2) For each original certificate of title issued by the department for a vehicle except as provided in section 60-159.01, the fee shall be ten dollars, which shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

**Source:** Laws 2005, LB 276, § 54; Laws 2006, LB 663, § 16; Laws 2006, LB 1061, § 7; Laws 2010, LB650, § 15.

### 60-154.01 Motor Vehicle Fraud Cash Fund; created; use; investment.

The Motor Vehicle Fraud Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. The fund shall consist of revenue credited pursuant to section 60-154. The fund shall only be used by the Department of Justice for expenses incurred and related to (1) the investigation and prosecution of odometer and motor vehicle fraud and motor vehicle licensing violations which may be referred by the Nebraska Motor Vehicle Industry Licensing Board and (2) the investigation and prosecution of fraud relating to and theft of all-terrain vehicles, utility-type vehicles, and minibikes. Expenditures from the fund shall be approved by the Attorney General as authorized by law. 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 2006, LB 1061, § 8; Laws 2010, LB650, § 16.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-155 Notation of lien; fees.**

(1) For each notation of a lien by a county, the fee shall be seven dollars. Two dollars shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. One dollar shall be remitted to the State Treasurer for credit to the General Fund.

(2) For each notation of a lien by the department, the fee shall be seven dollars, which shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

**Source:** Laws 2005, LB 276, § 55.

**60-156 Duplicate certificate of title; fees.**

(1) For each duplicate certificate of title issued by a county for a vehicle, the fee shall be fourteen dollars. Ten dollars shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(2) For each duplicate certificate of title issued by the department for a vehicle, the fee shall be fourteen dollars, which shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

**Source:** Laws 2005, LB 276, § 56.

**60-157 Repealed. Laws 2007, LB 286, § 57.****60-158 Identification inspection; fees.**

(1) For each identification inspection conducted by the patrol, the fee shall be ten dollars, which shall be remitted to the State Treasurer for credit to the Nebraska State Patrol Cash Fund.

(2) For each identification inspection conducted by a county sheriff, the fee shall be ten dollars, which shall be paid to the county treasurer and credited to the county sheriff's vehicle inspection account within the county general fund.

**Source:** Laws 2005, LB 276, § 58.

**60-159 Application for vehicle identification number or distinguishing identification number; fee.**

For each application for a metallic assigned vehicle identification number plate or other form of marking or identification under section 60-148, the fee shall be twenty dollars, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2005, LB 276, § 59; Laws 2006, LB 663, § 17.

**60-159.01 New title of vehicle previously issued title as assembled vehicle; fee.**

For each certificate of title issued by the department under section 60-142.06, the fee shall be twenty-five dollars, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2006, LB 663, § 18.

**60-160 Bonded certificate of title; fee.**

For each bonded certificate of title issued for a vehicle, the fee shall be fifty dollars, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2005, LB 276, § 60.

**60-161 County clerk or designated official; remit funds; when.**

The county clerk or designated county official shall remit all funds due the State Treasurer under sections 60-154 to 60-160 monthly and not later than the fifth day of the month following collection. The county clerk or designated county official shall remit fees not due the State of Nebraska to the respective county treasurer who shall credit the fees to the county general fund.

**Source:** Laws 2005, LB 276, § 61.

**60-162 Department; powers; rules and regulations.**

(1) The department may adopt and promulgate rules and regulations to insure uniform and orderly operation of the Motor Vehicle Certificate of Title Act, and the county clerk or designated county official of each county shall conform to such rules and regulations and proceed at the direction of the department. The department shall also provide the county clerks and designated county officials with the necessary training for the proper administration of the act.

(2) The department shall receive all instruments relating to vehicles forwarded to it by the county clerks and designated county officials under the act and shall maintain indices covering the state at large for the instruments so received. These indices shall be by motor number or by an identification number and alphabetically by the owner's name and shall be for the state at large and not for individual counties.

(3) The department shall provide and furnish the forms required by the act, except manufacturers' or importers' certificates.

(4) The county clerk or designated county official shall keep on hand a sufficient supply of blank forms which, except certificate of title forms, shall be furnished and distributed without charge to manufacturers, dealers, or other persons residing within the county.

**Source:** Laws 2005, LB 276, § 62.

**60-162.01 County treasurer; assume powers and duties of county clerk; when.**

On and after the implementation date designated under section 23-186 by the director, the county treasurer shall have all of the powers and duties of the county clerk as specified under the Motor Vehicle Certificate of Title Act.

**Source:** Laws 2009, LB49, § 7.

**60-163 Department; cancellation of certificate of title; procedure.**

(1) The department shall check with its records all duplicate certificates of title received from a county clerk or designated county official. If it appears that a certificate of title has been improperly issued, the department shall cancel the same. Upon cancellation of any certificate of title, the department

shall notify the county clerk or designated county official who issued the same, and such county clerk or designated county official shall thereupon enter the cancellation upon his or her records. The department shall also notify the person to whom such certificate of title was issued, as well as any lienholders appearing thereon, of the cancellation and shall demand the surrender of such certificate of title, but the cancellation shall not affect the validity of any lien noted thereon. The holder of such certificate of title shall return the same to the department forthwith.

(2) If a certificate of registration has been issued to the holder of a certificate of title so canceled, the department shall immediately cancel the same and demand the return of such certificate of registration and license plates or tags, and the holder of such certificate of registration and license plates or tags shall return the same to the department forthwith.

**Source:** Laws 2005, LB 276, § 63.

**60-164 Department; implement electronic title and lien system for vehicles; liens on motor vehicles; when valid; notation on certificate; inventory, exception; priority; adjustment to rental price; how construed; notation of cancellation; failure to deliver certificate; damages; release.**

(1) The department shall implement an electronic title and lien system for vehicles no later than January 1, 2011. The director shall designate the date for the implementation of the system. Beginning on the implementation date, the holder of a security interest, trust receipt, conditional sales contract, or similar instrument regarding a vehicle may file a lien electronically as prescribed by the department. Beginning on the implementation date, upon receipt of an application for a certificate of title for a vehicle, any lien filed electronically shall become part of the electronic certificate of title record created by the county clerk, designated county official, or department maintained on the electronic title and lien system. Beginning on the implementation date, if an application for a certificate of title indicates that there is a lien or encumbrance on a vehicle or if a lien or notice of lien has been filed electronically, the department shall retain an electronic certificate of title record and shall note and cancel such liens electronically on the system. The department shall provide access to the electronic certificate of title records for motor vehicle dealers and lienholders who participate in the system by a method determined by the director.

(2) Except as provided in section 60-165, the provisions of article 9, Uniform Commercial Code, shall never be construed to apply to or to permit or require the deposit, filing, or other record whatsoever of a security agreement, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument or any copy of the same covering a vehicle. Any mortgage, conveyance intended to operate as a security agreement as provided by article 9, Uniform Commercial Code, trust receipt, conditional sales contract, or other similar instrument covering a vehicle, if such instrument is accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of the same by the holder of such instrument or, in the case of a certificate of title, if a notation of the same has been made electronically as prescribed in subsection (1) of this section or by the county clerk, designated county official, or department on the face of the certificate of title or on the electronic certificate of title record, shall be valid as

against the creditors of the debtor, whether armed with process or not, and subsequent purchasers, secured parties, and other lienholders or claimants but otherwise shall not be valid against them, except that during any period in which a vehicle is inventory, as defined in section 9-102, Uniform Commercial Code, held for sale by a person or corporation that is required to be licensed as provided in the Motor Vehicle Industry Regulation Act and is in the business of selling such vehicles, the filing provisions of article 9, Uniform Commercial Code, as applied to inventory, shall apply to a security interest in such vehicle created by such person or corporation as debtor without the notation of lien on the certificate of title. A buyer of a vehicle at retail from a dealer required to be licensed as provided in the Motor Vehicle Industry Regulation Act shall take such vehicle free of any security interest. A purchase-money security interest, as defined in section 9-103, Uniform Commercial Code, in a vehicle is perfected against the rights of judicial lien creditors and execution creditors on and after the date the purchase-money security interest attaches.

(3) Subject to subsections (1) and (2) of this section, all liens, security agreements, and encumbrances noted upon a certificate of title or an electronic certificate of title record and all liens noted electronically as prescribed in subsection (1) of this section shall take priority according to the order of time in which the same are noted by the county clerk, designated county official, or department. Exposure for sale of any vehicle by the owner thereof with the knowledge or with the knowledge and consent of the holder of any lien, security agreement, or encumbrance on such vehicle shall not render the same void or ineffective as against the creditors of such owner or holder of subsequent liens, security agreements, or encumbrances upon such vehicle.

(4) The holder of a security agreement, trust receipt, conditional sales contract, or similar instrument, upon presentation of such instrument to the department, or to any county clerk or designated county official, together with the certificate of title and the fee prescribed for notation of lien, may have a notation of such lien made on the face of such certificate of title. The owner of a vehicle may present a valid out-of-state certificate of title issued to such owner for such vehicle with a notation of lien on such certificate of title and the prescribed fee to the county clerk, designated county official, or department and have the notation of lien made on the new certificate of title issued pursuant to section 60-144 without presenting a copy of the lien instrument. The county clerk or designated county official or the department shall enter the notation and the date thereof over the signature of the person making the notation and the seal of the office. If noted by a county clerk or designated county official, he or she shall on that day notify the department which shall note the lien on its records. The county clerk or designated county official or the department shall also indicate by appropriate notation and on such instrument itself the fact that such lien has been noted on the certificate of title.

(5) A transaction does not create a sale or a security interest in a vehicle, other than an all-terrain vehicle, a utility-type vehicle, or a minibike, merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the vehicle.

(6) The county clerk or designated county official or the department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county clerk or

designated county official or the department, within fifteen days after the date of notice, the certificate of title to permit notation of such other lien and, after notation of such other lien, the county clerk or designated county official or the department shall deliver the certificate of title to the first lienholder. The holder of a certificate of title who refuses to deliver a certificate of title to the county clerk or designated county official or the department for the purpose of showing such other lien on such certificate of title within fifteen days after the date of notice shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the showing of such lien on the certificate of title.

(7) Beginning on the implementation date of the electronic title and lien system, upon receipt of a subsequent lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments or a notice of lien filed electronically, together with an application for notation of the subsequent lien, the fee prescribed in section 60-154, and, if a printed certificate of title exists, the presentation of the certificate of title, the county clerk, designated county official, or department shall make notation of such other lien. If the certificate of title is not an electronic certificate of title record, the county clerk, designated county official, or department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county clerk, designated county official, or department, within fifteen days after the date of notice, the certificate of title to permit notation of such other lien. After such notation of lien, the lien shall become part of the electronic certificate of title record created by the county clerk, designated county official, or department which is maintained on the electronic title and lien system. The holder of a certificate of title who refuses to deliver a certificate of title to the county clerk, designated county official, or department for the purpose of noting such other lien on such certificate of title within fifteen days after the date when notified to do so shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the noting of such lien on the certificate of title.

(8) When a lien is discharged, the holder shall, within fifteen days after payment is received, note a cancellation of the lien on the certificate of title over his, her, or its signature and deliver the certificate of title to the county clerk or designated county official or the department, which shall note the cancellation of the lien on the face of the certificate of title and on the records of such office. If delivered to a county clerk or designated county official, he or she shall on that day notify the department which shall note the cancellation on its records. The county clerk or designated county official or the department shall then return the certificate of title to the owner or as otherwise directed by the owner. The cancellation of lien shall be noted on the certificate of title without charge. For an electronic certificate of title record, the lienholder shall, within fifteen days after payment is received when such lien is discharged, notify the department electronically or provide written notice of such lien release, in a manner prescribed by the department, to the county clerk, designated county official, or department. The department shall note the cancellation of lien and, if no other liens exist, issue the certificate of title to the owner or as otherwise directed by the owner or lienholder. If the holder of the

title cannot locate a lienholder, a lien may be discharged ten years after the date of filing by presenting proof that thirty days have passed since the mailing of a written notice by certified mail, return receipt requested, to the last-known address of the lienholder.

**Source:** Laws 2005, LB 276, § 64; Laws 2007, LB286, § 14; Laws 2008, LB756, § 3; Laws 2008, LB953, § 3; Laws 2009, LB202, § 15; Laws 2010, LB650, § 17; Laws 2010, LB816, § 5.

#### Cross References

**Motor Vehicle Industry Regulation Act**, see section 60-1401.

1. Priority of liens
2. Notation of lien on certificate
3. Miscellaneous

#### 1. Priority of liens

If procedure of this section followed, lienor's interest shall take priority and marshalling of assets cannot be required. *Platte Valley Bank of North Bend v. Kracl*, 185 Neb. 168, 174 N.W.2d 724 (1970).

Conditional sales contract shown on certificate of title is superior to artisan's lien. *Allied Inv. Co. v. Shaneyfelt*, 161 Neb. 840, 74 N.W.2d 723 (1956).

Attorney who paid off balance taxpayer owed on purchase of automobile and took taxpayer's equity as payment for prior legal fee was subrogated to amount of encumbrance discharged, and, as to such, attorney, whose interest in vehicle was otherwise junior to federal tax lien, was entitled to priority over the government. *Gallup v. United States*, 358 F.Supp. 776 (D. Neb. 1973).

#### 2. Notation of lien on certificate

A manufactured home is within the scope of this section as a class of "cabin trailer" pursuant to section 60-614. Therefore, a manufactured home is considered to be a motor vehicle for purposes of this section, and a security interest is perfected when such interest is listed on a certificate of title to the manufactured home. A fixture filing is not needed to perfect a security interest in a manufactured home. *Green Tree Fin. Servicing v. Sutton*, 264 Neb. 533, 650 N.W.2d 228 (2002).

Claims of a purchase money mortgage, a conditional interest established by an agreement, and other security interests not shown on the certificate of title are invalid as to subsequent purchasers under the express terms of the certificate of title act. *Nelson v. Cool*, 230 Neb. 859, 434 N.W.2d 32 (1989).

The practice of filing and recording chattel mortgage on motor vehicles has been eliminated and under that section security interests must be noted on the certificate of title itself. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

A security interest noted on the certificate of title to a vehicle is valid against creditors of the debtor whether armed with process or not. *White Motor Credit Corp. v. Sapp Bros. Truck Plaza, Inc.*, 197 Neb. 421, 249 N.W.2d 489 (1977).

An unrecorded lien is invalid as to a subsequent purchaser or lienholder. *First Nat. Bank v. Provident Finance Co.*, 176 Neb. 45, 125 N.W.2d 78 (1963).

Filing of conditional sales contract is not required, but notation on certificate of title is. *Universal C.I.T. Credit Corp. v. Vogt*, 165 Neb. 611, 86 N.W.2d 771 (1957).

Chattel mortgage was void as to creditors where notation on certificate of title was made after levy of execution. *Alliance Loan & Inv. Co. v. Morgan*, 154 Neb. 745, 49 N.W.2d 593 (1951).

#### 3. Miscellaneous

This section applies to dealers as well as general purchasers. *Bank of Keystone v. Kayton*, 155 Neb. 79, 50 N.W.2d 511 (1951).

Legislature intended to eliminate the previous practice of filing chattel mortgages on motor vehicles in the chattel mortgage records. *Securities Credit Corp. v. Pindell*, 153 Neb. 298, 44 N.W.2d 501 (1950).

For purpose of perfecting security interest in mobile homes manufactured by debtor and assigned to trust, debtor corporation's president could not act as agent of trust and president's possession of homes and certificates of origin was not possession of trust and did not give trust possession sufficient to perfect interest. In re *North American Builders, Inc.*, 320 F.Supp. 1229 (D. Neb. 1970).

### **60-165 Security interest in all-terrain vehicle, minibike, or utility-type vehicle; perfection; priority; notation of lien; when.**

(1) Any security interest in an all-terrain vehicle or minibike perfected pursuant to article 9, Uniform Commercial Code, before, on, or after January 1, 2004, or in a utility-type vehicle so perfected before, on, or after January 1, 2011, shall continue to be perfected until (a) the financing statement perfecting such security interest is terminated or lapses in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code, or (b) an all-terrain vehicle, utility-type vehicle, or minibike certificate of title is issued and a notation of lien is made as provided in section 60-164.

(2) Any lien noted on the face of an all-terrain vehicle, utility-type vehicle, or minibike certificate of title or on an electronic certificate of title record

pursuant to subsection (1), (3), or (4) of this section, on behalf of the holder of a security interest in the all-terrain vehicle, utility-type vehicle, or minibike which was previously perfected pursuant to article 9, Uniform Commercial Code, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a certificate of title for an all-terrain vehicle, utility-type vehicle, or minibike shall, upon request, surrender the certificate of title to a holder of a previously perfected security interest in the all-terrain vehicle, utility-type vehicle, or minibike to permit notation of a lien on the certificate of title or on an electronic certificate of title record and shall do such other acts as may be required to permit such notation.

(4) If the owner of an all-terrain vehicle or minibike subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2004, the security interest holder may obtain a certificate of title in the name of the owner of the all-terrain vehicle or minibike following the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

(5) If the owner of a utility-type vehicle subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2011, the security interest holder may obtain a certificate of title in the name of the owner of the utility-type vehicle following the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

(6) The assignment, release, or satisfaction of a security interest in an all-terrain vehicle, utility-type vehicle, or minibike shall be governed by the laws under which it was perfected.

**Source:** Laws 2005, LB 276, § 65; Laws 2009, LB202, § 16; Laws 2010, LB650, § 18.

#### **60-165.01 Printed certificate of title; when issued.**

Beginning on the implementation date of the electronic title and lien system designated by the director pursuant to section 60-164, a lienholder, at the owner's request, may request the issuance of a printed certificate of title if the owner of the vehicle relocates to another state or country or if requested for any other purpose approved by the department. Upon proof by the owner that a lienholder has not provided the requested certificate of title within fifteen days after the owner's request, the department may issue to the owner a printed certificate of title with all liens duly noted.

**Source:** Laws 2009, LB202, § 17.

#### **60-166 New certificate of title; issued when; proof required; processing of application.**

(1) In the event of (a) the transfer of ownership of a vehicle by operation of law as upon inheritance, devise, or bequest, order in bankruptcy, insolvency, replevin, or execution sale or as provided in sections 30-24,125, 52-601.01 to 52-605, 60-1901 to 60-1911, and 60-2401 to 60-2411, (b) the engine of a vehicle being replaced by another engine, (c) a vehicle being sold to satisfy storage or repair charges, or (d) repossession being had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or

other like agreement, the county clerk or designated county official of any county or the department, if the last certificate of title was issued by the department, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to such vehicle, and upon payment of the appropriate fee and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the prior certificate of title issued for such vehicle provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner. Only an affidavit by the person or agent of the person to whom possession of such vehicle has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have, and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize the county clerk or designated county official to issue a certificate of title, as the case may be.

(2) If from the records in the office of the county clerk or designated county official or the department there appear to be any liens on such vehicle, such certificate of title shall comply with section 60-164 or 60-165 regarding such liens unless the application is accompanied by proper evidence of their satisfaction or extinction.

**Source:** Laws 2005, LB 276, § 66; Laws 2007, LB286, § 15; Laws 2009, LB202, § 18.

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

**60-167 Bonded certificate of title; application; fee; bond; issuance; release; statement on title; recall; procedure.**

(1) The department shall issue a bonded certificate of title to an applicant who:

- (a) Presents evidence reasonably sufficient to satisfy the department of the applicant's ownership of the vehicle or security interest in the vehicle;
- (b) Provides a statement that an identification inspection has been conducted pursuant to section 60-146;
- (c) Pays the fee as prescribed in section 60-160; and
- (d) Files a bond in a form prescribed by the department and executed by the applicant.

(2) The bond shall be issued by a surety company authorized to transact business in this state, in an amount equal to one and one-half times the value of the vehicle as determined by the department using reasonable appraisal methods, and conditioned to indemnify any prior owner and secured party, any subsequent purchaser and secured party, and any successor of the purchaser and secured party for any expense, loss, or damage, including reasonable attorney's fees, incurred by reason of the issuance of the certificate of title to

the vehicle or any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the vehicle. An interested person may have a cause of action to recover on the bond for a breach of the conditions of the bond. The aggregate liability of the surety to all persons having a claim shall not exceed the amount of the bond.

(3) At the end of three years after the issuance of the bond, the holder of the certificate of title may apply to the department on a form prescribed by the department for the release of the bond and the removal of the notice required by subsection (4) of this section if no claim has been made on the bond. The department may release the bond at the end of three years after the issuance of the bond if all questions as to the ownership of the vehicle have been answered to the satisfaction of the department unless the department has been notified of the pendency of an action to recover on the bond. If the currently valid certificate of title is surrendered to the department, the department may release the bond prior to the end of the three-year period.

(4) The department shall include the following statement on a bonded certificate of title issued pursuant to this section and any subsequent title issued as a result of a title transfer while the bond is in effect:

NOTICE: THIS VEHICLE MAY BE SUBJECT TO AN UNDISCLOSED INTEREST, BOND NUMBER . . . . .

(5) The department shall recall a bonded certificate of title if the department finds that the application for the title contained a false statement or if a check presented by the applicant for a bonded certificate of title is returned uncollected by a financial institution.

**Source:** Laws 2005, LB 276, § 67.

**60-168 Certificate of title; loss or mutilation; duplicate certificate; subsequent purchaser, rights; recovery of original; duty of owner.**

(1) In the event of a lost or mutilated certificate of title, the owner of the vehicle or the holder of a lien on the vehicle shall apply, upon a form prescribed by the department, to the department, if the certificate of title was issued by the department, or to any county clerk or designated county official for a duplicate certificate of title and shall pay the fee prescribed by section 60-156. The application shall be signed and sworn to by the person making the application or a person authorized to sign under section 60-151. Thereupon the county clerk or designated county official, with the approval of the department, or the department shall issue a duplicate certificate of title to the person entitled to receive the certificate of title. If the records of the title have been destroyed pursuant to section 60-152, the county clerk or designated county official shall issue a duplicate certificate of title to the person entitled to receive the same upon such showing as the county clerk or designated county official may deem sufficient. If the applicant cannot produce such proof of ownership, he or she may apply directly to the department and submit such evidence as he or she may have, and the department may, if it finds the evidence sufficient, authorize the county clerk or designated county official to issue a duplicate certificate of title. A duplicate certificate of title so issued shall show only those unreleased liens of record. The new purchaser shall be entitled to receive an original certificate of title upon presentation of the assigned duplicate copy of the certificate of title, properly assigned to the new purchaser, to the county clerk or designated county official prescribed in section 60-144.

(2) Any purchaser of a vehicle for which a certificate of title was lost or mutilated may at the time of purchase require the seller of the same to indemnify him or her and all subsequent purchasers of the vehicle against any loss which he, she, or they may suffer by reason of any claim presented upon the original certificate. In the event of the recovery of the original certificate of title by the owner, he or she shall forthwith surrender the same to the county clerk or designated county official or the department for cancellation.

**Source:** Laws 2005, LB 276, § 68; Laws 2007, LB286, § 16.

Issuance of duplicate certificates is authorized, but purchaser is charged with notice of possible impairment of title. Allstate Ins. Co. v. Enzolera, 164 Neb. 38, 81 N.W.2d 588 (1957).

**60-168.01 Certificate of title; failure to note required brand or lien; notice to holder of title; corrected certificate of title; failure of holder to deliver certificate; effect.**

The department, upon receipt of clear and convincing evidence of a failure to note a required brand or failure to note a lien on a certificate of title, shall notify the holder of such certificate of title to deliver to the county clerk or designated county official or the department, within fifteen days after the date on the notice, such certificate of title to permit the noting of such brand or lien. After notation, the county clerk or designated county official or the department shall deliver the corrected certificate of title to the holder as provided by section 60-152. If a holder fails to deliver a certificate of title to the county clerk or designated county official or to the department, within fifteen days after the date on the notice for the purpose of noting such brand or lien on the certificate of title, the department shall cancel the certificate of title. This section does not apply when noting a lien in accordance with subsection (6) of section 60-164.

**Source:** Laws 2007, LB286, § 17; Laws 2009, LB202, § 19.

**60-168.02 Certificate of title in dealer's name; issuance authorized; documentation and fees required; dealer; duties.**

(1) When a motor vehicle, commercial trailer, semitrailer, or cabin trailer is purchased by a motor vehicle dealer or trailer dealer and the original assigned certificate of title has been lost or mutilated, the dealer selling such motor vehicle or trailer may apply for an original certificate of title in the dealer's name. The following documentation and fees shall be submitted by the dealer:

- (a) An application for a certificate of title in the name of such dealer;
- (b) A photocopy from the dealer's records of the front and back of the lost or mutilated original certificate of title assigned to a dealer;
- (c) A notarized affidavit from the purchaser of such motor vehicle or trailer for which the original assigned certificate of title was lost or mutilated stating that the original assigned certificate of title was lost or mutilated; and
- (d) The appropriate certificate of title fee.

(2) The application and affidavit shall be on forms prescribed by the department. When the motor vehicle dealer or trailer dealer receives the new certificate of title in such dealer's name and assigns it to the purchaser, the dealer shall record the original sale date and provide the purchaser with a copy of the front and back of the original lost or mutilated certificate of title as

evidence as to why the purchase date of the motor vehicle or trailer is prior to the issue date of the new certificate of title.

**Source:** Laws 2007, LB286, § 18; Laws 2008, LB756, § 4.

**60-169 Vehicle; certificate of title; surrender and cancellation; when required; mobile home or manufactured home affixed to real property; certificate of title; surrender and cancellation; procedure; effect; detachment; owner; duties.**

(1)(a) Except as otherwise provided in subdivision (b) of this subsection, each owner of a vehicle and each person mentioned as owner in the last certificate of title, when the vehicle is dismantled, destroyed, or changed in such a manner that it loses its character as a vehicle or changed in such a manner that it is not the vehicle described in the certificate of title, shall surrender his or her certificate of title to the county clerk or designated county official of the county where such certificate of title was issued or, if issued by the department, to the department. If the certificate of title is surrendered to the county clerk or designated county official, he or she shall, with the consent of any holders of any liens noted thereon, enter a cancellation upon his or her records and shall notify the department of such cancellation. If the certificate is surrendered to the department, it shall, with the consent of any holder of any lien noted thereon, enter a cancellation upon its records.

(b)(i) In the case of a mobile home or manufactured home for which a certificate of title has been issued, if such mobile home or manufactured home is affixed to real property in which each owner of the mobile home or manufactured home has any ownership interest, the certificate of title may be surrendered for cancellation to the county clerk or designated county official of the county where such certificate of title is issued or, if issued by the department, to the department, if at the time of surrender the owner submits to the county clerk, the designated county official, or the department an affidavit of affixture on a form provided by the department that contains all of the following, as applicable:

(A) The names and addresses of all of the owners of record of the mobile home or manufactured home;

(B) A description of the mobile home or manufactured home that includes the name of the manufacturer, the year of manufacture, the model, and the manufacturer's serial number;

(C) The legal description of the real property upon which the mobile home or manufactured home is affixed and the names of all of the owners of record of the real property;

(D) A statement that the mobile home or manufactured home is affixed to the real property;

(E) The written consent of each holder of a lien duly noted on the certificate of title to the release of such lien and the cancellation of the certificate of title;

(F) A copy of the certificate of title surrendered for cancellation; and

(G) The name and address of an owner, a financial institution, or another entity to which notice of cancellation of the certificate of title may be delivered.

(ii) The person submitting an affidavit of affixture pursuant to subdivision (b)(i) of this subsection shall swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement in the

affidavit may subject the person to penalties relating to perjury under section 28-915.

(2) If a certificate of title of a mobile home or manufactured home is surrendered to the county clerk or designated county official, along with the affidavit required by subdivision (1)(b) of this section, he or she shall enter a cancellation upon his or her records, notify the department of such cancellation, forward a duplicate original of the affidavit to the department, and deliver a duplicate original of the executed affidavit under subdivision (1)(b) of this section to the register of deeds for the county in which the real property is located to be filed by the register of deeds. The county clerk or designated county official shall be entitled to collect fees from the person submitting the affidavit in accordance with sections 33-109 and 33-112 to cover the costs of filing such affidavit. If the certificate of title is surrendered to the department, along with the affidavit required by subdivision (1)(b) of this section, the department shall enter a cancellation upon its records and deliver a duplicate original of the executed affidavit under subdivision (1)(b) of this section to the register of deeds for the county in which the real property is located to be filed by the register of deeds. The department shall be entitled to collect fees from the person submitting the affidavit in accordance with sections 33-109 and 33-112 to cover the costs of filing such affidavit. Following the cancellation of a certificate of title for a mobile home or manufactured home, neither the county clerk, the designated county official, nor the department shall issue a certificate of title for such mobile home or manufactured home, except as provided in subsection (5) of this section.

(3) If a mobile home or manufactured home is affixed to real estate before June 1, 2006, a person who is the holder of a lien or security interest in both the mobile home or manufactured home and the real estate to which it is affixed on such date may enforce its liens or security interests by accepting a deed in lieu of foreclosure or in the manner provided by law for enforcing liens on the real estate.

(4) A mobile home or manufactured home for which the certificate of title has been canceled and for which an affidavit of affixture has been duly recorded pursuant to subsection (2) of this section shall be treated as part of the real estate upon which such mobile home or manufactured home is located. Any lien thereon shall be perfected and enforced in the same manner as a lien on real estate. The owner of such mobile home or manufactured home may convey ownership of the mobile home or manufactured home only as a part of the real estate to which it is affixed.

(5)(a) If each owner of both the mobile home or manufactured home and the real estate described in subdivision (1)(b) of this section intends to detach the mobile home or manufactured home from the real estate, the owner shall do both of the following: (i) Before detaching the mobile home or manufactured home, record an affidavit of detachment in the office of the register of deeds in the county in which the affidavit is recorded under subdivision (1)(b) of this section; and (ii) apply for a certificate of title for the mobile home or manufactured home pursuant to section 60-147.

(b) The affidavit of detachment shall contain all of the following:

(i) The names and addresses of all of the owners of record of the mobile home or manufactured home;

(ii) A description of the mobile home or manufactured home that includes the name of the manufacturer, the year of manufacture, the model, and the manufacturer's serial number;

(iii) The legal description of the real estate from which the mobile home or manufactured home is to be detached and the names of all of the owners of record of the real estate;

(iv) A statement that the mobile home or manufactured home is to be detached from the real property;

(v) A statement that the certificate of title of the mobile home or manufactured home has previously been canceled;

(vi) The name of each holder of a lien of record against the real estate from which the mobile home or manufactured home is to be detached, with the written consent of each holder to the detachment; and

(vii) The name and address of an owner, a financial institution, or another entity to which the certificate of title may be delivered.

(6) An owner of an affixed mobile home or manufactured home for which the certificate of title has previously been canceled pursuant to subsection (2) of this section shall not detach the mobile home or manufactured home from the real estate before a certificate of title for the mobile home or manufactured home is issued by the county clerk, designated county official, or department. If a certificate of title is issued by the county clerk, designated county official, 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 clerk or designated county official 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.

**60-170 Nontransferable certificate of title; when issued; procedure; surrender for certificate of title; procedure.**

(1) When an insurance company authorized to do business in Nebraska acquires a vehicle which has been properly titled and registered in a state other than Nebraska through payment of a total loss settlement on account of theft and the vehicle has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair, the company shall obtain the certificate of title from the owner and may

make application for a nontransferable certificate of title by surrendering the certificate of title to the county clerk or designated county official. A nontransferable certificate of title shall be issued in the same manner and for the same fee or fees as provided for a certificate of title in sections 60-154 to 60-160 and shall be on a form prescribed by the department.

(2) A vehicle which has a nontransferable certificate of title shall not be sold or otherwise transferred or disposed of without first obtaining a certificate of title under the Motor Vehicle Certificate of Title Act.

(3) When a nontransferable certificate of title is surrendered for a certificate of title, the application shall be accompanied by a statement from the insurance company stating that to the best of its knowledge the vehicle has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair. The statement shall not constitute or imply a warranty of condition to any subsequent purchaser or operator of the vehicle.

**Source:** Laws 2005, LB 276, § 70.

**60-171 Salvage branded certificate of title; terms, defined.**

For purposes of sections 60-171 to 60-177:

(1) Cost of repairs means the estimated or actual retail cost of parts needed to repair a vehicle plus the cost of labor computed by using the hourly labor rate and time allocations for repair that are customary and reasonable. Retail cost of parts and labor rates may be based upon collision estimating manuals or electronic computer estimating systems customarily used in the insurance industry;

(2) Late model vehicle means a vehicle which has (a) a manufacturer's model year designation of, or later than, the year in which the vehicle was wrecked, damaged, or destroyed, or any of the six preceding years or (b)(i) in the case of vehicles other than all-terrain vehicles, utility-type vehicles, and minibikes, a retail value of more than ten thousand five hundred dollars until January 1, 2010, and a retail value of more than ten thousand five hundred dollars increased by five hundred dollars every five years thereafter or (ii) in the case of all-terrain vehicles, utility-type vehicles, or minibikes, a retail value of more than one thousand seven hundred fifty dollars until January 1, 2010, and a retail value of more than one thousand seven hundred fifty dollars increased by two hundred fifty dollars every five years thereafter;

(3) Manufacturer buyback means the designation of a vehicle with an alleged nonconformity when the vehicle (a) has been replaced by a manufacturer or (b) has been repurchased by a manufacturer as the result of court judgment, arbitration, or any voluntary agreement entered into between the manufacturer or its agent and a consumer;

(4) Previously salvaged means the designation of a rebuilt or reconstructed vehicle which was previously required to be issued a salvage branded certificate of title and which has been inspected as provided in section 60-146;

(5) Retail value means the actual cash value, fair market value, or retail value of a vehicle as (a) set forth in a current edition of any nationally recognized compilation, including automated data bases, of retail values or (b) determined pursuant to a market survey of comparable vehicles with respect to condition and equipment; and

(6) Salvage means the designation of a vehicle which is:

(a) A late model vehicle which has been wrecked, damaged, or destroyed to the extent that the estimated total cost of repair to rebuild or reconstruct the vehicle to its condition immediately before it was wrecked, damaged, or destroyed and to restore the vehicle to a condition for legal operation, meets or exceeds seventy-five percent of the retail value of the vehicle at the time it was wrecked, damaged, or destroyed; or

(b) Voluntarily designated by the owner of the vehicle as a salvage vehicle by obtaining a salvage branded certificate of title, without respect to the damage to, age of, or value of the vehicle.

**Source:** Laws 2005, LB 276, § 71; Laws 2010, LB650, § 19.

**60-172 Salvage branded certificate of title; required disclosure.**

A certificate of title issued on or after January 1, 2003, shall disclose in writing, from any records readily accessible to the department or county officials or a law enforcement officer, anything which indicates that the vehicle was previously issued a title in another jurisdiction that bore any word or symbol signifying that the vehicle was damaged, including, but not limited to, older model salvage, unbuildable, parts only, scrap, junk, nonrepairable, reconstructed, rebuilt, flood damaged, damaged, buyback, or any other indication, symbol, or word of like kind, and the name of the jurisdiction issuing the previous title.

**Source:** Laws 2005, LB 276, § 72.

**60-173 Salvage branded certificate of title; insurance company; total loss settlement; when issued.**

When an insurance company acquires a salvage vehicle through payment of a total loss settlement on account of damage, the company shall obtain the certificate of title from the owner, surrender such certificate of title to the county clerk or designated county official, and make application for a salvage branded certificate of title which shall be assigned when the company transfers ownership. An insurer shall take title to a salvage vehicle for which a total loss settlement is made unless the owner of the salvage vehicle elects to retain the salvage vehicle. If the owner elects to retain the salvage vehicle, the insurance company shall notify the department of such fact in a format prescribed by the department. The department shall immediately enter the salvage brand onto the computerized record of the vehicle. The insurance company shall also notify the owner of the owner's responsibility to comply with this section. The owner shall, within thirty days after the settlement of the loss, forward the properly endorsed acceptable certificate of title to the county clerk or designated county official in the county designated in section 60-144. The county clerk or designated county official shall, upon receipt of the certificate of title, issue a salvage branded certificate of title for the vehicle.

**Source:** Laws 2005, LB 276, § 73; Laws 2007, LB286, § 19.

**60-174 Salvage branded certificate of title; salvage, previously salvaged, or manufacturer buyback title brand; inspection; when.**

Whenever a title is issued in this state for a vehicle that is designated a salvage, previously salvaged, or manufacturer buyback, the following title

brands shall be required: Salvage, previously salvaged, or manufacturer buyback. A certificate branded salvage, previously salvaged, or manufacturer buyback shall be administered in the same manner and for the same fee or fees as provided for a certificate of title in sections 60-154 to 60-160. When a salvage branded certificate of title is surrendered for a certificate of title branded previously salvaged, the application for a certificate of title shall be accompanied by a statement of inspection as provided in section 60-146.

**Source:** Laws 2005, LB 276, § 74.

**60-175 Salvage branded certificate of title; nontransferable certificate of title; when issued; procedure; surrender for certificate of title; procedure.**

Any person who acquires ownership of a salvage or manufacturer buyback vehicle for which he or she does not obtain a salvage branded or manufacturer buyback branded certificate of title shall surrender the certificate of title to the county clerk or designated county official and make application for a salvage branded or manufacturer buyback branded certificate of title within thirty days after acquisition or prior to the sale or resale of the vehicle or any major component part of such vehicle or use of any major component part of the vehicle, whichever occurs earlier.

**Source:** Laws 2005, LB 276, § 75.

**60-176 Salvage branded certificate of title; prohibited act; penalty.**

Any person who knowingly transfers a wrecked, damaged, or destroyed vehicle in violation of sections 60-171 to 60-177 is guilty of a Class IV felony.

**Source:** Laws 2005, LB 276, § 76.

**60-177 Salvage branded certificate of title; sections; how construed.**

Nothing in sections 60-171 to 60-177 shall be construed to require the actual repair of a wrecked, damaged, or destroyed vehicle to be designated as salvage.

**Source:** Laws 2005, LB 276, § 77.

**60-178 Stolen vehicle; duties of law enforcement and department.**

Every sheriff, chief of police, or member of the patrol having knowledge of a stolen vehicle shall immediately furnish the department with full information in connection therewith. The department, whenever it receives a report of the theft or conversion of such a vehicle, whether owned in this or any other state, together with the make and manufacturer's serial number or motor number, if applicable, shall make a distinctive record thereof and file the same in the numerical order of the manufacturer's serial number with the index records of such vehicle of such make. The department shall prepare a report listing such vehicles stolen and recovered as disclosed by the reports submitted to it, and the report shall be distributed as it may deem advisable. In the event of the receipt from any county clerk or designated county official of a copy of a certificate of title to such vehicle, the department shall immediately notify the rightful owner thereof and the county clerk or designated county official who issued such certificate of title, and if upon investigation it appears that such certificate of title was improperly issued, the department shall immediately cancel the same. In the event of the recovery of such stolen or converted

vehicle, the owner shall immediately notify the department, which shall cause the record of the theft or conversion to be removed from its file.

**Source:** Laws 2005, LB 276, § 78.

**60-179 Prohibited acts; penalty.**

A person commits a Class IV felony if he or she (1) forges any certificate of title or manufacturer's or importer's certificate to a vehicle, any assignment of either certificate, or any cancellation of any lien on a vehicle, (2) holds or uses such certificate, assignment, or cancellation knowing the same to have been forged, (3) procures or attempts to procure a certificate of title to a vehicle or passes or attempts to pass a certificate of title or any assignment thereof to a vehicle, knowing or having reason to believe that such vehicle has been stolen, (4) sells or offers for sale in this state a vehicle on which the motor number or manufacturer's serial number has been destroyed, removed, covered, altered, or defaced with knowledge of the destruction, removal, covering, alteration, or defacement of such motor number or manufacturer's serial number, (5) knowingly uses a false or fictitious name, knowingly gives a false or fictitious address, knowingly makes any false statement in any application or affidavit required under the Motor Vehicle Certificate of Title Act or in a bill of sale or sworn statement of ownership, or (6) otherwise knowingly commits a fraud in any application for a certificate of title.

**Source:** Laws 2005, LB 276, § 79.

There is no legal requirement that a lien be noted on a certificate of title purportedly covering property not subject to the Certificate of Title Act, even though a certificate of title for such property has been issued. *Cushman Sales & Service of Nebraska, Inc. v. Muirhead*, 201 Neb. 495, 268 N.W.2d 440 (1978).

Although making a false affidavit was a crime, it would not have been effective in obtaining a certificate of title had holder of certificate recorded its lien. *First Nat. Bank v. Provident Finance Co.*, 176 Neb. 45, 125 N.W.2d 78 (1963).

**60-180 Violations; penalty.**

(1) A person who operates in this state a vehicle for which a certificate of title is required without having such certificate in accordance with the Motor Vehicle Certificate of Title Act or upon which the certificate of title has been canceled is guilty of a Class III misdemeanor.

(2) A person who is a dealer or acting on behalf of a dealer and who acquires, purchases, holds, or displays for sale a new vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title therefor as provided for in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(3) A person who fails to surrender any certificate of title or any certificate of registration or license plates or tags upon cancellation of the same by the department and notice thereof as prescribed in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(4) A person who fails to surrender the certificate of title to the county clerk or designated county official as provided in section 60-169 in case of the destruction or dismantling or change of a vehicle in such respect that it is not the vehicle described in the certificate of title is guilty of a Class III misdemeanor.

(5) A person who purports to sell or transfer a vehicle without delivering to the purchaser or transferee thereof a certificate of title or a manufacturer's or

importer's certificate thereto duly assigned to such purchaser as provided in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(6) A person who knowingly alters or defaces a certificate of title or manufacturer's or importer's certificate is guilty of a Class III misdemeanor.

(7) Except as otherwise provided in section 60-179, a person who violates any of the other provisions of the Motor Vehicle Certificate of Title Act or any rules or regulations adopted and promulgated pursuant to the act is guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 276, § 80.

Legislature contemplated that form provided must be fully and properly executed. *Loyal's Auto Exchange, Inc. v. Munch*, 153 Neb. 628, 45 N.W.2d 913 (1951).

**60-181 Vehicle identification inspections; training expenses; how paid.**

The Nebraska State Patrol Cash Fund shall be used to defray the expenses of training personnel in title document examination, vehicle identification, and fraud and theft investigation and to defray the patrol's expenses arising pursuant to sections 60-181 to 60-189, including those incurred for printing and distribution of forms, personal services, hearings, and similar administrative functions. Personnel may include, but shall not be limited to, county clerks, designated county officials, investigative personnel of the Nebraska Motor Vehicle Industry Licensing Board, and peace officers as defined in section 60-646. The training program shall be administered by the patrol. The patrol may utilize the Nebraska Law Enforcement Training Center to accomplish the training requirements of sections 60-181 to 60-189. The superintendent may make expenditures from the fund necessary to implement such training.

**Source:** Laws 2005, LB 276, § 81.

**60-182 Vehicle identification inspections; sheriff; designate inspectors.**

The sheriff shall designate a sufficient number of persons to become certified to assure completion of inspections with reasonable promptness.

**Source:** Laws 2005, LB 276, § 82.

**60-183 Vehicle identification inspections; inspectors; certificate required; issuance.**

No person shall conduct an inspection unless he or she is the holder of a current certificate of training issued by the patrol. The certificate of training shall be issued upon completion of a course of instruction, approved by the patrol, in the identification of stolen and altered vehicles. The superintendent may require an individual to take such additional training as he or she deems necessary in order to maintain a current certificate of training.

**Source:** Laws 2005, LB 276, § 83.

**60-184 Vehicle identification inspections; application for training; contents.**

The sheriff may designate an employee of his or her office, any individual who is a peace officer as defined in section 60-646, or, by agreement, a county clerk or designated county official to assist in accomplishing inspections. Upon designation, the person shall request approval for training from the superintendent. Any person requesting approval for training shall submit a written

application to the patrol. Such application shall include the following information: (1) The name and address of the applicant; (2) the name and address of the agency employing the applicant and the name of the agency head; and (3) such biographical information as the superintendent may require to facilitate the designation authorized by this section.

**Source:** Laws 2005, LB 276, § 84.

**60-185 Vehicle identification inspections; application for training; investigation; denial; grounds.**

(1) Upon receipt of an application for training pursuant to section 60-184, the patrol may inquire into the qualifications of the applicant and may also inquire into the background of the applicant.

(2) The patrol shall not approve any applicant who has (a) knowingly purchased, sold, or done business in stolen vehicles or parts therefor, (b) been found guilty of any felony which has not been pardoned, been found guilty of any misdemeanor concerning fraud or conversion, or suffered any judgment in any civil action involving fraud, misrepresentation, or conversion, or (c) made a false material statement in his or her application.

**Source:** Laws 2005, LB 276, § 85.

**60-186 Vehicle identification inspections; revocation of certificate of training; procedure; appeal.**

The patrol may, after notice and a hearing, revoke a certificate of training. The patrol shall only be required to hold a hearing if the hearing is requested in writing within fifteen days after notice of the proposed revocation is delivered by the patrol. The patrol may revoke a certificate of training for any reason for which an applicant may be denied approval for training pursuant to section 60-185. The patrol may revoke a certificate of training if the holder fails to keep a certificate current by taking any additional training the patrol may require. The patrol may revoke a certificate of training if the patrol finds that the holder is incompetent. A rebuttable presumption of incompetence shall arise from a finding by the patrol or a court of competent jurisdiction that the holder of a certificate of training has issued a statement of inspection for a stolen vehicle. Any person who feels himself or herself aggrieved by the patrol's decision to revoke a certificate may appeal such decision, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 2005, LB 276, § 86.

**Cross References**

Administrative Procedure Act, see section 84-920.

**60-187 Vehicle identification inspections; attendance at training; restriction.**

No individual, other than a peace officer, shall attend training for inspections funded under the Nebraska State Patrol Cash Fund unless such individual has been designated by a sheriff and approved by the patrol.

**Source:** Laws 2005, LB 276, § 87.

**60-188 Vehicle identification inspections; restriction on authority to inspect.**

A holder of a certificate of training who is an employee of a licensee as determined by the department shall not inspect any vehicle which is not owned

by his or her sponsoring licensee. A holder of a certificate of training who is a licensee shall not inspect any vehicle which he or she does not own.

**Source:** Laws 2005, LB 276, § 88.

**60-189 Vehicle identification inspections; superintendent; duty.**

The superintendent shall, from time to time, provide each county clerk or designated county official and each sheriff with a list of persons holding then current certificates of training.

**Source:** Laws 2005, LB 276, § 89.

**60-190 Odometers; unlawful acts; exceptions.**

It shall be unlawful for any person to:

(1) Knowingly tamper with, adjust, alter, change, disconnect, or fail to connect an odometer of a motor vehicle, or cause any of the foregoing to occur, to reflect a mileage different than has actually been driven by such motor vehicle except as provided in section 60-191;

(2) With intent to defraud, operate a motor vehicle on any street or highway knowing that the odometer is disconnected or nonfunctional; or

(3) Advertise for sale, sell, use, or install on any part of a motor vehicle or on any odometer in a motor vehicle any device which causes the odometer to register any mileage other than that actually driven.

Sections 60-190 to 60-196 shall not apply to gross-rated motor vehicles of more than sixteen thousand pounds.

**Source:** Laws 2005, LB 276, § 90.

Because no rational basis exists between the State's objective of preventing odometer fraud and the requirement that motorcycle dealers register vehicles under conditions which do not obligate dealers of other motor vehicles to do so, this section

and section 60-133 offend the Equal Protection Clause of U.S. Const. amend. XIV. State v. Garber, 249 Neb. 648, 545 N.W.2d 75 (1996).

**60-191 Odometers; repaired or replaced; notice.**

If any odometer is repaired or replaced, the reading of the repaired or replaced odometer shall be set at the reading of the odometer repaired or replaced immediately prior to repair or replacement and the adjustment shall not be deemed a violation of section 60-190, except that when the repaired or replaced odometer is incapable of registering the same mileage as before such repair or replacement, the repaired or replaced odometer shall be adjusted to read zero and a notice in writing on a form prescribed by the department shall be attached to the left door frame of the motor vehicle, or in the case of a motorcycle, to the frame of the motorcycle, by the owner or his or her agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced and any removal or alteration of such notice so affixed shall be deemed a violation of section 60-190.

**Source:** Laws 2005, LB 276, § 91.

Because no rational basis exists between the State's objective of preventing odometer fraud and the requirement that motorcycle dealers register vehicles under conditions which do not obligate dealers of other motor vehicles to do so, section 60-132

and this section offend the Equal Protection Clause of U.S. Const. amend. XIV. State v. Garber, 249 Neb. 648, 545 N.W.2d 75 (1996).

**60-192 Odometers; transferor; statement; contents.**

The transferor of any motor vehicle of an age of less than ten years, which was equipped with an odometer by the manufacturer, shall provide to the

transferee a statement, signed by the transferor, setting forth: (1) The mileage on the odometer at the time of transfer; and (2)(a) a statement that, to the transferor's best knowledge, such mileage is that actually driven by the motor vehicle, (b) a statement that the transferor has knowledge that the mileage shown on the odometer is in excess of the designated mechanical odometer limit, or (c) a statement that the odometer reading does not reflect the actual mileage and should not be relied upon because the transferor has knowledge that the odometer reading differs from the actual mileage and that the difference is greater than that caused by odometer calibration error. If a discrepancy exists between the odometer reading and the actual mileage, a warning notice to alert the transferee shall be included with the statement. The transferor shall retain a true copy of such statement for a period of five years from the date of the transaction.

**Source:** Laws 2005, LB 276, § 92.

**60-193 Odometers; application for certificate of title; statement required.**

The statement required by section 60-192 shall be on a form prescribed by the department or shall appear on the certificate of title. Such statement shall be submitted with the application for certificate of title unless the statement appears on the certificate of title being submitted with the application. The statement required by section 60-192 shall appear on the new certificate of title issued in the name of the transferee. No certificate of title shall be issued for a motor vehicle unless the application is accompanied by such statement or unless the information required by such statement appears on the certificate of title being submitted with the application.

**Source:** Laws 2005, LB 276, § 93; Laws 2006, LB 663, § 20.

**60-194 Odometers; motor vehicle dealer; duties; violation; effect.**

No licensed motor vehicle dealer shall have in his or her possession as inventory for sale any used motor vehicle of an age of less than twenty-five years for which the dealer does not have in his or her possession the transferor's statement required by section 60-192 unless a certificate of title has been issued for such motor vehicle in the name of the dealer. Violation of sections 60-190 to 60-196 shall be grounds for suspension or revocation of a motor vehicle dealer's license under the Motor Vehicle Industry Regulation Act.

**Source:** Laws 2005, LB 276, § 94; Laws 2010, LB816, § 6.

**Cross References**

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-195 Odometers; motor vehicle dealer; not guilty of violation; conditions.**

A licensed motor vehicle dealer reassigning a certificate of title shall not be guilty of a violation of sections 60-190 to 60-196 if such dealer has in his or her possession the transferor's statement and if he or she has no knowledge that the statement is false and that the odometer does not reflect the mileage actually driven by the motor vehicle.

**Source:** Laws 2005, LB 276, § 95.

**60-196 Odometers; retention of statement; violation; penalty.**

Any transferor who does not retain a true copy of the odometer statement for a period of five years from the date of the transaction as required by section 60-192 shall be guilty of a Class V misdemeanor. Any person who violates any other provision of sections 60-190 to 60-196 shall be guilty of a Class IV felony.

**Source:** Laws 2005, LB 276, § 96.

**60-197 Certificates, statements, notations, rules, regulations, and orders under prior law; effect.**

(1) The repeal of Chapter 60, article 1, as it existed on September 4, 2005, and the enactment of the Motor Vehicle Certificate of Title Act is not intended to affect the validity of manufacturer’s or importer’s certificates, certificates of title of any kind, odometer statements, or security interests or liens in existence on such date. All such certificates, statements, and notations are valid under the Motor Vehicle Certificate of Title Act as if issued or made under such act.

(2) The repeal of Chapter 60, article 1, as it existed on September 4, 2005, and the enactment of the Motor Vehicle Certificate of Title Act is not intended to affect the validity of certificates of training for inspections in existence on such date. All such certificates are valid under the Motor Vehicle Certificate of Title Act as if issued under such act.

(3) The rules, regulations, and orders of the Director of Motor Vehicles and the Department of Motor Vehicles issued under Chapter 60, article 1, shall remain in effect as if issued under the Motor Vehicle Certificate of Title Act unless changed or eliminated by the director or the department to the extent such power is statutorily granted to the director and department.

**Source:** Laws 2005, LB 276, § 97.

**ARTICLE 2**

**EQUALIZATION FEES ON MOTOR VEHICLES**

Section	
60-201.	Repealed. Laws 1953, c. 222, § 40.
60-202.	Repealed. Laws 1953, c. 222, § 40.
60-202.01.	Repealed. Laws 1953, c. 222, § 40.
60-202.02.	Repealed. Laws 1953, c. 222, § 40.
60-203.	Repealed. Laws 1953, c. 222, § 40.
60-204.	Repealed. Laws 1953, c. 222, § 40.
60-205.	Repealed. Laws 1953, c. 222, § 40.

**60-201 Repealed. Laws 1953, c. 222, § 40.**

**60-202 Repealed. Laws 1953, c. 222, § 40.**

**60-202.01 Repealed. Laws 1953, c. 222, § 40.**

**60-202.02 Repealed. Laws 1953, c. 222, § 40.**

**60-203 Repealed. Laws 1953, c. 222, § 40.**

**60-204 Repealed. Laws 1953, c. 222, § 40.**

**60-205 Repealed. Laws 1953, c. 222, § 40.**

**ARTICLE 3**

**MOTOR VEHICLE REGISTRATION**

**Cross References**

License plates, duties of Department of Correctional Services, see section 83-123.

## MOTOR VEHICLES

Section	
60-301.	Act, how cited.
60-302.	Definitions, where found.
60-303.	Agricultural floater-spreader implement, defined.
60-304.	Agricultural products, defined.
60-305.	All-terrain vehicle, defined.
60-306.	Alternative fuel, defined.
60-307.	Ambulance, defined.
60-308.	Apportionable vehicle, defined.
60-309.	Assembled vehicle, defined.
60-310.	Automobile liability policy, defined.
60-311.	Base jurisdiction, defined.
60-312.	Boat dealer, defined.
60-313.	Bus, defined.
60-314.	Cabin trailer, defined.
60-315.	Collector, defined.
60-316.	Commercial motor vehicle, defined.
60-317.	Commercial trailer, defined.
60-318.	Current model year vehicle, defined.
60-319.	Department, defined.
60-320.	Designated county official, defined.
60-321.	Director, defined.
60-322.	Electric personal assistive mobility device, defined.
60-323.	Evidence of insurance, defined.
60-324.	Farm trailer, defined.
60-325.	Farm truck, defined.
60-326.	Fertilizer trailer, defined.
60-327.	Film vehicle, defined.
60-328.	Finance company, defined.
60-329.	Fleet, defined.
60-330.	Gross vehicle weight, defined.
60-331.	Gross vehicle weight rating, defined.
60-332.	Highway, defined.
60-333.	Historical vehicle, defined.
60-334.	Injurisdiction distance, defined.
60-334.01.	International Registration Plan, defined.
60-335.	Kit vehicle, defined.
60-336.	Local truck, defined.
60-336.01.	Low-speed vehicle, defined.
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**60-301 Act, how cited.**

Sections 60-301 to 60-3,222 shall be known and may be cited as the Motor Vehicle Registration Act.

**Source:** Laws 2005, LB 274, § 1; Laws 2006, LB 663, § 21; Laws 2007, LB286, § 20; Laws 2007, LB349, § 1; Laws 2007, LB570, § 1; Laws 2008, LB756, § 5; Laws 2009, LB110, § 1; Laws 2009, LB129, § 1; Laws 2010, LB650, § 20.

**60-302 Definitions, where found.**

For purposes of the Motor Vehicle Registration Act, unless the context otherwise requires, the definitions found in sections 60-303 to 60-360 shall be used.

**Source:** Laws 2005, LB 274, § 2; Laws 2007, LB286, § 21; Laws 2008, LB756, § 6; Laws 2010, LB650, § 21.

**60-303 Agricultural floater-spreader implement, defined.**

Agricultural floater-spreader implement means self-propelled equipment which is designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops and which has a gross laden weight of forty-eight thousand pounds or less and is equipped with floatation tires.

**Source:** Laws 2005, LB 274, § 3.

**60-304 Agricultural products, defined.**

Agricultural products means field crops and horticultural, viticultural, forestry, nut, dairy, livestock, poultry, bee, and farm products, including sod grown on the land owned or rented by the farmer, and the byproducts derived from any of them.

**Source:** Laws 2005, LB 274, § 4.

**60-305 All-terrain vehicle, defined.**

All-terrain vehicle means any motorized off-highway vehicle which (1) is fifty inches or less in width, (2) has a dry weight of nine hundred pounds or less, (3) travels on three or more low-pressure tires, (4) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger, (5) has a seat or saddle designed to be straddled by the operator, and (6) has handlebars or any other steering assembly for steering control.

**Source:** Laws 2005, LB 274, § 5.

**60-306 Alternative fuel, defined.**

Alternative fuel has the same meaning as in section 66-686.

**Source:** Laws 2005, LB 274, § 6.

**60-307 Ambulance, defined.**

Ambulance means any privately or publicly owned motor vehicle that is especially designed, constructed or modified, and equipped and is intended to be used and is maintained or operated for the overland transportation of patients upon the highways in this state or any other motor vehicle used for such purposes but does not include or mean any motor vehicle owned or operated under the direct control of an agency of the United States Government.

**Source:** Laws 2005, LB 274, § 7.

**60-308 Apportionable vehicle, defined.**

(1) Apportionable vehicle means any motor vehicle or trailer used or intended for use in two or more member jurisdictions that allocate or proportionally register motor vehicles or trailers and used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property.

(2) Apportionable vehicle does not include any recreational vehicle, motor vehicle displaying restricted plates, city pickup and delivery vehicle, bus used in the transportation of chartered parties, or government-owned motor vehicle.

(3) An apportionable vehicle that is a power unit shall (a) have two axles and a gross vehicle weight or registered gross vehicle weight in excess of twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms, (b) have three or more axles, regardless of weight, or (c) be used in combination when the weight of such combination exceeds twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms gross vehicle weight. Vehicles or combinations of vehicles having a gross vehicle weight of twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms or less and two-axle vehicles and buses used in the transportation of chartered parties may be proportionally registered at the option of the registrant.

**Source:** Laws 2005, LB 274, § 8; Laws 2007, LB286, § 22.

**60-309 Assembled vehicle, defined.**

Assembled vehicle means a motor vehicle or trailer that is materially altered from its construction by the removal, addition, or substitution of new or used major component parts. Its make shall be assembled, and its model year shall be the year in which the motor vehicle or trailer was assembled. Assembled vehicle also includes a specially constructed vehicle.

**Source:** Laws 2005, LB 274, § 9.

**60-310 Automobile liability policy, defined.**

Automobile liability policy means liability insurance written by an insurance carrier duly authorized to do business in this state protecting other persons from damages for liability on account of accidents occurring subsequent to the effective date of the insurance arising out of the ownership of a motor vehicle (1) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (2) subject to the limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (3) in the amount of twenty-five thousand dollars because of injury to or destruction of property of other persons in any one accident. An automobile liability policy shall not exclude liability coverage under the policy solely because the injured person making a claim is the named insured in the policy or residing in the household with the named insured.

**Source:** Laws 2005, LB 274, § 10.

**60-311 Base jurisdiction, defined.**

Base jurisdiction means, for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where miles or kilometers are accrued by the fleet, and where operational records of such fleet are maintained or can be made available.

**Source:** Laws 2005, LB 274, § 11; Laws 2006, LB 853, § 1; Laws 2007, LB239, § 1; Laws 2008, LB756, § 7.

**60-312 Boat dealer, defined.**

Boat dealer means a person engaged in the business of buying, selling, or exchanging boats at retail who has a principal place of business for such purposes in this state.

**Source:** Laws 2005, LB 274, § 12.

**60-313 Bus, defined.**

Bus means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

**Source:** Laws 2005, LB 274, § 13.

**60-314 Cabin trailer, defined.**

Cabin trailer means any trailer designed for living quarters and for being towed by a motor vehicle and not exceeding one hundred two inches in width, forty feet in length, or thirteen and one-half feet in height, except as provided in subdivision (2)(k) of section 60-6,288.

**Source:** Laws 2005, LB 274, § 14.

**60-315 Collector, defined.**

Collector means the owner of one or more historical vehicles who collects, purchases, acquires, trades, or disposes of such historical vehicles or parts thereof for his or her own use in order to preserve, restore, and maintain a historical vehicle or vehicles for hobby purposes.

**Source:** Laws 2005, LB 274, § 15.

**60-316 Commercial motor vehicle, defined.**

Commercial motor vehicle means any motor vehicle used or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property and does not include farm trucks.

**Source:** Laws 2005, LB 274, § 16.

**60-317 Commercial trailer, defined.**

Commercial trailer means any trailer or semitrailer which has a gross weight, including load thereon, of more than nine thousand pounds and which is designed, used, or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property. Commercial trailer does not include cabin trailers, farm trailers, fertilizer trailers, or utility trailers.

**Source:** Laws 2005, LB 274, § 17.

**60-318 Current model year vehicle, defined.**

Current model year vehicle means a motor vehicle or trailer for which the model year as designated by the manufacturer corresponds to the calendar year.

**Source:** Laws 2005, LB 274, § 18.

**60-319 Department, defined.**

Department means the Department of Motor Vehicles.

**Source:** Laws 2005, LB 274, § 19.

**60-320 Designated county official, defined.**

Until the implementation date designated under section 23-186 by the director, designated county official means the county official, other than the county treasurer, designated by a county board to provide services pursuant to section 23-186. On and after the implementation date designated under section 23-186 by the director, designated county official means the county treasurer.

**Source:** Laws 2005, LB 274, § 20; Laws 2009, LB49, § 8.

**60-321 Director, defined.**

Director means the Director of Motor Vehicles.

**Source:** Laws 2005, LB 274, § 21.

**60-322 Electric personal assistive mobility device, defined.**

Electric personal assistive mobility device means a self-balancing, two-non-tandem-wheeled device, designed to transport only one person and containing an electric propulsion system with an average power of seven hundred fifty watts or one horsepower, whose maximum speed on a paved level surface, when powered solely by such a propulsion system and while being ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour.

**Source:** Laws 2005, LB 274, § 22.

**60-323 Evidence of insurance, defined.**

Evidence of insurance means evidence of a current and effective automobile liability policy.

**Source:** Laws 2005, LB 274, § 23.

**60-324 Farm trailer, defined.**

Farm trailer means a trailer or semitrailer belonging to a farmer or rancher and used wholly and exclusively to carry supplies to or from the owner's farm or ranch, used by a farmer or rancher to carry his or her own agricultural products to or from storage or market, or used by a farmer or rancher for hauling of supplies or agricultural products in exchange of services. Farm trailer does not include a trailer so used when attached to a farm tractor.

**Source:** Laws 2005, LB 274, § 24; Laws 2007, LB286, § 23.

**60-325 Farm truck, defined.**

Farm truck means a truck or sport utility vehicle, including any combination of a truck, truck-tractor, or sport utility vehicle, and a trailer or semitrailer, of a farmer or rancher (1) used exclusively to carry a farmer's or rancher's own supplies, farm equipment, and household goods to or from the owner's farm or ranch, (2) used by the farmer or rancher to carry his or her own agricultural products to or from storage or market, (3) used by a farmer or rancher in exchange of services in such hauling of supplies or agricultural products, or (4)

used occasionally to carry camper units, to tow boats or cabin trailers, or to carry or tow museum pieces or historical vehicles, without compensation, to events for public display or educational purposes.

**Source:** Laws 2005, LB 274, § 25; Laws 2007, LB286, § 24.

**60-326 Fertilizer trailer, defined.**

Fertilizer trailer means any trailer, including gooseneck applicators or trailers, designed and used exclusively to carry or apply agricultural fertilizer or agricultural chemicals and having a gross weight, including load thereon, of twenty thousand pounds or less.

**Source:** Laws 2005, LB 274, § 26.

**60-327 Film vehicle, defined.**

Film vehicle means any motor vehicle or trailer used exclusively by a nonresident production company temporarily on location in Nebraska producing a feature film, television commercial, documentary, or industrial or educational videotape production.

**Source:** Laws 2005, LB 274, § 27.

**60-328 Finance company, defined.**

Finance company means any person engaged in the business of financing sales of motor vehicles, motorcycles, or trailers, or purchasing or acquiring promissory notes, secured instruments, or other documents by which the motor vehicles, motorcycles, or trailers are pledged as security for payment of obligations arising from such sales and who may find it necessary to engage in the activity of repossession and the sale of the motor vehicles, motorcycles, or trailers so pledged.

**Source:** Laws 2005, LB 274, § 28.

**60-329 Fleet, defined.**

Fleet means one or more apportionable vehicles.

**Source:** Laws 2005, LB 274, § 29.

**60-330 Gross vehicle weight, defined.**

Gross vehicle weight means the sum of the empty weights of a truck or truck-tractor and the empty weights of any trailer, semitrailer, or combination thereof with which the truck or truck-tractor 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.

**Source:** Laws 2005, LB 274, § 30.

**60-331 Gross vehicle weight rating, defined.**

Gross vehicle weight rating means the value specified by the manufacturer as the loaded weight of a single motor vehicle or trailer.

**Source:** Laws 2005, LB 274, § 31.

**60-332 Highway, defined.**

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.

**Source:** Laws 2005, LB 274, § 32.

**60-333 Historical vehicle, defined.**

Historical vehicle means a motor vehicle or trailer which is thirty or more years old, which is essentially unaltered from the original manufacturer's specifications, and which is, because of its significance, being collected, preserved, restored, or maintained by a collector as a leisure pursuit.

**Source:** Laws 2005, LB 274, § 33; Laws 2006, LB 663, § 22; Laws 2007, LB286, § 25.

**60-334 Injurisdiction distance, defined.**

Injurisdiction distance means total miles or kilometers operated (1) in the State of Nebraska during the preceding year by the motor vehicle or vehicles registered and licensed for fleet operation and (2) in noncontracting reciprocity jurisdictions by fleet vehicles that are base-plated in Nebraska.

**Source:** Laws 2005, LB 274, § 34.

**60-334.01 International Registration Plan, defined.**

International Registration Plan means the International Registration Plan adopted by International Registration Plan, Inc.

**Source:** Laws 2008, LB756, § 8.

**60-335 Kit vehicle, defined.**

Kit vehicle means a motor vehicle or trailer assembled by a person other than a generally recognized manufacturer of motor vehicles or trailers by the use of a replica purchased from an authorized manufacturer and accompanied by a manufacturer's statement of origin. Kit vehicle does not include glider kits.

**Source:** Laws 2005, LB 274, § 35.

**60-336 Local truck, defined.**

Local truck means a truck and combinations of trucks, truck-tractors, or trailers operated solely within an incorporated city or village or within ten miles of the corporate limits of the city or village in which they are owned, operated, and registered.

**Source:** Laws 2005, LB 274, § 36.

**60-336.01 Low-speed vehicle, defined.**

Low-speed vehicle means a vehicle that (1) cannot travel more than twenty-five miles per hour on a paved, level surface, (2) complies with 49 C.F.R. part 571, as such part existed on January 1, 2007, or (3) is designated by the manufacturer as an off-road or low-speed vehicle.

**Source:** Laws 2007, LB286, § 26.

**60-337 Minibike, defined.**

Minibike means a two-wheel motor vehicle which has a total wheel and tire diameter of less than fourteen inches or an engine-rated capacity of less than forty-five cubic centimeters displacement or any other two-wheel motor vehicle primarily designed by the manufacturer for off-road use only. Minibike shall not include an electric personal assistive mobility device.

**Source:** Laws 2005, LB 274, § 37.

**60-337.01 Minitruck, defined.**

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

**Source:** Laws 2010, LB650, § 22.

**60-338 Moped, defined.**

Moped means a bicycle with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than thirty miles per hour on level ground.

**Source:** Laws 2005, LB 274, § 38.

**60-339 Motor vehicle, defined.**

Motor vehicle means any vehicle propelled by any power other than muscular power. Motor vehicle does not include (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, utility-type vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, (9) electric personal assistive mobility devices, and (10) low-speed vehicles.

**Source:** Laws 2005, LB 274, § 39; Laws 2007, LB286, § 27; Laws 2010, LB650, § 23.

Licensed automobile dealer is required to note mortgage lien on certificate of title. *Bank of Keystone v. Kayton*, 155 Neb. 79, 50 N.W.2d 511 (1951).

Legislative definition of motor vehicle for purposes of classification for licensing or taxing does not change the common

meaning of words with relation to other matters. *Moffitt v. State Automobile Ins. Assn.*, 140 Neb. 578, 300 N.W. 837 (1941), vacating on rehearing, 139 Neb. 512, 297 N.W. 918 (1941).

Failure of supposed owner to register automobile as required by law is suspicious circumstance, putting purchaser on inquiry. *Wallich v. Sandlovich*, 111 Neb. 318, 196 N.W. 317 (1923).

#### **60-340 Motorcycle, defined.**

Motorcycle means any motor vehicle having a seat or saddle for use of the operator and designed to travel on not more than three wheels in contact with the ground.

**Source:** Laws 2005, LB 274, § 40.

#### **60-341 Noncontracting reciprocity jurisdiction, defined.**

Noncontracting reciprocity jurisdiction means any jurisdiction which is not a party to any type of contracting agreement between the State of Nebraska and one or more other jurisdictions for registration purposes on commercial motor vehicles or trailers and, as a condition to operate on the highways of that jurisdiction, (1) does not require any type of motor vehicle or trailer registration or allocation of motor vehicles or trailers for registration purposes or (2) does not impose any charges based on miles operated, other than those that might be assessed against fuel consumed in that jurisdiction, on any motor vehicles or trailers which are part of a Nebraska-based fleet.

**Source:** Laws 2005, LB 274, § 41.

#### **60-342 Owner, defined.**

Owner means a person, firm, or corporation which holds a legal title of a motor vehicle or trailer. If (1) a motor vehicle or trailer is the subject of an agreement for the conditional sale 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, (2) a motor vehicle or trailer is subject to a lease of thirty days or more with an immediate right of possession vested in the lessee, or (3) a mortgagor of a motor vehicle or trailer is entitled to possession, then such conditional vendee, lessee, or mortgagor shall be deemed the owner for purposes of the Motor Vehicle Registration Act.

**Source:** Laws 2005, LB 274, § 42; Laws 2006, LB 853, § 2; Laws 2007, LB239, § 2; Laws 2008, LB756, § 9.

#### **60-343 Park, defined.**

Park means to stop a motor vehicle or trailer for any length of time, whether occupied or unoccupied.

**Source:** Laws 2005, LB 274, § 43.

#### **60-344 Parts vehicle, defined.**

Parts vehicle means a motor vehicle or trailer generally in nonoperable condition which is owned by a collector to furnish parts that are usually not obtainable from normal sources, thus enabling a collector to preserve, restore, and maintain a historical vehicle.

**Source:** Laws 2005, LB 274, § 44.

#### **60-345 Passenger car, defined.**

Passenger car means a motor vehicle designed and used to carry ten passengers or less and not used for hire. Passenger car may include a sport utility vehicle.

**Source:** Laws 2005, LB 274, § 45; Laws 2007, LB286, § 28.

**60-346 Proof of financial responsibility, defined.**

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, (1) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (2) subject to 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 (3) in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.

**Source:** Laws 2005, LB 274, § 46.

**60-347 Recreational vehicle, defined.**

Recreational vehicle means a motor vehicle designed for living quarters.

**Source:** Laws 2005, LB 274, § 47.

**60-348 Semitrailer, defined.**

Semitrailer means any trailer so constructed that some part of its weight and that of its load rests upon or is carried by the towing vehicle.

**Source:** Laws 2005, LB 274, § 48.

**60-349 Situs, defined.**

Situs means the tax district where the motor vehicle or trailer is stored and kept for the greater portion of the calendar year. For a motor vehicle or trailer used or owned by a student, the situs is at the place of residence of the student if different from the place at which he or she is attending school.

**Source:** Laws 2005, LB 274, § 49.

**60-350 Snowmobile, defined.**

Snowmobile means a self-propelled vehicle designed to travel on snow or ice or a natural terrain steered by wheels, skis, or runners and propelled by a belt-driven track with or without steel cleats.

**Source:** Laws 2005, LB 274, § 50.

**60-351 Specially constructed vehicle, defined.**

Specially constructed vehicle means a motor vehicle or trailer which was not originally constructed under a distinctive name, make, model, or type by a manufacturer of motor vehicles or trailers. Specially constructed vehicle includes kit vehicle.

**Source:** Laws 2005, LB 274, § 51.

**60-351.01 Sport utility vehicle, defined.**

Sport utility vehicle means a high-performance motor vehicle weighing six thousand pounds or less designed to carry ten passengers or less or designated as a sport utility vehicle by the manufacturer.

**Source:** Laws 2007, LB286, § 29.

**60-352 Suspension of operator's license, defined.**

Suspension of operator's license means the temporary withdrawal by formal action of the department of a person's motor vehicle operator's license for a period specifically designated by the department, if any, and until compliance with all conditions for reinstatement.

**Source:** Laws 2005, LB 274, § 52.

**60-353 Total fleet distance, defined.**

Total fleet distance means the distance traveled by a fleet in all jurisdictions during the preceding year.

**Source:** Laws 2005, LB 274, § 53.

**60-354 Trailer, defined.**

Trailer means any device without motive power designed for carrying persons or property and being towed by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

**Source:** Laws 2005, LB 274, § 54.

Trailer and truck-tractor are defined by this section. Ashton v. State, 173 Neb. 78, 112 N.W.2d 540 (1961).

**60-355 Transporter, defined.**

Transporter means any person lawfully engaged in the business of transporting motor vehicles or trailers not his or her own solely for delivery thereof (1) by driving singly, (2) by driving in combinations by the towbar, fullmount, or saddlemount method or any combination thereof, or (3) when a truck or truck-tractor tows a trailer.

**Source:** Laws 2005, LB 274, § 55; Laws 2007, LB286, § 30.

**60-356 Truck, defined.**

Truck means a motor vehicle that is designed, used, or maintained primarily for the transportation of property or designated as a truck by the manufacturer.

**Source:** Laws 2005, LB 274, § 56; Laws 2007, LB286, § 31.

Section 39-6,193, imposing vicarious liability on owners-lessees of trucks for damages by lessees and operators of the leased trucks, is constitutional. Bridgeford v. U-Haul Co., 195 Neb. 308, 238 N.W.2d 443 (1976).

Statute deals only with regulation of motor vehicles upon the highway and definition of word truck therein does not become

part of insurance contract. Paltani v. Sentinel Life Ins. Co., 121 Neb. 447, 237 N.W. 392 (1931).

In replevin for motor truck under chattel mortgage, describing it by wrong serial number, question whether description in mortgage, together with other circumstances, was sufficient to identify truck, was for jury. State Bank of Omaha v. Murphy, 110 Neb. 526, 194 N.W. 442 (1923).

**60-357 Truck-tractor, defined.**

Truck-tractor means any motor vehicle designed and used primarily for towing other motor vehicles or trailers and not so constructed as to carry a load other than a part of the weight of the motor vehicle or trailer and load being towed.

**Source:** Laws 2005, LB 274, § 57.

Trailer and truck-tractor are defined by this section. Ashton v. State, 173 Neb. 78, 112 N.W.2d 540 (1961).

**60-358 Utility trailer, defined.**

Utility trailer means a trailer having a gross weight, including load thereon, of nine thousand pounds or less.

**Source:** Laws 2005, LB 274, § 58.

**60-358.01 Utility-type vehicle, defined.**

(1) Utility-type vehicle means any motorized off-highway vehicle which (a) is not less than forty-eight inches nor more than seventy-four inches in width, (b) is not more than one hundred thirty-five inches, including the bumper, in length, (c) has a dry weight of not less than nine hundred pounds nor more than two thousand pounds, (d) travels on four or more low-pressure tires, and (e) is equipped with a steering wheel and bench or bucket-type seating designed for at least two people to sit side-by-side.

(2) Utility-type vehicle does not include golf carts or low-speed vehicles.

**Source:** Laws 2010, LB650, § 24.

**60-359 Well-boring apparatus, defined.**

Well-boring apparatus means trucks, truck-tractors, or combinations of trucks or truck-tractors and trailers which are not for hire and are used exclusively to travel to and from the well site including (1) the well rig truck, (2) the boom truck, (3) the water tank truck, and (4) such other devices as are used exclusively for transporting well-boring apparatus to and from the well site including the drill stem, casing, drilling mud, pumps and related equipment, and well-site excavating machinery or equipment.

**Source:** Laws 2005, LB 274, § 59.

**60-360 Well-servicing equipment, defined.**

Well-servicing equipment means equipment used for the (1) care and replacement of down-hole production equipment and (2) restimulation of a well.

**Source:** Laws 2005, LB 274, § 60.

**60-361 Department; powers.**

The department may administer and enforce the International Registration Plan Act and the Motor Vehicle Registration Act.

**Source:** Laws 2005, LB 274, § 61.

**Cross References**

**International Registration Plan Act**, see section 60-3,192.

**60-362 Registration required; presumption.**

Unless otherwise expressly provided, no motor vehicle shall be operated or parked and no trailer shall be towed or parked on the highways of this state unless the motor vehicle or trailer is registered in accordance with the Motor Vehicle Registration Act. There shall be a rebuttable presumption that any motor vehicle or trailer stored and kept more than thirty days in the state is being operated, parked, or towed on the highways of this state, and such motor

vehicle or trailer shall be registered in accordance with the act, from the date of title of the motor vehicle or trailer or, if no transfer in ownership of the motor vehicle or trailer has occurred, from the expiration of the last registration period for which the motor vehicle or trailer was registered. No motor vehicle or trailer shall be eligible for initial registration in this state, except a motor vehicle or trailer registered or eligible to be registered as part of a fleet of apportionable vehicles under section 60-3,198, unless the Motor Vehicle Certificate of Title Act has been complied with insofar as the motor vehicle or trailer is concerned.

**Source:** Laws 2005, LB 274, § 62; Laws 2006, LB 765, § 5.

#### Cross References

**Motor Vehicle Certificate of Title Act**, see section 60-101.

Exceptions are made as to requirement of registration. Bank United States Constitution. Peterson v. Department of Public Works, 120 Neb. 517, 234 N.W. 95 (1931).  
Keystone v. Kayton, 155 Neb. 79, 50 N.W.2d 511 (1951).

This section requiring owners of motor vehicles to obtain certificates of registration does not violate commerce clause of

### 60-363 Registration certificate; duty to carry, exception.

No person shall operate or park a motor vehicle or tow or park a trailer on the highways unless such motor vehicle or trailer at all times carries in or upon it, subject to inspection by any peace officer, the registration certificate issued for it, except fertilizer trailers as defined in section 60-326. The registration certificate for a fertilizer trailer shall be kept at the principal place of business of the owner of the fertilizer trailer. In the case of a motorcycle, the registration certificate shall be carried either in plain sight, affixed to the motorcycle, or in the tool bag or some convenient receptacle attached to the motorcycle.

**Source:** Laws 2005, LB 274, § 63; Laws 2010, LB725, § 1.

That person injured was driving unlicensed automobile was v. Western Bridge & Const. Co., 116 Neb. 553, 218 N.W. 397  
no defense to action for highway contractor's negligence. Pratt (1928).

### 60-364 Transfer of vehicle; effect on registration.

Upon the transfer of ownership of any motor vehicle or trailer, its registration shall expire.

**Source:** Laws 2005, LB 274, § 64.

Transfer of ownership must be made under Certificate of Title Act. State Farm Mutual Auto Ins. Co. v. Drawbaugh, 159 Neb. 149, 65 N.W.2d 542 (1954).

Even though purchaser receives a formal bill of sale to a motor vehicle conveying absolute title, as between the parties, a subsequently executed conditional sale contract signed by the purchaser creates a valid obligation. American Loan Plan v. Frazell, 135 Neb. 718, 283 N.W. 836 (1939).

Title to automobile can be transferred between living persons only by compliance with statute. In re Estate of Nielsen, 135 Neb. 110, 280 N.W. 246 (1938).

Substantial compliance with sections relating to transfer of ownership of automobile is required to convey title between living persons. Mackechnie v. Lyders, 134 Neb. 682, 279 N.W. 328 (1938).

This section does not provide exclusive method of transferring ownership of motor vehicle as it may be transferred by operation of law. Slagle v. Securities Investment Corp., 131 Neb. 319, 268 N.W. 294 (1936).

Title to automobile can only be transferred between living persons by compliance with statute. In re Estate of Wroth, 125 Neb. 832, 252 N.W. 322 (1934).

Failure of supposed owner to comply with requirements as to transfer of automobile, or to register the same, is a suspicious circumstance, sufficient to put purchaser upon inquiry. Wallich v. Sandlovich, 111 Neb. 318, 196 N.W. 317 (1923).

Whether description of motor truck in chattel mortgage, together with other inquiries suggested by contract itself is sufficient to enable third parties to identify truck, is a question for jury. State Bank of Omaha v. Murphy, 110 Neb. 526, 194 N.W. 442 (1923).

### 60-365 Operation of vehicle without registration; limitation; proof of ownership.

Any person purchasing a motor vehicle or trailer in this state other than from a licensed dealer in motor vehicles or trailers shall not operate or tow such

motor vehicle or trailer in this state without registration except as provided in this section. Such purchaser may operate or tow such motor vehicle or trailer without registration for a period not to exceed thirty days. Upon demand of proper authorities, there shall be presented by the person in charge of such motor vehicle or trailer, for examination, a certificate showing the date of transfer or the certificate of title to such motor vehicle or trailer with assignment thereof duly executed. When such motor vehicle or trailer is purchased from a nonresident, the person in charge of such motor vehicle or trailer shall present upon demand proper evidence of ownership from the state where such motor vehicle or trailer was purchased.

**Source:** Laws 2005, LB 274, § 65; Laws 2008, LB756, § 11.

Pursuant to this section, one can lawfully operate an unregistered motor vehicle for 30 days without display of license plates or in-transit tags after purchasing the vehicle from a nonlicensed seller, provided one can produce the proper documentation upon demand. *State v. Bowers*, 250 Neb. 151, 548 N.W.2d 725 (1996).

**60-366 Nonresident owner; registration; when; reciprocity.**

(1) Any nonresident owner who desires to register a motor vehicle or trailer in this state shall register in the county where the motor vehicle or trailer is domiciled or where the owner conducts a bona fide business.

(2) A nonresident owner, except as provided in subsection (3) of this section, owning any motor vehicle or trailer which has been properly registered in the state, country, or other place of which the owner is a resident, and which at all times, when operated or towed in this state, has displayed upon it the license plate or plates issued for such motor vehicle or trailer in the place of residence of such owner, may operate or permit the operation or tow or permit the towing of such motor vehicle or trailer within the state without registering such motor vehicle or trailer or paying any fees to this state.

(3) Any nonresident owner gainfully employed or present in this state, operating a motor vehicle or towing a trailer in this state, shall register such motor vehicle or trailer in the same manner as a Nebraska resident, after thirty days of continuous employment or presence in this state, unless the state of his or her legal residence grants immunity from such requirements to residents of this state operating a motor vehicle or towing a trailer in that state. Any nonresident owner who operates a motor vehicle or tows a trailer in this state for thirty or more continuous days shall register such motor vehicle or trailer in the same manner as a Nebraska resident unless the state of his or her legal residence grants immunity from such requirements to residents of this state operating a motor vehicle or towing a trailer in that state.

**Source:** Laws 2005, LB 274, § 66.

Right of nonresident owner of motor vehicle to operate under license issued by another state is recognized. *Universal C.I.T. Credit Corp. v. Vogt*, 165 Neb. 611, 86 N.W.2d 771 (1957).

**60-367 Nonresident; applicability of act.**

The provisions of the Motor Vehicle Registration Act relative to registration and display of registration numbers do not apply to a motor vehicle or trailer owned by a nonresident of this state, other than a foreign corporation doing business in this state, if the owner thereof has complied with the provisions of the law of the foreign country, state, territory, or federal district of his or her residence relative to registration of motor vehicles or trailers and the display of

registration numbers thereon and conspicuously displays his or her registration numbers as required thereby.

**Source:** Laws 2005, LB 274, § 67.

**60-368 Nonresident; nonresident licensed vehicles hauling grain or seasonally harvested products; reciprocity.**

Sections 60-367 and 60-3,112 shall be operative as to motor vehicles or trailers owned by a nonresident of this state only to the extent that under the laws of the foreign country, state, territory, or federal district of his or her residence, like exemptions and privileges are guaranteed to motor vehicles or trailers duly registered under the laws of and owned by residents of this state or to a motor vehicle or trailer duly licensed in the state of residence and operated by a nonresident agricultural worker, certified by the Department of Labor, as engaged in temporary agricultural employment in this state, for a period of not to exceed sixty days.

**Source:** Laws 2005, LB 274, § 68.

**60-369 Operation of vehicle without registration; purchase from state or political subdivision; proof of ownership.**

Any purchaser of a motor vehicle or trailer from the State of Nebraska or any political subdivision of the state may operate such motor vehicle or tow such trailer without registration for a period of thirty days. Upon demand of proper authority, satisfactory proof of ownership, which shall be either the certificate of title to such motor vehicle or trailer with assignment thereof duly executed or a bill of sale which describes such motor vehicle or trailer with identification number, shall be presented by the person in charge of such motor vehicle or trailer for examination.

**Source:** Laws 2005, LB 274, § 69.

Pursuant to this section, one can lawfully operate an unregistered motor vehicle for 30 days without display of license plates or in-transit tags after purchasing the vehicle from a nonlicensed seller, provided one can produce the proper documentation upon demand. *State v. Bowers*, 250 Neb. 151, 548 N.W.2d 725 (1996).

**60-370 County number system; alphanumeric system.**

(1)(a) Each county in the state shall use the county number system except as otherwise provided in this section.

(b) Registration of motor vehicles or trailers as farm trucks or farm trailers shall be by the county number system.

(2) Counties using the county number system shall show on motor vehicles or trailers licensed therein a county number on the license plate preceding a dash which shall then be followed by the registration number assigned to the motor vehicle or trailer. The county numbers assigned to the counties in Nebraska shall be as follows:

No.	Name of County	No.	Name of County
1	Douglas	2	Lancaster
3	Gage	4	Custer
5	Dodge	6	Saunders
7	Madison	8	Hall
9	Buffalo	10	Platte
11	Otoe	12	Knox

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13	Cedar	14	Adams
15	Lincoln	16	Seward
17	York	18	Dawson
19	Richardson	20	Cass
21	Scotts Bluff	22	Saline
23	Boone	24	Cuming
25	Butler	26	Antelope
27	Wayne	28	Hamilton
29	Washington	30	Clay
31	Burt	32	Thayer
33	Jefferson	34	Fillmore
35	Dixon	36	Holt
37	Phelps	38	Furnas
39	Cheyenne	40	Pierce
41	Polk	42	Nuckolls
43	Colfax	44	Nemaha
45	Webster	46	Merrick
47	Valley	48	Red Willow
49	Howard	50	Franklin
51	Harlan	52	Kearney
53	Stanton	54	Pawnee
55	Thurston	56	Sherman
57	Johnson	58	Nance
59	Sarpy	60	Frontier
61	Sheridan	62	Greeley
63	Boyd	64	Morrill
65	Box Butte	66	Cherry
67	Hitchcock	68	Keith
69	Dawes	70	Dakota
71	Kimball	72	Chase
73	Gosper	74	Perkins
75	Brown	76	Dundy
77	Garden	78	Deuel
79	Hayes	80	Sioux
81	Rock	82	Keya Paha
83	Garfield	84	Wheeler
85	Banner	86	Blaine
87	Logan	88	Loup
89	Thomas	90	McPherson
91	Arthur	92	Grant
93	Hooker		

(3)(a) Except as provided in subdivision (1)(b) of this section, registration of motor vehicles or trailers in counties having a population of one hundred thousand inhabitants or more according to the most recent federal decennial census shall be by an alphanumeric system rather than by the county number system.

(b) Except as provided in subdivision (1)(b) of this section, registration of motor vehicles or trailers in all other counties shall be, at the option of each county board, by either the alphanumeric system or the county number system.

(c) Counties using the alphanumeric system shall show on the license plates of motor vehicles or trailers licensed therein a combination of three letters followed by a combination of three numerals. The department may adopt and promulgate rules and regulations creating alphanumeric distinctions on the license plates based upon the registration of the motor vehicle or trailer.

**Source:** Laws 2005, LB 274, § 70.

**60-371 Exemption from civil liability.**

The county and the county treasurer or designated county official and his or her employees or agents shall be exempt from all civil liability when carrying out powers and duties delegated under the Motor Vehicle Registration Act.

**Source:** Laws 2005, LB 274, § 71.

**60-372 Vehicle titling and registration computer system; agent of county treasurer; appointment.**

(1) Each county shall issue and file registration certificates using the vehicle titling and registration computer system prescribed by the department.

(2) The county treasurer or designated county official may appoint an agent to issue registration certificates and to accept the payment of taxes and fees as provided in the Motor Vehicle Registration Act, upon approval of the county board. The agent shall furnish a bond in such amount and upon such conditions as determined by the county board.

**Source:** Laws 2005, LB 274, § 72.

**60-373 Operation of vehicle without registration; dealer; employee or agent; licensed manufacturer; conditions.**

(1) Each licensed motor vehicle dealer or trailer dealer as defined in sections 60-1401.26 and 60-1401.37, respectively, doing business in this state, in lieu of registering each motor vehicle or trailer which such dealer owns of a type otherwise required to be registered, or any full-time or part-time employee or agent of such dealer may, if the motor vehicle or trailer displays dealer number plates:

(a) Operate or tow the motor vehicle or trailer upon the highways of this state solely for purposes of transporting, testing, demonstrating, or use in the ordinary course and conduct of business as a motor vehicle or trailer dealer. Such use may include personal or private use by the dealer and personal or private use by any bona fide employee licensed pursuant to the Motor Vehicle Industry Regulation Act, if the employee can be verified by payroll records maintained at the dealership as ordinarily working more than thirty hours per week or fifteen hundred hours per year at the dealership;

(b) Operate or tow the motor vehicle or trailer upon the highways of this state for transporting industrial equipment held by the licensee for purposes of demonstration, sale, rental, or delivery; or

(c) Sell the motor vehicle or trailer.

(2) Each licensed manufacturer as defined in section 60-1401.24 which actually manufactures or assembles motor vehicles or trailers within this state, in lieu of registering each motor vehicle or trailer which such manufacturer owns of a type otherwise required to be registered, or any employee of such manufacturer may operate or tow the motor vehicle or trailer upon the highways of this state solely for purposes of transporting, testing, demonstrating to prospective customers, or use in the ordinary course and conduct of business as a motor vehicle or trailer manufacturer, upon the condition that any such motor vehicle or trailer display thereon, in the manner prescribed in section 60-3,100, dealer number plates as provided for in section 60-3,114.

(3) In no event shall such plates be used on motor vehicles or trailers hauling other than automotive or trailer equipment, complete motor vehicles, or trailers

which are inventory of such licensed dealer or manufacturer unless there is issued by the department a special permit specifying the hauling of other products. This section shall not be construed to allow a dealer to operate a motor vehicle or trailer with dealer number plates for the delivery of parts inventory. A dealer may use such motor vehicle or trailer to pick up parts to be used for the motor vehicle or trailer inventory of the dealer.

**Source:** Laws 2005, LB 274, § 73; Laws 2010, LB816, § 7.

**Cross References**

**Motor Vehicle Industry Regulation Act**, see section 60-1401.

Dealer need not apply for certificate of title for motor vehicle in stock or acquired for stock purposes. *State Farm Mutual Auto Ins. Co. v. Drawbaugh*, 159 Neb. 149, 65 N.W.2d 542 (1954).

Licensed automobile dealer is not required to obtain a new certificate of title in his name. *Bank of Keystone v. Kayton*, 155 Neb. 79, 50 N.W.2d 511 (1951).

**60-374 Operation of vehicle without registration; prospective buyer; conditions; special permit; fee.**

Motor vehicles or trailers owned by a dealer and bearing dealer number plates may be operated or towed upon the highways for demonstration purposes by any prospective buyer thereof for a period of forty-eight hours. Motor vehicles or trailers owned and held for sale by a dealer and bearing such dealer number plates may be operated or towed upon the highways for a period of forty-eight hours as service loaner vehicles by customers having their vehicles repaired by the dealer. Upon delivery of such motor vehicle or trailer to such prospective buyer for demonstration purposes or to a service customer, the dealer shall deliver to the prospective buyer or service customer a card or certificate giving the name and address of the dealer, the name and address of the prospective buyer or service customer, and the date and hour of such delivery and the products to be hauled, if any, under a special permit. The special permit and card or certificate shall be in such form as shall be prescribed by the department and shall be carried by such prospective buyer or service customer while operating such motor vehicle or towing such trailer. The department shall charge ten dollars for each special permit issued under this section.

**Source:** Laws 2005, LB 274, § 74.

**60-375 Operation of vehicle without registration; finance company; repossession plates; fee.**

(1) A finance company which is licensed to do business in this state may, in lieu of registering each motor vehicle or trailer repossessed, upon the payment of a fee of ten dollars, make an application to the department for a repossession registration certificate and one repossession license plate. Additional pairs of repossession certificates and repossession license plates may be procured for a fee of ten dollars each. Repossession license plates may be used only for operating or towing motor vehicles or trailers on the highways for the purpose of repossession, demonstration, and disposal of such motor vehicles or trailers. The repossession certificate shall be displayed on demand for any motor vehicle or trailer which has a repossession license plate. A finance company shall be entitled to a dealer license plate only in the event such company is licensed as a motor vehicle dealer or trailer dealer under the Motor Vehicle Industry Regulation Act.

(2) Repossession license plates shall be prefixed with a large letter R and be serially numbered from 1 to distinguish them from each other. Such license plates shall be displayed only on the rear of a repossessed motor vehicle or trailer.

**Source:** Laws 2005, LB 274, § 75; Laws 2010, LB816, § 8.

**Cross References**

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-376 Operation of vehicle without registration; In Transit sticker; records required; proof of ownership.**

Subject to all the provisions of law relating to motor vehicles and trailers not inconsistent with this section, any motor vehicle dealer or trailer dealer who is regularly engaged within this state in the business of buying and selling motor vehicles and trailers, who regularly maintains within this state an established place of business, and who desires to effect delivery of any motor vehicle or trailer bought or sold by him or her from the point where purchased or sold to points within or outside this state may, solely for the purpose of such delivery by himself or herself, his or her agent, or a bona fide purchaser, operate such motor vehicle or tow such trailer on the highways of this state without charge or registration of such motor vehicle or trailer. A sticker shall be displayed on the front and rear windows or the rear side windows of such motor vehicle, except a motorcycle, and displayed on the front and rear of each such trailer. On the sticker shall be plainly printed in black letters the words In Transit. One In Transit sticker shall be displayed on a motorcycle, which sticker may be one-half the size required for other motor vehicles. Such stickers shall include a registration number, which registration number shall be different for each sticker or pair of stickers issued, and the contents of such sticker and the numbering system shall be as prescribed by the department. Each dealer issuing such stickers shall keep a record of the registration number of each sticker or pair of stickers on the invoice of such sale. Such sticker shall allow such owner to operate the motor vehicle or tow such trailer for a period of thirty days in order to effect proper registration of the new or used motor vehicle or trailer. When any person, firm, or corporation has had a motor vehicle or trailer previously registered and license plates assigned to such person, firm, or corporation, such owner may operate the motor vehicle or tow such trailer for a period of thirty days in order to effect transfer of plates to the new or used motor vehicle or trailer. Upon demand of proper authorities, there shall be presented by the person in charge of such motor vehicle or trailer, for examination, a duly executed bill of sale therefor or other satisfactory evidence of the right of possession by such person of such motor vehicle or trailer.

**Source:** Laws 2005, LB 274, § 76; Laws 2008, LB756, § 12.

A vehicle may be operated for 15 days without being registered pursuant to section 60-302, provided that it properly displays "In Transit" decals. *State v. Childs*, 242 Neb. 426, 495 N.W.2d 475 (1993).

This section provides for in-transit tags to be issued by a licensed dealer; it does not allow private sellers to issue in-transit tags. Thus, such handwritten tags are not entitled to the presumption of compliance that we have afforded dealer-issued tags. The law enforcement officer has reasonable suspicion to

stop a motor vehicle when he or she sees such vehicle being operated on the public streets without license plates and without dealer-issued in-transit tags. Upon demand, the driver of such vehicle must show documents proving compliance with motor vehicle registration laws. *State v. Kling*, 8 Neb. App. 631, 599 N.W.2d 240 (1999).

"Display" of in-transit decals as described in this section logically implies a display of the decal which is visible. *State v. Reiter*, 3 Neb. App. 153, 524 N.W.2d 575 (1994).

**60-377 Business of equipping, modifying, repairing, or detailing; registration and plates; fee.**

Any person, firm, or corporation in this state engaged in the business of equipping, modifying, repairing, or detailing motor vehicles or trailers which are not registered and which are not owned by such person, firm, or corporation shall make an application to the department for a registration certificate and one license plate. Such application shall be accompanied by a fee of thirty dollars. Additional pairs of certificates and license plates may be procured for a fee of thirty dollars each. Such license plates shall be designed by the department and shall bear a mark and be serially numbered so as to be distinguished from each other. Such license plates may be used solely for the purpose of equipping, modifying, repairing, detailing, and delivering such motor vehicles or trailers. Upon demand of proper authorities, the operator of such motor vehicle shall present a written statement from the owner authorizing operation of such motor vehicle or towing such trailer.

**Source:** Laws 2005, LB 274, § 77.

**60-378 Transporter plates; fee; records.**

(1) Any transporter doing business in this state may, in lieu of registering each motor vehicle or trailer which such transporter is transporting, upon payment of a fee of ten dollars, apply to the department for a transporter's certificate and one transporter license plate. Additional pairs of transporter certificates and transporter license plates may be procured for a fee of ten dollars each. Transporter license plates shall be displayed (a) upon the motor vehicle or trailer being transported or (b) upon a properly registered truck or truck-tractor which is a work or service vehicle in the process of towing a trailer which is itself being delivered by the transporter, and such registered truck or truck-tractor shall also display a transporter plate upon the front thereof. The applicant for a transporter plate shall keep for six years a record of each motor vehicle or trailer transported by him or her under this section, and such record shall be available to the department for inspection. Each applicant shall file with the department proof of his or her status as a bona fide transporter.

(2) Transporter license plates may be the same size as license plates issued for motorcycles, shall bear thereon a mark to distinguish them as transporter plates, and shall be serially numbered so as to distinguish them from each other. Such license plates may only be displayed upon the front of a driven motor vehicle of a lawful combination or upon the front of a motor vehicle driven singly or upon the rear of a trailer being towed.

**Source:** Laws 2005, LB 274, § 78; Laws 2007, LB286, § 32.

**60-379 Boat dealer trailer plate; fee.**

Any boat dealer when transporting a boat which is part of the inventory of the boat dealer on a trailer required to be registered may annually, in lieu of registering the trailer and upon application to the department and payment of a fee of ten dollars, obtain a certificate and a license plate. The plate may be displayed on any trailer owned by the boat dealer when the trailer is transporting such a boat. The license plate shall be of a type designed by the department and so numbered as to distinguish one plate from another.

**Source:** Laws 2005, LB 274, § 79.

**60-380 Motor vehicle or trailer owned by dealer; presumption.**

Any motor vehicle or trailer owned by a dealer licensed under the Motor Vehicle Industry Regulation Act and bearing other than dealer license plates shall be conclusively presumed not to be a part of the dealer's inventory and not for demonstration or sale and therefor not eligible for any exemption from taxes or fees applicable to motor vehicles or trailers with dealer license plates.

**Source:** Laws 2005, LB 274, § 80; Laws 2010, LB816, § 9.

**Cross References**

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-381 Manufacturer or dealer; branch offices; separate registration; dealer's plates; use.**

Whenever a manufacturer or dealer licensed under the Motor Vehicle Industry Regulation Act maintains a branch or subagency, the manufacturer or dealer shall apply for a separate registration for such branch or subagency and shall pay therefor the fees provided in section 60-3,114 for the registration of motor vehicles or trailers owned by or under the control of the manufacturer or dealer, and the determination of the department upon the question whether any establishment constitutes a branch or subagency, within the intent of this section, shall be conclusive. No manufacturer, dealer, or employee of a manufacturer or dealer shall cause or permit the display or other use of any license plate or certificate of registration which has been issued to such manufacturer or dealer except upon motor vehicles or trailers owned by such manufacturer or dealer.

**Source:** Laws 2005, LB 274, § 81; Laws 2010, LB816, § 10.

**Cross References**

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-382 Nonresident owners; temporary permit; application; fee; certificate; contents.**

(1) Any person, not a resident of this state, who is the owner of a motor vehicle or trailer required to be registered in this state or any other state may, for the sole purpose of delivering, or having delivered, such motor vehicle or trailer, to his or her home or place of business in another state, apply for and obtain a thirty-day license plate which shall allow such person or his or her agent or employee to operate such motor vehicle or trailer upon the highways under conditions set forth in subsection (2) of this section, without obtaining a certificate of title to such motor vehicle in this state.

(2) Applications for such thirty-day license plate shall be made to the county treasurer or designated county official of the county where such motor vehicle or trailer was purchased or acquired. Upon receipt of such application and payment of the fee of five dollars, the county treasurer or designated county official shall issue to such applicant a thirty-day license plate, which shall be devised by the director, and evidenced by the official certificate of the county treasurer or designated county official, which certificate shall state the name of the owner and operator of the motor vehicle or trailer so licensed, the description of such motor vehicle or trailer, the place in Nebraska where such motor vehicle or trailer was purchased or otherwise acquired, the place where delivery is to be made, and the time, not to exceed thirty days from date of

purchase or acquisition of the motor vehicle or trailer, during which time such license plate shall be valid.

(3) Nonresident owner thirty-day license plates issued under this section shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100.

**Source:** Laws 2005, LB 274, § 82.

**60-383 Film vehicles; registration; fees.**

(1) A film vehicle, subject to approval by the Department of Economic Development, may be registered upon application to the Department of Motor Vehicles. The Department of Motor Vehicles may provide distinctive license plates for such film vehicles. Such license plates shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100.

(2) The registration for film vehicles shall be issued only with the payment of the fees required by section 60-3,102 and this section. The registration shall be valid for six months from the date of issuance and may be renewed for a period not to exceed three months upon payment of the renewal fee specified in this section.

(3) The six-month registration fee for a film vehicle shall be fifty dollars for a film vehicle with a gross vehicle weight of sixteen thousand pounds or less and one hundred fifty dollars for a film vehicle with a gross vehicle weight of more than sixteen thousand pounds. The three-month renewal fee shall be twenty-five dollars. All fees collected by the Department of Motor Vehicles under this section shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

**Source:** Laws 2005, LB 274, § 83.

**60-383.01 Minitruck; registration; fee.**

For the registration of every minitruck, the fee shall be fifteen dollars.

**Source:** Laws 2010, LB650, § 27.

**60-384 Nonresident carnival operator; thirty-day permit; fees; reciprocity.**

Upon receipt of an application duly verified, a nonresident carnival operator shall be issued a thirty-day carnival operators' permit to operate in Nebraska upon the payment of the following fees: For the gross vehicle weight of sixteen thousand pounds or less, ten dollars; for more than sixteen thousand pounds and not more than twenty-eight thousand pounds, fifteen dollars; for more than twenty-eight thousand pounds and not more than forty thousand pounds, twenty dollars; and for more than forty thousand pounds and not more than seventy-three thousand two hundred eighty pounds, twenty-five dollars, except that such a permit shall be issued only to out-of-state operators when the jurisdiction in which the motor vehicle and trailer is registered grants reciprocity to Nebraska. Such fees shall be paid to the county treasurer or designated county official or persons designated by the director, who shall have authority to issue the permit when the applicant is eligible and pays the required fee. All fees collected under the provisions of this section shall be paid into the state treasury and by the State Treasurer credited to the Highway Cash Fund.

**Source:** Laws 2005, LB 274, § 84.

**60-385 Application; situs.**

Every owner of a motor vehicle or trailer required to be registered shall make application for registration to the county treasurer or designated county official of the county in which the motor vehicle or trailer has situs. The application shall be by any means designated by the department. A salvage branded certificate of title and a nontransferable certificate of title provided for in section 60-170 shall not be valid for registration purposes.

**Source:** Laws 2005, LB 274, § 85; Laws 2006, LB 765, § 6; Laws 2007, LB286, § 33.

**60-386 Application; contents.**

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, and the weight of the motor vehicle or trailer required by the Motor Vehicle Registration Act. With the application the applicant shall pay the proper registration fee and shall state whether the motor vehicle is propelled by alternative fuel and, if alternative fuel, the type of fuel. The form shall also contain a notice that bulk fuel purchasers may be subject to federal excise tax liability. The department shall prescribe a form, containing the notice, for supplying the information for motor vehicles to be registered. The county treasurer or designated county official shall include the form in each mailing made pursuant to section 60-3,186. The county treasurer or designated county official or his or her agent shall notify the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue whenever a motor vehicle powered by an alternative fuel is registered. The notification shall include the name and address of the registrant, the date of registration, the type of motor vehicle registered, and the type of alternative fuel used to propel the motor vehicle as indicated on the registration application.

**Source:** Laws 2005, LB 274, § 86.

**60-387 Proof of financial responsibility required.**

An application for registration of a motor vehicle shall be accompanied by proof of financial responsibility or evidence of insurance covering the motor vehicle. Proof of financial responsibility shall be evidenced by a copy of proof of financial responsibility filed pursuant to subdivision (2), (3), or (4) of section 60-528 bearing the seal of the department. Evidence of insurance shall give the effective dates of the automobile liability policy, which dates shall be evidence that the coverage is in effect on and following the date of registration, and shall designate, by explicit description or by appropriate reference, all motor vehicles covered. Evidence of insurance in the form of a certificate of insurance for fleet vehicles may include, as an appropriate reference, a designation that the insurance coverage is applicable to all vehicles owned by the named insured, or wording of similar effect, in lieu of an explicit description. Proof of financial responsibility also may be evidenced by (1) a check by the department or its agents of the motor vehicle insurance data base created under section 60-3,136 or (2) any other automated or electronic means as prescribed or developed by

the department. For purposes of this section, fleet means a group of at least five vehicles that belong to the same owner.

**Source:** Laws 2005, LB 274, § 87; Laws 2007, LB286, § 34.

Recent legislative enactments to make automobile liability insurance compulsory could not be read retroactively in violation of vested rights under the policy, where the enactments were not in force when the policy was issued or when the loss occurred. *Glockel v. State Farm Mut. Auto. Ins. Co.*, 224 Neb. 598, 400 N.W.2d 250 (1987).

#### **60-388 Collection of taxes and fees required.**

No county treasurer or designated county official shall receive or accept an application or registration fee or issue any registration certificate for any motor vehicle or trailer without collection of the taxes and the fees imposed in sections 60-3,185, 60-3,190, and 77-2703 and any other applicable taxes and fees upon such motor vehicle or trailer. If applicable, the applicant shall furnish proof of payment, in the form prescribed by the director as directed by the United States Secretary of the Treasury, of the federal heavy vehicle use tax imposed by the Internal Revenue Code, 26 U.S.C. 4481.

**Source:** Laws 2005, LB 274, § 88.

Cited in connection with separate listing and assessing of motor vehicles. *Peterson v. Hancock*, 166 Neb. 637, 90 N.W.2d 298 (1958).

#### **60-389 Registration number; assignment.**

Upon the filing of such application, the department shall, upon registration, assign to such motor vehicle or trailer a distinctive registration number in the form of a license plate. Upon sale or transfer of any such motor vehicle or trailer, such number may be canceled or may be reassigned to another motor vehicle or trailer, at the option of the department, subject to the provisions of the Motor Vehicle Registration Act.

**Source:** Laws 2005, LB 274, § 89.

#### **60-390 Certificate of registration; contents.**

The certificate of registration shall contain upon the face thereof the name of the registered owner of the motor vehicle or trailer, his or her residential mailing address, a description of the motor vehicle or trailer as set forth in the application for registration, and whether alternative fuel was used to propel the motor vehicle and, if so, the type of fuel. The certificate of registration shall have and contain the identical registration number denoted on the license plate in connection with which such certificate of registration is issued and shall be valid only for the registration period for which it is issued. On the back of the certificate, the certificate of registration shall include a statement in boldface print that an automobile liability policy or proof of financial responsibility is required in Nebraska. By paying the required registration fees, every person whose name appears on the registration of the motor vehicle or trailer certifies that a current and effective automobile liability policy or proof of financial responsibility will be maintained for the motor vehicle or trailer at the time of registration and while the motor vehicle or trailer is operated on a highway of this state and that he or she will also provide a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility for the motor vehicle or trailer upon demand.

**Source:** Laws 2005, LB 274, § 90.

Failure of supposed owner to register automobile as required by law, or to comply with requirements as to transfer, was a suspicious circumstance, sufficient to put purchaser on inquiry. *Wallich v. Sandlovich*, 111 Neb. 318, 196 N.W. 317 (1923).

**60-391 Combined certificate and receipt for fees; county officials; reports; contents.**

The county treasurer or designated county official shall issue a combined certificate and receipt for all fees received for the registration of motor vehicles or trailers to the applicant for registration and forward an electronic copy of the combined application and receipt to the department in a form prescribed by the department. Each county treasurer or designated county official shall make a report to the department of the number of original registrations of motor vehicles or trailers registered in the rural areas of the county and of the number of original registrations of motor vehicles or trailers registered in each incorporated city and village in the county during each month, on or before the twenty-fifth day of the succeeding month. The department shall prescribe the form of such report. When any county treasurer or designated county official fails to file such report, the department shall notify the county board of commissioners or supervisors of such county and the Director of Administrative Services who shall immediately suspend any payments to such county for highway purposes until the required reports are submitted.

**Source:** Laws 2005, LB 274, § 91.

**60-392 Renewal of registration; license plates; validation decals; registration period; expiration.**

(1) 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 his or her 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 his or her 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 expire December 31 of each year and shall become delinquent February 1 of the following year.

**Source:** Laws 2005, LB 274, § 92; Laws 2006, LB 789, § 1.

**60-393 Multiple vehicle registration.**

Any owner who has two or more motor vehicles or trailers required to be registered under the Motor Vehicle Registration Act may register all such motor vehicles or trailers on a calendar-year basis or on an annual basis for the same registration period beginning in a month chosen by the owner. When electing to establish the same registration period for all such motor vehicles or trailers, the owner shall pay the registration fee, the motor vehicle tax imposed in section 60-3,185, and the motor vehicle fee imposed in section 60-3,190 on each motor vehicle for the number of months necessary to extend its current registration period to the registration period under which all such motor vehicles or trailers will be registered. Credit shall be given for registration paid on each motor vehicle or trailer when the motor vehicle or trailer has a later expiration date than that chosen by the owner except as otherwise provided in sections 60-3,121, 60-3,122.02, and 60-3,128. Thereafter all such motor vehicles or trailers shall be registered on an annual basis starting in the month chosen by the owner.

**Source:** Laws 2005, LB 274, § 93; Laws 2007, LB570, § 4.

**60-394 Registration; certain name changes; fee.**

Registration which is in the name of one spouse may be transferred to the other spouse for a fee of one dollar and fifty cents.

So long as one registered name on a registration of a noncommercial motor vehicle or trailer remains the same, other names may be deleted therefrom or new names added thereto for a fee of one dollar and fifty cents.

**Source:** Laws 2005, LB 274, § 94.

**60-395 Refund or credit of fees; when authorized.**

(1) Except as otherwise provided in subsection (2) of this section and sections 60-3,121, 60-3,122.02, and 60-3,128, the registration shall expire and the registered owner or lessee may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals and by either making application on a form prescribed by the department to the county treasurer or designated county official of the occurrence of an event described in subdivisions (a) through (e) of this subsection or, in the case of a change in situs, displaying to the county treasurer or designated county official the registration certificate of such other state as evidence of a change in situs, receive a refund of that part of the unused fees and taxes on motor vehicles or trailers based on the number of unexpired months remaining in the registration period from the date of any of the following events:

- (a) Upon transfer of ownership of any motor vehicle or trailer;
- (b) In case of loss of possession because of fire, theft, dismantlement, or junking;
- (c) When a salvage branded certificate of title is issued;
- (d) Whenever a type or class of motor vehicle or trailer previously registered is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees, the motor vehicle tax imposed in section 60-3,185, and the motor vehicle fee imposed in section 60-3,190;
- (e) Upon a trade-in or surrender of a motor vehicle under a lease; or

(f) In case of a change in the situs of a motor vehicle or trailer to a location outside of this state.

(2) If the date of the event falls within the same calendar month in which the motor vehicle or trailer is acquired, no refund shall be allowed for such month.

(3) If the transferor or lessee acquires another motor vehicle at the time of the transfer, trade-in, or surrender, the transferor or lessee shall have the credit provided for in this section applied toward payment of the motor vehicle fees and taxes then owing. Otherwise, the transferor or lessee shall file a claim for refund with the county treasurer or designated county official upon an application form prescribed by the department.

(4) The registered owner or lessee shall make a claim for refund or credit of the fees and taxes for the unexpired months in the registration period within sixty days after the date of the event or shall be deemed to have forfeited his or her right to such refund or credit.

(5) For purposes of this section, the date of the event shall be: (a) In the case of a transfer or loss, the date of the transfer or loss; (b) in the case of a change in the situs, the date of registration in another state; (c) in the case of a trade-in or surrender under a lease, the date of trade-in or surrender; (d) in the case of a legislative act, the effective date of the act; and (e) in the case of a court decision, the date the decision is rendered.

(6) Application for registration or for reassignment of license plates and, when appropriate, validation decals to another motor vehicle or trailer shall be made within thirty days of the date of purchase.

(7) If a motor vehicle or trailer was reported stolen under section 60-178, a refund under this section shall not be reduced for a lost plate charge and a credit under this section may be reduced for a lost plate charge but the applicant shall not be required to pay the plate fee for new plates.

(8) The county treasurer or designated county official shall refund the motor vehicle fee and registration fee from the fees which have not been transferred to the State Treasurer. The county treasurer shall make payment to the claimant from the undistributed motor vehicle taxes of the taxing unit where the tax money was originally distributed. No refund of less than two dollars shall be paid.

**Source:** Laws 2005, LB 274, § 95; Laws 2007, LB286, § 35; Laws 2007, LB570, § 5; Laws 2009, LB175, § 1.

#### **60-396 Credit of fees; vehicle disabled or removed from service.**

Whenever the registered owner files an application with the county treasurer or designated county official showing that a motor vehicle or trailer is disabled and has been removed from service, the registered owner may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals or, in the case of the unavailability of such registration certificate or certificates, license plates, or validation decals, then by making an affidavit to the county treasurer or designated county official of such disablement and removal from service, receive a credit for a portion of the registration fee from the fee deposited with the State Treasurer at the time of registration based upon the number of unexpired months remaining in the registration year except as otherwise provided in sections 60-3,121, 60-3,122.02, and 60-3,128. The owner shall also receive a credit for the unused portion of the motor vehicle tax and

fee based upon the number of unexpired months remaining in the registration year. When the owner registers a replacement motor vehicle or trailer at the time of filing such affidavit, the credit may be immediately applied against the registration fee and the motor vehicle tax and fee for the replacement motor vehicle or trailer. When no such replacement motor vehicle or trailer is so registered, the county treasurer or designated county official shall forward the application and affidavit, if any, to the State Treasurer who shall determine the amount, if any, of the allowable credit for the registration fee and issue a credit certificate to the owner. For the motor vehicle tax and fee, the county treasurer or designated county official shall determine the amount, if any, of the allowable credit and issue a credit certificate to the owner. When such motor vehicle or trailer is removed from service within the same month in which it was registered, no credits shall be allowed for such month. The credits may be applied against taxes and fees for new or replacement motor vehicles or trailers incurred within one year after cancellation of registration of the motor vehicle or trailer for which the credits were allowed. When any such motor vehicle or trailer is reregistered within the same registration year in which its registration has been canceled, the taxes and fees shall be that portion of the registration fee and the motor vehicle tax and fee for the remainder of the registration year.

**Source:** Laws 2005, LB 274, § 96; Laws 2007, LB570, § 6.

**60-397 Refund or credit; salvage branded certificate of title.**

If a motor vehicle or trailer has a salvage branded certificate of title issued as a result of an insurance company acquiring the motor vehicle or trailer through a total loss settlement, the prior owner of the motor vehicle or trailer who is a party to the settlement may receive a refund or credit of unused fees and taxes by (1) filing an application with the county treasurer or designated county official within sixty days after the date of the settlement stating that title to the motor vehicle or trailer was transferred as a result of the settlement and (2) returning the registration certificate, the license plates, and, when appropriate, the validation decals or, in the case of the unavailability of the registration certificate, license plates, or validation decals, filing an affidavit with the county treasurer or designated county official regarding the transfer of title due to the settlement and the unavailability of the certificate, license plates, or validation decals. The owner may receive a refund or credit of the registration fees and motor vehicle taxes and fees for the unexpired months remaining in the registration year determined based on the date when the motor vehicle or trailer was damaged and became unavailable for service. When the owner registers a replacement motor vehicle or trailer at the time of filing such affidavit, the credit may be immediately applied against the registration fee and the motor vehicle tax and fee for the replacement motor vehicle or trailer. When no such replacement motor vehicle or trailer is so registered, the county treasurer or designated county official shall refund the unused registration fees. If the motor vehicle or trailer was damaged and became unavailable for service during the same month in which it was registered, no refund or credit shall be allowed for such month. When any such motor vehicle or trailer is reregistered within the same registration year in which its registration has been canceled, the taxes and fees shall be that portion of the registration fee and the motor vehicle tax and fee for the remainder of the registration year.

**Source:** Laws 2005, LB 274, § 97; Laws 2007, LB286, § 36.

**60-398 Nonresident; refund; when allowed.**

A nonresident may, if he or she applies within ninety days from his or her original registration date and surrenders the registration certificate and license plates which were assigned to him or her, receive from the county treasurer or designated county official, or the department if registration was pursuant to section 60-3,198, a refund in the amount of fifty percent of the original license fee, fifty percent of the motor vehicle tax imposed in section 60-3,185, and fifty percent of the motor vehicle fee imposed in section 60-3,190, except that no refunds shall be made on any license surrendered after the ninth month of the registration period for which the motor vehicle or trailer was registered.

**Source:** Laws 2005, LB 274, § 98.

**60-399 Display of plates; requirements.**

(1) Except as otherwise specifically provided, no person shall operate or park or cause to be operated or parked a motor vehicle or tow or park or cause to be towed or parked a trailer on the highways unless such motor vehicle or trailer has displayed the proper number of plates as required in the Motor Vehicle Registration Act.

In each registration period in which new license plates are not issued, previously issued license plates shall have affixed thereto the validation decals issued pursuant to section 60-3,101. In all cases such license plates shall be securely fastened in an upright position to the motor vehicle or trailer so as to prevent such plates from swinging and at a minimum distance of twelve inches from the ground to the bottom of the license plate. No person shall attach to or display on such motor vehicle or trailer any (a) license plate or registration certificate other than as assigned to it for the current registration period, (b) fictitious or altered license plates or registration certificate, (c) license plates or registration certificate that has been canceled by the department, or (d) license plates lacking current validation decals.

(2) All letters, numbers, printing, writing, and other identification marks upon such plates and certificate shall be kept clear and distinct and free from grease, dust, or other blurring matter, so that they shall be plainly visible at all times during daylight and under artificial light in the nighttime.

**Source:** Laws 2005, LB 274, § 99.

"Display" of license plates as described in this section logically implies a display of the license plate which is visible. *State v. Reiter*, 3 Neb. App. 153, 524 N.W.2d 575 (1994).

Officer properly stopped vehicle bearing both Missouri license plates and in transit sticker, and when driver failed to produce

identification, and upon noticing scratches around vehicle identification number checked to determine whether vehicle was stolen, upon learning it was, was justified in making arrest. *United States v. Harris*, 528 F.2d 1327 (8th Cir. 1975).

**60-3,100 License plates; issuance.**

(1) The department shall issue to every person whose motor vehicle or trailer is registered fully reflectorized license plates upon which shall be displayed (a) the registration number consisting of letters and numerals assigned to such motor vehicle or trailer in figures not less than two and one-half inches nor more than three inches in height and (b) also the word Nebraska suitably lettered so as to be attractive. Two license plates shall be issued for every motor vehicle, except that one plate shall be issued for dealers, motorcycles, mini-trucks, truck-tractors, trailers, buses, and apportionable vehicles. The license plates shall be of a color designated by the director. The color of the plates shall

be changed each time the license plates are changed. Each time the license plates are changed, the director shall secure competitive bids for materials pursuant to sections 81-145 to 81-162. Motorcycle, minitruck, and trailer license plate letters and numerals may be one-half the size of those required in this section.

(2) When two license plates are issued, one shall be prominently displayed at all times on the front and one on the rear of the registered motor vehicle or trailer. When only one plate is issued, it shall be prominently displayed on the rear of the registered motor vehicle or trailer. When only one plate is issued for motor vehicles registered pursuant to section 60-3,198 and truck-tractors, it shall be prominently displayed on the front of the apportionable vehicle.

**Source:** Laws 2005, LB 274, § 100; Laws 2010, LB650, § 25.

“Display” of license plates as described in this section logically implies a display of the license plate which is visible. State v. Reiter, 3 Neb. App. 153, 524 N.W.2d 575 (1994).

Officer properly stopped vehicle bearing both Missouri license plates and in transit sticker, and when driver failed to produce

identification, and upon noticing scratches around vehicle identification number checked to determine whether vehicle was stolen, upon learning it was, was justified in making arrest. United States v. Harris, 528 F.2d 1327 (8th Cir. 1975).

### **60-3,101 License plates; when issued; validation decals.**

Except for license plates issued pursuant to section 60-3,203, license plates shall be issued every six years beginning with the license plates issued in the year 2005. Except for plates issued pursuant to such section, in the years in which plates are not issued, in lieu of issuing such license plates, the department shall furnish to every person whose motor vehicle or trailer is registered one or two validation decals, as the case may be, which validation decals shall bear the year for which issued and be so constructed as to permit them to be permanently affixed to the plates.

**Source:** Laws 2005, LB 274, § 101.

### **60-3,102 Plate fee.**

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 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 three dollars and fifty cents. All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

**Source:** Laws 2005, LB 274, § 102.

### **60-3,103 License Plate Cash Fund; created; use; investment.**

There is hereby created the License Plate Cash Fund which shall consist of money transferred to it pursuant to section 39-2215. All costs associated with the manufacture of license plates and decals provided for in the Motor Vehicle Registration Act and section 60-1804 shall be paid from funds appropriated from the License Plate Cash Fund. The fund shall be used exclusively for such purposes and shall be administered by the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2005, LB 274, § 103.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-3,104 Types of license plates.**

The department shall issue the following types of license plates:

- (1) Amateur radio station license plates issued pursuant to section 60-3,126;
- (2) Apportionable vehicle license plates issued pursuant to section 60-3,203;
- (3) Boat dealer license plates issued pursuant to section 60-379;
- (4) Bus license plates issued pursuant to section 60-3,144;
- (5) Commercial motor vehicle license plates issued pursuant to section 60-3,147;
- (6) Dealer or manufacturer license plates issued pursuant to sections 60-3,114 and 60-3,115;
- (7) Disabled veteran license plates issued pursuant to section 60-3,124;
- (8) Farm trailer license plates issued pursuant to section 60-3,151;
- (9) Farm truck license plates issued pursuant to section 60-3,146;
- (10) Farm trucks with a gross weight of over sixteen tons license plates issued pursuant to section 60-3,146;
- (11) Fertilizer trailer license plates issued pursuant to section 60-3,151;
- (12) Film vehicle license plates issued pursuant to section 60-383;
- (13) Gold Star Family license plates issued pursuant to sections 60-3,122.01 and 60-3,122.02;
- (14) Handicapped or disabled person license plates issued pursuant to section 60-3,113;
- (15) Historical vehicle license plates issued pursuant to sections 60-3,130 to 60-3,134;
- (16) Local truck license plates issued pursuant to section 60-3,145;
- (17) Minitruck license plates issued pursuant to section 60-3,100;
- (18) Motor vehicle license plates for motor vehicles owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,105;
- (19) Motor vehicles exempt pursuant to section 60-3,107;
- (20) Motorcycle license plates issued pursuant to section 60-3,100;
- (21) Nebraska Cornhusker Spirit Plates issued pursuant to sections 60-3,127 to 60-3,129;
- (22) Nonresident owner thirty-day license plates issued pursuant to section 60-382;
- (23) Passenger car having a seating capacity of ten persons or less and not used for hire issued pursuant to section 60-3,143;
- (24) Passenger car having a seating capacity of ten persons or less and used for hire issued pursuant to section 60-3,143;
- (25) Pearl Harbor license plates issued pursuant to section 60-3,122;
- (26) Personal-use dealer license plates issued pursuant to section 60-3,116;

- (27) Personalized message license plates for motor vehicles and cabin trailers, except commercial motor vehicles registered for over ten tons gross weight, issued pursuant to sections 60-3,118 to 60-3,121;
- (28) Prisoner-of-war license plates issued pursuant to section 60-3,123;
- (29) Purple Heart license plates issued pursuant to section 60-3,125;
- (30) Recreational vehicle license plates issued pursuant to section 60-3,151;
- (31) Repossession license plates issued pursuant to section 60-375;
- (32) Specialty license plates issued pursuant to sections 60-3,104.01 and 60-3,104.02;
- (33) Trailer license plates issued for trailers owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,106;
- (34) Trailer license plates issued pursuant to section 60-3,100;
- (35) Trailers exempt pursuant to section 60-3,108;
- (36) Transporter license plates issued pursuant to section 60-378;
- (37) Trucks or combinations of trucks, truck-tractors, or trailers which are not for hire and engaged in soil and water conservation work and used for the purpose of transporting pipe and equipment exclusively used by such contractors for soil and water conservation construction license plates issued pursuant to section 60-3,149;
- (38) Utility trailer license plates issued pursuant to section 60-3,151; and
- (39) Well-boring apparatus and well-servicing equipment license plates issued pursuant to section 60-3,109.

**Source:** Laws 2005, LB 274, § 104; Laws 2006, LB 663, § 23; Laws 2007, LB286, § 37; Laws 2007, LB570, § 7; Laws 2009, LB110, § 2; Laws 2010, LB650, § 26.

**60-3,104.01 Specialty license plates; application; fee; delivery; transfer; credit allowed; fee.**

(1) Beginning January 1, 2010, a person may apply for specialty license plates in lieu of regular license plates on an application prescribed and provided by the department pursuant to section 60-3,104.02 for any motor vehicle, trailer, semitrailer, or cabin trailer, except for motor vehicles or trailers registered under section 60-3,198. An applicant receiving a specialty license plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications. Each application for initial issuance or renewal of specialty license plates shall be accompanied by a fee of seventy dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit fifteen percent of the fee for initial issuance and renewal of specialty license plates to the Department of Motor Vehicles Cash Fund and eighty-five percent of the fee to the Highway Trust Fund.

(2) When the department receives an application for specialty license plates, it shall deliver the plates to the county treasurer or designated county official of the county in which the motor vehicle, trailer, semitrailer, or cabin trailer is registered. The county treasurer or designated county official shall issue specialty license plates in lieu of regular license plates when the applicant complies with the other provisions of law for registration of the motor vehicle,

trailer, semitrailer, or cabin trailer. If specialty license plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(3)(a) The owner of a motor vehicle, trailer, semitrailer, or cabin trailer bearing specialty license plates may make application to the county treasurer or designated county official to have such specialty license plates transferred to a motor vehicle, trailer, semitrailer, or cabin trailer other than the motor vehicle, trailer, semitrailer, or cabin trailer for which such plates were originally purchased if such motor vehicle, trailer, semitrailer, or cabin trailer is owned by the owner of the specialty license plates.

(b) The owner may have the unused portion of the specialty license plate fee credited to the other motor vehicle, trailer, semitrailer, or cabin trailer which will bear the specialty license plates at the rate of eight and one-third percent per month for each full month left in the registration period.

(c) Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2009, LB110, § 3.

**60-3,104.02 Specialty license plates; organization; requirements; design of plates.**

(1) On or before January 1, 2011, the department shall begin issuing specialty license plates for any organization which certifies that it meets the requirements of this section. The department shall work with the organization to design the plates.

(2) The department shall make applications available pursuant to section 60-3,104.01 for each type of specialty license plate when it is designed. The department shall not manufacture specialty license plates for an organization until the department has received five hundred prepaid applications for specialty license plates designed for that organization. The department may revoke the approval for an organization's specialty license plate if the total number of registered vehicles that obtained such plate is less than five hundred within three years after receiving approval.

(3) In order to have specialty license plates designed and manufactured, an organization shall furnish the department with the following:

(a) A copy of its articles of incorporation and, if the organization consists of a group of nonprofit corporations, a copy for each organization;

(b) A copy of its charter or bylaws and, if the organization consists of a group of nonprofit corporations, a copy for each organization;

(c) Any Internal Revenue Service rulings of the organization's nonprofit tax-exempt status and, if the organization consists of a group of nonprofit corporations, a copy for each organization;

(d) A copy of a certificate of existence on file with the Secretary of State under the Nebraska Nonprofit Corporation Act;

(e) Five hundred prepaid applications for the specialty license plates; and

(f) A completed application for the issuance of the plates on a form provided by the department certifying that the organization meets the following requirements:

(i) The organization is a nonprofit corporation or a group of nonprofit corporations with a common purpose;

(ii) The primary activity or purpose of the organization serves the community, contributes to the welfare of others, and is not offensive or discriminatory in its purpose, nature, activity, or name;

(iii) The name and purpose of the organization does not promote any specific product or brand name that is on a product provided for sale;

(iv) The organization is authorized to use any name, logo, or graphic design suggested for the design of the plates;

(v) No infringement or violation of any property right will result from such use of such name, logo, or graphic design; and

(vi) The organization will hold harmless the State of Nebraska and its employees and agents for any liability which may result from any infringement or violation of a property right based on the use of such name, logo, or graphic design.

(4) The department may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2009, LB110, § 4.

**Cross References**

Nebraska Nonprofit Corporation Act, see section 21-1901.

**60-3,105 Motor vehicles owned or operated by the state, counties, municipalities, or school districts; distinctive plates or undercover license plates.**

(1) The department may provide a distinctive license plate for all motor vehicles owned or operated by the state, counties, municipalities, or school districts. Motor vehicles owned or operated by the state, counties, municipalities, or school districts shall display such distinctive license plates when such license plates are issued or shall display undercover license plates when such license plates are issued under section 60-3,135.

(2) Any motor vehicle owned or leased and used by any city or village of this state, any rural fire protection district, the Civil Air Patrol, any public school district, any county, the state, the United States Government, any entity formed pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, or any municipal public body or authority used in operating a public passenger transportation system, and exempt from a distinct marking as provided in section 81-1021, may carry license plates the same design and size as are provided in subsection (1) of this section or undercover license plates issued under section 60-3,135.

**Source:** Laws 2005, LB 274, § 105.

**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.

**60-3,106 Trailers owned or operated by the state, counties, municipalities, or school districts; distinctive plates.**

(1) The department may provide a distinctive license plate for all trailers owned or operated by the state, counties, municipalities, or school districts.

Trailers owned or operated by the state, counties, municipalities, or school districts shall display such distinctive license plates when such license plates are issued or shall display undercover license plates when such license plates are issued under section 60-3,135.

(2) Any trailer owned or leased and used by any city or village of this state, any rural fire protection district, the Civil Air Patrol, any public school district, any county, the state, the United States Government, any entity formed pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, or any municipal public body or authority used in operating a public passenger transportation system, and exempt from a distinct marking as provided in section 81-1021, may carry license plates the same design and size as are provided in subsection (1) of this section or undercover license plates issued under section 60-3,135.

**Source:** Laws 2005, LB 274, § 106.

**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.

**60-3,107 Tax-exempt motor vehicles; distinctive plates.**

The department may provide distinctive license plates issued for use on motor vehicles which are tax exempt pursuant to subdivision (6) of section 60-3,185. License plates on such motor vehicles shall display, in addition to the license number, the words tax exempt.

**Source:** Laws 2005, LB 274, § 107; Laws 2007, LB286, § 38.

**60-3,108 Tax-exempt trailers; distinctive plates.**

The department may provide distinctive license plates issued for use on trailers exempt pursuant to subdivision (6) of section 60-3,185. License plates on such trailers shall display, in addition to the license number, the word exempt which shall appear at the bottom of the license plates.

**Source:** Laws 2005, LB 274, § 108.

**60-3,109 Well-boring apparatus and well-servicing equipment license plates.**

(1) Any owner of well-boring apparatus and well-servicing equipment may make application to the county treasurer or designated county official for license plates.

(2) Well-boring apparatus and well-servicing equipment license plates shall display thereon, in addition to the license number, the words special equipment.

**Source:** Laws 2005, LB 274, § 109.

**60-3,110 Local truck; special permit; fee.**

Any owner of a motor vehicle registered as a local truck may make application to the department for a special permit authorizing operation of such local truck on the highways of this state beyond the limits specified by law for local trucks for the sole purpose of having such truck equipped, modified, or serviced. The operator of the local truck shall have such permit in his or her possession at all times when he or she is operating such local truck beyond the

limits specified by law for the local truck and shall display such permit upon demand of proper authorities. The fee for this permit shall be five dollars payable to the department. The department shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

**Source:** Laws 2005, LB 274, § 110.

**60-3,111 Farmers and ranchers; special permits; fee.**

Special permits may be supplied by the department and issued by the county treasurer or designated county official for truck-tractor and semitrailer combinations of farmers or ranchers used wholly and exclusively to carry their own supplies, farm equipment, and household goods to or from the owner's farm or ranch or used by the farmer or rancher to carry his or her own agricultural products to or from storage or market. Such special permits shall be valid for periods of thirty days and shall be carried in the cab of the truck-tractor. The fee for such permit shall be equivalent to one-twelfth of the regular commercial registration fee as determined by gross vehicle weight and size limitations as defined in sections 60-6,288 to 60-6,294, but the fee shall be no less than twenty-five dollars. Such fee shall be collected and distributed in the same manner as other motor vehicle fees.

**Source:** Laws 2005, LB 274, § 111.

**60-3,112 Nonresident licensed vehicle hauling grain or seasonally harvested products; permit; fee.**

If a truck, truck-tractor, or trailer is lawfully licensed under the laws of another state or province and is engaged in hauling grain or other seasonally harvested products from the field where they are harvested to storage or market during the period from June 1 to December 15 of each year or under emergency conditions, the right to operate over the highways of this state for a period of ninety days shall be authorized by obtaining a permit therefor from the county treasurer or designated county official or his or her agent of the county in which grain is first hauled. Such permit shall be issued electronically upon the payment of a fee of twenty dollars for a truck or one hundred fifty dollars for any combination of truck, truck-tractor, or trailer. The fees for such permits, when collected, shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

**Source:** Laws 2005, LB 274, § 112.

**60-3,113 Handicapped or disabled person; plates; department; compile and maintain registry.**

(1) The department shall, without the payment of any fee except the taxes and fees required by sections 60-3,100, 60-3,102, 60-3,185, and 60-3,190, issue license plates for one motor vehicle not used for hire and a license plate for one motorcycle not used for hire to:

(a) Any permanently handicapped or disabled person as defined in section 18-1738 or his or her parent, legal guardian, foster parent, or agent upon application and proof of a permanent handicap or disability; or

(b) A trust which owns the motor vehicle or motorcycle if a designated beneficiary of the trust qualifies under subdivision (a) of this subsection.

Beginning January 1, 2005, an application and proof of disability in the form and with the information required by section 18-1738 shall be filed before license plates are issued or reissued.

(2) The license plate or plates shall carry the internationally accepted wheelchair symbol, which symbol is a representation of a person seated in a wheelchair surrounded by a border six units wide by seven units high, and such other letters or numbers as the director prescribes. Such license plate or plates shall be used by such person in lieu of the usual license plate or plates.

(3) The department shall compile and maintain a registry of the names, addresses, and license numbers of all persons who obtain special license plates pursuant to this section and all persons who obtain a handicapped or disabled parking permit as described in section 18-1739.

**Source:** Laws 2005, LB 274, § 113.

**60-3,114 Dealer or manufacturer license plates; fee.**

(1) Any licensed dealer or manufacturer may, upon payment of a fee of thirty dollars, make an application, on a form approved by the Nebraska Motor Vehicle Industry Licensing Board, to the county treasurer or designated county official of the county in which his or her place of business is located for a certificate and one dealer license plate for the type of motor vehicle or trailer the dealer has been authorized by the Nebraska Motor Vehicle Industry Licensing Board to sell and demonstrate. One additional dealer license plate may be procured for the type of motor vehicle or trailer the dealer has sold during the last previous period of October 1 through September 30 for each twenty motor vehicles or trailers sold at retail during such period or one additional dealer license plate for each thirty motor vehicles or trailers sold at wholesale during such period, but not to exceed a total of five additional dealer license plates in the case of motor vehicles or trailers sold at wholesale, or, in the case of a manufacturer, for each ten motor vehicles or trailers actually manufactured or assembled within the state within the last previous period of October 1 through September 30 for a fee of fifteen dollars each.

(2) Dealer or manufacturer license plates shall display, in addition to the registration number, the letters DLR.

**Source:** Laws 2005, LB 274, § 114.

**60-3,115 Additional dealer license plates; unauthorized use; hearing.**

When an applicant applies for a license, the Nebraska Motor Vehicle Industry Licensing Board may authorize the county treasurer or designated county official to issue additional dealer license plates when the dealer or manufacturer furnishes satisfactory proof for a need of additional dealer license plates because of special condition or hardship. In the case of unauthorized use of dealer license plates by any licensed dealer, the Nebraska Motor Vehicle Industry Licensing Board may hold a hearing and after such hearing may determine that such dealer is not qualified for continued usage of such dealer license plates for a set period not to exceed one year.

**Source:** Laws 2005, LB 274, § 115.

**60-3,116 Personal-use dealer license plates; fee.**

(1) Any licensed dealer or manufacturer may, upon payment of an annual fee of two hundred fifty dollars, make an application, on a form approved by the Nebraska Motor Vehicle Industry Licensing Board, to the county treasurer or designated county official of the county in which his or her place of business is located for a certificate and one personal-use dealer license plate for the type of motor vehicle or trailer the dealer has been authorized by the Nebraska Motor Vehicle Industry Licensing Board to sell and demonstrate. Additional personal-use dealer license plates may be procured upon payment of an annual fee of two hundred fifty dollars each, subject to the same limitations as provided in section 60-3,114 as to the number of additional dealer license plates. A personal-use dealer license plate may be displayed on a motor vehicle having a gross weight including any load of six thousand pounds or less belonging to the dealer, may be used in the same manner as a dealer license plate, and may be used for personal or private use of the dealer, the dealer's immediate family, or any bona fide employee of the dealer licensed pursuant to the Motor Vehicle Industry Regulation Act.

(2) Personal-use dealer license plates shall have the same design and shall be displayed as provided in sections 60-370 and 60-3,100.

**Source:** Laws 2005, LB 274, § 116; Laws 2010, LB816, § 11.

**Cross References**

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-3,117 Surrender of dealer license plates; when.**

When any motor vehicle or trailer dealer's or manufacturer's license has been revoked or otherwise terminated, it shall be the duty of such dealer or manufacturer to immediately surrender to the department or to the Nebraska Motor Vehicle Industry Licensing Board any dealer license plates issued to him or her for the current year. Failure of such dealer or manufacturer to immediately surrender such dealer license plates to the department upon demand by the department shall be unlawful.

**Source:** Laws 2005, LB 274, § 117.

**60-3,118 Personalized message license plates; conditions.**

(1) In lieu of the license plates provided for by section 60-3,100, the department shall issue personalized message license plates for motor vehicles, trailers, semitrailers, or cabin trailers, except for motor vehicles and trailers registered under section 60-3,198, to all applicants who meet the requirements of sections 60-3,119 to 60-3,121. Personalized message license plates shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100. The characters used shall consist only of letters and numerals of the same size and design and shall comply with the requirements of subdivision (1)(a) of section 60-3,100. A maximum of seven characters may be used, except that for motorcycles, a maximum of six characters may be used.

(2) The following conditions apply to all personalized message license plates:

(a) County prefixes shall not be allowed except in counties using the alphanumeric system for motor vehicle registration. The numerals in the county prefix shall be the numerals assigned to the county, pursuant to subsection (2) of section 60-370, in which the motor vehicle or cabin trailer is registered.

Renewal of a personalized message license plate containing a county prefix shall be conditioned upon the motor vehicle or cabin trailer being registered in such county. The numerals in the county prefix, including the hyphen or any other unique design for an existing license plate style, count against the maximum number of characters allowed under this section;

(b) The characters in the order used shall not conflict with or duplicate any number used or to be used on the regular license plates or any number or license plate already approved pursuant to sections 60-3,118 to 60-3,121;

(c) The characters in the order used shall not express, connote, or imply any obscene or objectionable words or abbreviations; and

(d) An applicant receiving a personalized message license plate for a farm truck with a gross weight of over sixteen tons or a commercial truck or truck-tractor with a gross weight of five tons or over shall affix the appropriate tonnage decal to such license plate.

(3) The department shall have sole authority to determine if the conditions prescribed in subsection (2) of this section have been met.

**Source:** Laws 2005, LB 274, § 118; Laws 2007, LB286, § 39.

**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 or designated county official forms to be used for such applications.

(2) Each initial application shall be accompanied by a fee of forty dollars. The fees shall be remitted to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee to the Highway Trust Fund and seventy-five percent of the fee to the Department of Motor Vehicles Cash Fund.

(3) An application for renewal of a license plate previously approved and issued shall be accompanied by a fee of forty dollars. County treasurers or designated county officials collecting fees pursuant to this subsection shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee to the Highway Trust Fund and seventy-five percent of the fee to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2005, LB 274, § 119; Laws 2009, LB110, § 5.

**60-3,120 Personalized message license plates; delivery.**

When the department approves an application for personalized message license plates, it shall notify the applicant and deliver the license plates to the county treasurer or designated county official of the county in which the motor vehicle or cabin trailer is to be registered. The county treasurer or designated county official shall deliver such plates to the applicant, in lieu of regular license plates, when the applicant complies with the other provisions of law for registration of the motor vehicle or cabin trailer.

**Source:** Laws 2005, LB 274, § 120.

**60-3,121 Personalized message license plates; transfer; credit allowed; fee.**

(1) The owner of a motor vehicle or cabin trailer bearing personalized message license plates may make application to the county treasurer or designated county official to have such license plates transferred to a motor vehicle

or cabin trailer other than the motor vehicle or cabin trailer for which such license plates were originally purchased if such motor vehicle or cabin trailer is owned by the owner of the license plates.

(2) The owner may have the unused portion of the message plate fee credited to the other motor vehicle or cabin trailer which will bear the license plate at the rate of eight and one-third percent per month for each full month left in the registration period.

(3) Application for such transfer shall be accompanied by a fee of three dollars. The fees shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2005, LB 274, § 121.

**60-3,122 Pearl Harbor plates; fee.**

(1) Any person may, in addition to the application required by section 60-385, apply to the department for license plates designed by the department to indicate that he or she is a survivor of the Japanese attack on Pearl Harbor if he or she:

(a) Was a member of the United States Armed Forces on December 7, 1941;

(b) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three miles;

(c) Was discharged or otherwise separated with a characterization of honorable from the United States Armed Forces; and

(d) Holds a current membership in a Nebraska Chapter of the Pearl Harbor Survivors Association.

(2) The license plates shall be issued upon the applicant paying the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant fulfills the requirements provided by subsection (1) of this section. The additional fee shall be remitted to the State Treasurer for credit to the Nebraska Veteran Cemetery System Operation Fund. Any number of motor vehicles, trailers, semitrailers, or cabin trailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued pursuant to this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates upon request and without charge.

**Source:** Laws 2005, LB 274, § 122; Laws 2007, LB286, § 40; Laws 2009, LB110, § 6; Laws 2010, LB705, § 1.

**60-3,122.01 Gold Star Family plates; design requirements.**

(1) The department shall design license plates to be known as Gold Star Family plates. The department shall create designs reflecting support for those who died while serving in good standing in the United States Armed Forces in consultation with the Department of Veterans' Affairs and the Military Department. The Department of Veterans' Affairs shall recommend the design of the plate to the Department of Motor Vehicles. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102.

The department shall make applications available for this type of plate when it is designed. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,122.02.

(2) One type of Gold Star Family plate shall be consecutively numbered plates. The department shall:

(a) Number the plates consecutively beginning with the number one, using numerals the size of which maximizes legibility and limiting the numerals to five characters or less; and

(b) Not use a county designation or any characters other than numbers on the plates.

(3) One type of Gold Star Family 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, except that a maximum of five characters may be used.

**Source:** Laws 2007, LB570, § 2.

**60-3,122.02 Gold Star Family plates; fee.**

(1) A person may apply to the department for Gold Star Family plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, semitrailer, or cabin trailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a Gold Star Family plate for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers or designated county officials. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section and furnishing proof satisfactory to the department that the applicant is a surviving spouse, whether remarried or not, or an ancestor, including a stepparent, a descendant, including a stepchild, a foster parent or a person in loco parentis, or a sibling of a person who died while in good standing on active duty in the military service of the United States.

(2)(a) Each application for initial issuance of consecutively numbered Gold Star Family plates shall be accompanied by a fee of five dollars. An application for renewal of such plates shall be accompanied by a fee of five dollars. County treasurers or designated county officials collecting fees for renewals pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit five dollars of the fee for initial issuance and renewal of such plates to the Nebraska Veteran Cemetery System Operation Fund.

(b) Each application for initial issuance of personalized message Gold Star Family plates shall be accompanied by a fee of forty dollars. An application for renewal of such plates shall be accompanied by a fee of forty dollars. County treasurers or designated county officials collecting fees for renewals pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Nebraska Veteran Cemetery System Operation Fund.

(3) When the department receives an application for Gold Star Family plates, the department shall deliver the plates to the county treasurer or designated county official of the county in which the motor vehicle or cabin trailer is

registered. The county treasurer or designated county official shall issue Gold Star Family plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or cabin trailer. If Gold Star Family plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request and without charge.

(4) The owner of a motor vehicle or cabin trailer bearing Gold Star Family plates may apply to the county treasurer or designated county official to have such plates transferred to a motor vehicle other than the vehicle for which such plates were originally purchased if such vehicle is owned by the owner of the plates. The owner may have the unused portion of the fee for the plates credited to the other vehicle which will bear the plates at the rate of eight and one-third percent per month for each full month left in the registration period. Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5) If the cost of manufacturing Gold Star Family plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Nebraska Veteran Cemetery System Operation Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Gold Star Family plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Nebraska Veteran Cemetery System Operation Fund.

**Source:** Laws 2007, LB570, § 3; Laws 2009, LB110, § 7; Laws 2009, LB331, § 2.

**60-3,123 Prisoner of war plates; fee.**

(1) Any person who was captured and incarcerated by an enemy of the United States during a period of conflict with such enemy and who was discharged or otherwise separated with a characterization of honorable from or is currently serving in the United States Armed Forces may, in addition to the application required in section 60-385, apply to the department for license plates designed to indicate that he or she is a former prisoner of war.

(2) The license plates shall be issued upon the applicant paying the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant was formerly a prisoner of war. The additional fee shall be remitted to the State Treasurer for credit to the Nebraska Veteran Cemetery System Operation Fund. Any number of motor vehicles, trailers, semitrailers, or cabin trailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued under this section are lost, stolen, or mutilated, the recipient of the license plates shall be issued replacement license plates upon request and without charge.

**Source:** Laws 2005, LB 274, § 123; Laws 2007, LB286, § 41; Laws 2009, LB110, § 8; Laws 2010, LB705, § 2.

**60-3,124 Disabled veteran plates; 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) The plates shall be issued upon the applicant paying the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant is a disabled veteran. The additional fee shall be remitted to the State Treasurer for credit to the Nebraska Veteran Cemetery System Operation Fund. Any number of motor vehicles, trailers, semitrailers, or cabin trailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued under this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates as provided in section 60-3,157.

**Source:** Laws 2005, LB 274, § 124; Laws 2007, LB286, § 42; Laws 2009, LB110, § 9; Laws 2010, LB705, § 3.

**60-3,125 Purple Heart plates; fee.**

(1) Any person may, in addition to the application required by section 60-385, apply to the department for license plates designed by the department to indicate that the applicant has received from the federal government an award of a Purple Heart. The inscription of the plates shall be designed so as to include a facsimile of the award and beneath any numerical designation upon the plates pursuant to section 60-370 the words Purple Heart separately on one line and the words Combat Wounded on the line below.

(2) The license plates shall be issued upon payment of the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant was awarded the Purple Heart. The additional fee shall be remitted to the State Treasurer for credit to the Nebraska Veteran Cemetery System Operation Fund. Any number of motor vehicles, trailers, semitrailers, or cabin trailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If license plates issued pursuant to this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates upon request and without charge.

**Source:** Laws 2005, LB 274, § 125; Laws 2007, LB286, § 43; Laws 2009, LB110, § 10.

**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, semitrailer, or cabin trailer, except for motor vehicles and trailers registered under section 60-3,198, may, in addition to the applica-

tion 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.

**Source:** Laws 2005, LB 274, § 126; Laws 2007, LB286, § 44.

**60-3,127 Nebraska Cornhusker Spirit Plates; design requirements.**

(1) The department, in designing Nebraska Cornhusker Spirit Plates, shall:

- (a) Include the word Cornhuskers or Huskers prominently in the design;
- (b) Use scarlet and cream colors in the design or such other similar colors as the department determines to best represent the official team colors of the University of Nebraska Cornhuskers athletic programs and to provide suitable reflection and contrast;
- (c) Use cream or a similar color for the background of the design and scarlet or a similar color for the printing; and
- (d) Create a design reflecting support for the University of Nebraska Cornhuskers athletic programs in consultation with the University of Nebraska-Lincoln Athletic Department. The design shall be selected on the basis of (i) enhancing the marketability of spirit plates to supporters of University of Nebraska Cornhuskers athletic programs and (ii) limiting the manufacturing cost of each spirit plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102.

(2) One type of Nebraska Cornhusker Spirit Plates shall be consecutively numbered spirit plates. The department shall:

- (a) Number the spirit plates consecutively beginning with the number one, using numerals the size of which maximizes legibility; and
- (b) Not use a county designation or any characters other than numbers on the spirit plates.

(3) One type of Nebraska Cornhusker Spirit Plates shall be personalized message spirit plates. Such plates shall be issued subject to the same conditions specified for message plates in subsection (2) of section 60-3,118. The characters used shall consist only of letters and numerals of the same size and design and shall comply with the requirements of subdivision (1)(a) of section 60-3,100. A maximum of seven characters may be used.

**Source:** Laws 2005, LB 274, § 127.

**60-3,128 Nebraska Cornhusker Spirit Plates; application; fee; transfer; credit allowed.**

(1) A person may apply to the department for Nebraska Cornhusker Spirit Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, semitrailer, or cabin trailer, except for motor vehicles or trailers registered under section 60-3,198. An applicant receiving a spirit plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the spirit plate. The department shall make forms available for such applications through the county treasurers or designated county officials. Each application for initial issuance or renewal of spirit plates shall be accompanied by a fee of seventy dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit forty-three percent of the fees for initial issuance and renewal of spirit plates to the Department of Motor Vehicles Cash Fund. The State Treasurer shall credit fifty-seven percent of the fees to the Spirit Plate Proceeds Fund until the fund has been credited five million dollars from such fees and thereafter to the Highway Trust Fund.

(2) When the department receives an application for spirit plates, it shall deliver the plates to the county treasurer or designated county official of the county in which the motor vehicle or cabin trailer is registered. The county treasurer or designated county official shall issue spirit plates in lieu of regular license plates when the applicant complies with the other provisions of law for registration of the motor vehicle or cabin trailer. If spirit plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(3)(a) The owner of a motor vehicle or cabin trailer bearing spirit plates may make application to the county treasurer or designated county official to have such spirit plates transferred to a motor vehicle or cabin trailer other than the motor vehicle or cabin trailer for which such plates were originally purchased if such motor vehicle or cabin trailer is owned by the owner of the spirit plates.

(b) The owner may have the unused portion of the spirit plate fee credited to the other motor vehicle or cabin trailer which will bear the spirit plate at the rate of eight and one-third percent per month for each full month left in the registration period.

(c) Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2005, LB 274, § 128; Laws 2007, LB286, § 45; Laws 2009, LB110, § 11.

**60-3,129 Spirit Plate Proceeds Fund; created; use; investment.**

(1) The Spirit Plate Proceeds Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) If the cost of manufacturing Nebraska Cornhusker Spirit Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Spirit Plate Proceeds Fund shall

instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of such spirit plates and the amount charged pursuant to such section with respect to such spirit plates and the remainder shall be credited to the Spirit Plate Proceeds Fund as provided in section 60-3,128.

(3) The first three million dollars credited to the Spirit Plate Proceeds Fund and not credited to the Highway Trust Fund shall be appropriated to the University of Nebraska to establish an endowment fund to provide financial support to former University of Nebraska athletes to pursue undergraduate and postgraduate studies at any University of Nebraska campus. Funds appropriated by the Legislature for such scholarship program shall be held, managed, and invested as an endowed scholarship fund in such manner as the Board of Regents of the University of Nebraska shall determine and as authorized by section 72-1246. The income from the endowed scholarship fund shall be expended for such scholarships. The University of Nebraska shall grant financial support to former athletes who demonstrate financial need as determined by the Federal Pell Grant Program or similar need-based qualifications as approved by the financial aid office of the appropriate campus.

(4) The next two million dollars credited to the Spirit Plate Proceeds Fund and not credited to the Highway Trust Fund shall be appropriated to the University of Nebraska to establish an endowment fund to provide financial support for the academic service units of the athletic departments of the campuses of the University of Nebraska in support of academic services to athletes.

**Source:** Laws 2005, LB 274, § 129; Laws 2009, LB110, § 12.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-3,130 Historical license plates; conditions.**

(1) Except as provided in section 60-3,134, a person presenting a certificate of title issued pursuant to section 60-142.01 or 60-142.02 or a certificate of title indicating that the vehicle is thirty or more years old may apply for historical license plates or may use license plates of the year of manufacture in lieu of regular license plates as provided in sections 60-3,130 to 60-3,134.

(2) Each collector applying for such license plates, other than a nonprofit organization described in sections 21-608 and 21-609, must own and have registered one or more motor vehicles with regular license plates which he or she uses for regular transportation.

(3) A motor vehicle or trailer manufactured, assembled from a kit, or otherwise assembled as a reproduction or facsimile of a historical vehicle shall not be eligible for historical license plates unless it has been in existence for thirty years or more. The age of the motor vehicle or trailer shall be calculated from the year reflected on the certificate of title.

**Source:** Laws 2005, LB 274, § 130; Laws 2006, LB 663, § 24.

**60-3,130.01 Historical license plates; application; form; contents.**

The application under section 60-3,130 shall be made on a form prescribed and furnished by the department. The form shall contain (1) a description of the

vehicle owned and sought to be registered, including the make, body type, model, vehicle identification number, and year of manufacture, (2) a description of any vehicle owned by the applicant and registered by him or her with regular license plates and used for regular transportation, which description shall include make, body type, model, vehicle identification number, year of manufacture, and the Nebraska registration number assigned to the vehicle, and (3) an affidavit sworn to by the vehicle owner that the historical vehicle is being collected, preserved, restored, and maintained by the applicant as a hobby and not for the general use of the vehicle for the same purposes and under the same circumstances as other motor vehicles of the same type.

**Source:** Laws 2006, LB 663, § 25.

**60-3,130.02 Historical license plates; fees.**

(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.

(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.

**60-3,130.03 Historical license plates; department; powers and duties.**

The department shall design historical license plates with a distinctive design which, in addition to the identification number, includes the words historical and Nebraska for identification. The department may adopt and promulgate rules and regulations to implement sections 60-3,130 to 60-3,134.

**Source:** Laws 2006, LB 663, § 27.

**60-3,130.04 Historical vehicle; model-year license plates; authorized.**

(1) An owner of a historical vehicle eligible for registration under section 60-3,130 may use a license plate or plates designed by this state in the year corresponding to the model year when the vehicle was manufactured in lieu of the plates designed pursuant to section 60-3,130.03 subject to the approval of the department. The department shall inspect the plate or plates and may approve the plate or plates if it is determined that the model-year license plate or plates are legible and serviceable and that the license plate numbers do not conflict with or duplicate other numbers assigned and in use. An original-issued license plate or plates that have been restored to original condition may be used when approved by the department.

(2) The department may consult with a recognized car club in determining whether the year of the license plate or plates to be used corresponds to the model year when the vehicle was manufactured.

(3) If only one license plate is used on the vehicle, the license plate shall be placed on the rear of the vehicle. The owner of a historical vehicle may use only

one plate on the vehicle even for years in which two license plates were issued for vehicles in general.

(4) License plates used pursuant to this section corresponding to the year of manufacture of the vehicle shall not be personalized message license plates, Pearl Harbor license plates, prisoner-of-war license plates, disabled veteran license plates, Purple Heart license plates, amateur radio station license plates, Nebraska Cornhusker Spirit Plates, handicapped or disabled person license plates, or specialty license plates.

**Source:** Laws 2006, LB 663, § 28; Laws 2007, LB286, § 46; Laws 2009, LB110, § 13.

**60-3,130.05 Historical license plates; model-year license plates; validity.**

License plates issued or used pursuant to section 60-3,130 or 60-3,130.04 shall be valid while the vehicle is owned by the applicant without the payment of any additional fee, tax, or license.

**Source:** Laws 2006, LB 663, § 29.

**60-3,130.06 Historical vehicle; transfer of registration and license plates; authorized; fee.**

A collector, upon loss of possession of a historical vehicle registered pursuant to section 60-3,130, may have the registration and license plate transferred to another vehicle in his or her possession, which is eligible for such registration, upon payment of a fee of twenty-five dollars. The fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

**Source:** Laws 2006, LB 663, § 30.

**60-3,130.07 Historical vehicles; registered and licensed on August 24, 1975; how treated.**

Collectors who, on August 24, 1975, had vehicles registered and licensed as historical vehicles shall be permitted to retain such registration and license if the collector submits an affidavit to the department sworn to by the vehicle owner that the vehicle is being collected, preserved, restored, and maintained as a hobby and not for the general use of the vehicle.

**Source:** Laws 2006, LB 663, § 31.

**60-3,131 Historical vehicles; use.**

(1) Except as otherwise provided in subsection (2) of this section, historical vehicles may be used for hobby pursuits but shall not be used for the same purposes and under the same conditions as other motor vehicles or trailers of the same type, and under ordinary circumstances, such historical vehicles shall not be used to transport passengers for hire. Any such historical vehicle shall not be used for business or occupation or regularly for transportation to and from work, and may be driven on the public streets and roads only for servicing, test drives, public displays, parades, and related pleasure or hobby activities.

(2) For special events that are sponsored or in which participation is by organized clubs such historical vehicles may:

(a) Transport passengers for hire only if any money received is to be used for club activities or to be donated to a charitable nonprofit organization; and

(b) Haul other vehicles to and from such special event.

**Source:** Laws 2005, LB 274, § 131; Laws 2006, LB 815, § 1.

**60-3,132 Historical vehicles; storage; conditions.**

Subject to land-use regulations of a county or municipality, a collector may store any motor vehicles, trailers, or parts vehicles, licensed or unlicensed, operable or inoperable, on his or her property if such motor vehicles, trailers, and parts vehicles and any outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and if the motor vehicles, trailers, and parts vehicles are located away from ordinary public view or are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, opaque covering, or other appropriate means.

**Source:** Laws 2005, LB 274, § 132; Laws 2006, LB 663, § 32.

Defendant who engaged in conduct clearly proscribed by this section lacks standing to attack the statute as vague. Defendant who failed to show that the proscriptions of this section reached a substantial amount of constitutionally protected conduct lacks standing to challenge it based on overbreadth. *State v. Sommerfeld*, 251 Neb. 876, 560 N.W.2d 420 (1997).

**60-3,133 Historical vehicles; emission controls; exempt, when; safety equipment; proper operating condition.**

(1) Unless the presence of equipment specifically named by Nebraska law was a prior condition for legal sale within Nebraska at the time a specific model of historical vehicle was manufactured for first use, the presence of such equipment shall not be required as a condition for use of any such model of historical vehicle as authorized in section 60-3,131.

(2) Any historical vehicle manufactured prior to the date emission controls were standard equipment on that particular make or model of historical vehicle is exempted from statutes requiring the inspection and use of such emission controls.

(3) Any safety equipment that was manufactured as part of the historical vehicle's original equipment must be in proper operating condition.

**Source:** Laws 2005, LB 274, § 133; Laws 2006, LB 663, § 33.

**60-3,134 Historical vehicle; registered with regular license plates; when.**

Any motor vehicle or trailer that qualifies as an historical vehicle which is used for the same general purposes and under the same conditions as motor vehicles or trailers registered with regular license plates shall be required to be registered with regular license plates, regardless of its age, and shall be subject to the payment of the same taxes and fees required of motor vehicles or trailers registered with regular license plates.

**Source:** Laws 2005, LB 274, § 134.

**60-3,135 Undercover license plates; issuance; confidential.**

(1)(a) Undercover license plates may be issued to federal, state, county, city, or village law enforcement agencies and shall be used only for legitimate criminal investigatory purposes. Undercover license plates may also be issued to the Nebraska State Patrol, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal

for state law enforcement purposes, persons employed by the Tax Commissioner for state revenue enforcement purposes, the Department of Health and Human Services for the purposes of communicable disease control, the prevention and control of those communicable diseases which endanger the public health, the enforcement of drug control laws, or other investigation purposes, the Department of Agriculture for special investigative purposes, and the Insurance Fraud Prevention Division of the Department of Insurance for investigative purposes. Undercover license plates shall not be used on personally owned vehicles or for personal use of government-owned vehicles.

(b) The director shall prescribe a form for agencies to apply for undercover license plates. The form shall include a space for the name and signature of the contact person for the requesting agency, a statement that the undercover license plates are to be used only for legitimate criminal investigatory purposes, and a statement that undercover license plates are not to be used on personally owned vehicles or for personal use of government-owned vehicles.

(2) The agency shall include the name and signature of the contact person for the agency on the form and pay the fee prescribed in section 60-3,102. If the undercover license plates will be used for the investigation of a specific event rather than for ongoing investigations, the agency shall designate on the form an estimate of the length of time the undercover license plates will be needed. The contact person in the agency shall sign the form and verify the information contained in the form.

(3) Upon receipt of a completed form, the director shall determine whether the undercover license plates will be used by an approved agency for a legitimate purpose pursuant to subsection (1) of this section. If the director determines that the undercover license plates will be used for such a purpose, he or she may issue the undercover license plates in the form and under the conditions he or she determines to be necessary. The decision of the director regarding issuance of undercover license plates is final.

(4) The department shall keep records pertaining to undercover license plates confidential, and such records shall not be subject to public disclosure.

(5) The contact person shall return the undercover license plates to the department if:

- (a) The undercover license plates expire and are not renewed;
- (b) The purpose for which the undercover license plates were issued has been completed or terminated; or
- (c) The director requests their return.

(6) A state agency, board, or commission that uses motor vehicles from the transportation services bureau of the Department of Administrative Services shall notify the bureau immediately after undercover license plates have been assigned to the motor vehicle and shall provide the equipment and license plate number and the undercover license plate number to the bureau. The transportation services bureau shall maintain a list of state-owned motor vehicles which have been assigned undercover license plates. The list shall be confidential and not be subject to public disclosure.

(7) The contact person shall be held accountable to keep proper records of the number of undercover plates possessed by the agency, the particular license plate numbers for each motor vehicle, and the person who is assigned to the

motor vehicle. This record shall be confidential and not be subject to public disclosure.

**Source:** Laws 2005, LB 274, § 135; Laws 2007, LB296, § 227; Laws 2009, LB28, § 1.

**60-3,136 Motor vehicle insurance data base; created; powers and duties; Motor Vehicle Insurance Data Base Task Force; created.**

(1)(a) The motor vehicle insurance data base is created. The department shall develop and administer the motor vehicle insurance data base which shall include the information provided by insurance companies as required by the department pursuant to sections 60-3,136 to 60-3,139. The motor vehicle insurance data base shall be used to facilitate registration of motor vehicles in this state by the department and its agents. The director may contract with a designated agent for the purpose of establishing and operating the motor vehicle insurance data base and monitoring compliance with the financial responsibility requirements of such sections. The department shall implement the motor vehicle insurance data base no later than July 1, 2004. The director shall designate the date for the department's implementation of the motor vehicle insurance data base.

(b) The department may adopt and promulgate rules and regulations to carry out sections 60-3,136 to 60-3,139. The rules and regulations shall include specifications for the information to be transmitted by the insurance companies to the department for inclusion in the motor vehicle insurance data base, and specifications for the form and manner of transmission of data for inclusion in the motor vehicle insurance data base, as recommended by the Motor Vehicle Insurance Data Base Task Force created in subsection (2) of this section in its report to the department.

(2)(a) The Motor Vehicle Insurance Data Base Task Force is created. The Motor Vehicle Insurance Data Base Task Force shall investigate the best practices of the industry and recommend specifications for the information to be transmitted by the insurance companies to the department for inclusion in the motor vehicle insurance data base and specifications for the form and manner of transmission of data for inclusion in the motor vehicle insurance data base.

(b) The Motor Vehicle Insurance Data Base Task Force shall consist of:

(i) The Director of Motor Vehicles or his or her designee;

(ii) The Director of Insurance or his or her designee;

(iii) The following members who shall be selected by the Director of Insurance:

(A) One representative of a domestic automobile insurance company or domestic automobile insurance companies;

(B) One representative of an admitted foreign automobile insurance company or admitted foreign automobile insurance companies; and

(C) One representative of insurance producers licensed under the laws of this state; and

(iv) Four members to be selected by the Director of Motor Vehicles.

(c) The requirements of this subsection shall expire on July 1, 2004, except that the director may reconvene the task force at any time thereafter if he or she deems it necessary.

**Source:** Laws 2005, LB 274, § 136.

**60-3,137 Motor vehicle insurance data base; information required.**

Each insurance company doing business in this state shall provide information shown on each automobile liability policy issued in this state as required by the department pursuant to sections 60-3,136 to 60-3,139 for inclusion in the motor vehicle insurance data base in a form and manner acceptable to the department. Any person who qualifies as a self-insurer under sections 60-562 to 60-564 or any person who provides financial responsibility under sections 75-392 to 75-399 shall not be required to provide information to the department for inclusion in the motor vehicle insurance data base.

**Source:** Laws 2005, LB 274, § 137; Laws 2007, LB358, § 9; Laws 2009, LB331, § 3.

**60-3,138 Motor vehicle insurance data base; information; restrictions.**

Information provided to the department by insurance companies for inclusion in the motor vehicle insurance data base created under section 60-3,136 is the property of the insurance company and the department, as the case may be. The department may disclose whether an individual has the required insurance coverage pursuant to the Uniform Motor Vehicle Records Disclosure Act, but in no case shall the department provide any person's insurance coverage information for purposes of resale, for purposes of solicitation, or as bulk listings.

**Source:** Laws 2005, LB 274, § 138.

**Cross References**

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

**60-3,139 Motor vehicle insurance data base; immunity.**

(1) The state shall not be liable to any person for gathering, managing, or using information in the motor vehicle insurance data base created under section 60-3,136.

(2) No insurance company shall be liable to any person for performing its duties under sections 60-3,136 to 60-3,138, unless and to the extent the insurance company commits a willful and wanton act or omission.

**Source:** Laws 2005, LB 274, § 139.

**60-3,140 Registration fees; to whom payable.**

All fees for the registration of motor vehicles or trailers, unless otherwise expressly provided, shall be paid to the county treasurer or designated county official of the county in which the motor vehicle or trailer has situs. If registered pursuant to section 60-3,198, all fees shall be paid to the department.

**Source:** Laws 2005, LB 274, § 140.

**60-3,141 Agents of department; fees; collection.**

(1) The various county treasurers or designated county officials shall act as agents for the department in the collection of all motor vehicle taxes, motor vehicle fees, and registration fees.

(2) While acting as agents pursuant to subsection (1) of this section, the county treasurers or designated county officials shall in addition to the taxes and registration fees collect and retain for the county two dollars for each registration of a motor vehicle or trailer of a resident of the State of Nebraska and five dollars for each registration of a motor vehicle or trailer of a nonresident from the funds collected for the registration issued. Such fees collected by the county shall be remitted to the county treasurer for credit to the county general fund.

(3) The county treasurers or designated county officials shall transmit all motor vehicle fees and registration fees collected to the State Treasurer on or before the twenty-fifth day of each month and at such other times as the State Treasurer requires for credit to the Motor Vehicle Fee Fund and the Highway Trust Fund, respectively, except as provided in section 60-3,156. Any county treasurer or designated county official who fails to transfer to the State Treasurer the amount due the state at the times required in this section shall pay interest at the rate specified in section 45-104.02, as such rate may be adjusted from time to time, from the time the motor vehicle fees and registration fees become due until paid.

**Source:** Laws 2005, LB 274, § 141; Laws 2007, LB286, § 47.

**60-3,142 Fees; retention by county.**

The various county treasurers or designated county officials acting as agents for the department in collection of the fees shall retain five percent of each fee collected under section 60-3,112. The five percent shall be remitted to the county treasurer for credit to the county general fund.

**Source:** Laws 2005, LB 274, § 142; Laws 2007, LB286, § 48.

**60-3,143 Passenger motor vehicle; leased motor vehicle; registration fee.**

(1) For every motor vehicle of ten-passenger capacity or less and not used for hire, the registration fee shall be fifteen dollars.

(2) For each motor vehicle having a seating capacity of ten persons or less and used for hire, the registration fee shall be six dollars plus an additional four dollars for every person such motor vehicle is equipped to carry in addition to the driver.

(3) For motor vehicles leased for hire when no driver or chauffeur is furnished by the lessor as part of the consideration paid for by the lessee, incident to the operation of the leased motor vehicle, the fee shall be fifteen dollars.

**Source:** Laws 2005, LB 274, § 143.

**60-3,144 Buses; registration fees.**

(1) For buses used exclusively to carry children to and from school, and other school activities, the registration fee shall be ten dollars.

(2) For buses equipped to carry more than ten persons for hire, the fee shall be based on the weight of such bus. To ascertain the weight, the unladen weight in pounds shall be used. There shall be added to such weight in pounds the

number of persons such bus is equipped to carry times two hundred, the sum thereof being the weight of such bus for license purposes. The unladen weight shall be ascertained by scale weighing of the bus fully equipped and as used upon the highways under the supervision of a member of the Nebraska State Patrol or a carrier enforcement officer and certified by such patrol member or carrier enforcement officer to the department or county treasurer or designated county official. The fee therefor shall be as follows:

(a) If such bus weighs thirty-two thousand pounds and less than thirty-four thousand pounds, it shall be licensed as a twelve-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(b) If such bus weighs thirty thousand pounds and less than thirty-two thousand pounds, it shall be licensed as an eleven-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(c) If such bus weighs twenty-eight thousand pounds and less than thirty thousand pounds, it shall be licensed as a ten-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(d) If such bus weighs twenty-two thousand pounds and less than twenty-eight thousand pounds, it shall be licensed as a nine-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(e) If such bus weighs sixteen thousand pounds and less than twenty-two thousand pounds, it shall be licensed as an eight-ton truck as provided in section 60-3,147 and pay the same fee as therein provided; and

(f) If such bus weighs less than sixteen thousand pounds, it shall be licensed as a five-ton truck as provided in section 60-3,147 and pay the same fee as therein provided, except that upon registration of buses equipped to carry ten passengers or more and engaged entirely in the transportation of passengers for hire within municipalities or in and within a radius of five miles thereof the fee shall be seventy-five dollars, and for buses equipped to carry more than ten passengers and not for hire the registration fee shall be thirty dollars.

(3) License plates issued under this section shall be the same size and of the same basic design as regular license plates issued under section 60-3,100.

**Source:** Laws 2005, LB 274, § 144.

#### **60-3,145 Local trucks; registration fees.**

(1) The registration fee on local trucks shall be based on the gross vehicle weight as provided in section 60-3,147, and local trucks shall be registered at a fee of thirty percent of the commercial motor vehicle registration fee, except that (a) no local truck shall be registered for a fee of less than eighteen dollars, (b) the registration fee for each truck with a factory-rated capacity of one ton or less shall be eighteen dollars, and (c) commercial pickup trucks with a gross load of over three tons shall be registered for the fee provided for commercial motor vehicles.

(2) Local truck license plates shall display, in addition to the registration number, the designation of local motor vehicles.

**Source:** Laws 2005, LB 274, § 145; Laws 2007, LB286, § 49.

#### **60-3,146 Farm trucks; registration fees.**

(1) For the registration of farm trucks, except for trucks or combinations of trucks or truck-tractors and trailers having a gross vehicle weight exceeding sixteen tons, the registration fee shall be eighteen dollars for up to and including five tons gross vehicle weight, and in excess of five tons the fee shall be twenty-two dollars.

(2) For a truck or a combination of a truck or truck-tractor and trailer weighing in excess of sixteen tons registered as a farm truck, except as provided in sections 60-3,111 and 60-3,151, the registration fee shall be based upon the gross vehicle weight. The registration fee on such trucks weighing in excess of sixteen tons shall be at the following rates: For a gross weight in excess of sixteen tons up to and including twenty tons, forty dollars plus five dollars for each ton of gross weight over seventeen tons, and for gross weight exceeding twenty tons, sixty-five dollars plus ten dollars for each ton of gross weight over twenty tons.

(3) Farm truck license plates shall display, in addition to the registration number, the designation farm and the words NOT FOR HIRE.

(4) Farm trucks with a gross weight of over sixteen tons license plates shall also display the weight that such farm truck is licensed for, using a decal on the license plates in letters and numerals of such size and design as shall be determined and issued by the department.

**Source:** Laws 2005, LB 274, § 146.

**60-3,147 Commercial motor vehicles; registration fees.**

(1) The registration fee on commercial motor vehicles, except those motor vehicles registered under section 60-3,198, shall be based upon the gross vehicle weight, not to exceed the maximum authorized by section 60-6,294.

(2) The registration fee on commercial motor vehicles, except for motor vehicles and trailers registered under section 60-3,198, shall be based on the gross vehicle weight on such commercial motor vehicles plus the gross vehicle weight of any trailer or combination with which it is operated, except that for the purpose of determining the registration fee, the gross vehicle weight of a commercial motor vehicle towing or hauling a disabled or wrecked motor vehicle properly registered for use on the highways shall be only the gross vehicle weight of the towing commercial motor vehicle fully equipped and not including the weight of the motor vehicle being towed or hauled.

(3) Except as provided in subsection (4) of this section, the registration fee on such commercial motor vehicles shall be at the following rates:

(a) For a gross vehicle weight of three tons or less, eighteen dollars;

(b) For a gross vehicle weight exceeding three tons and not exceeding four tons, twenty-five dollars;

(c) For a gross vehicle weight exceeding four tons and not exceeding five tons, thirty-five dollars;

(d) For a gross vehicle weight exceeding five tons and not exceeding six tons, sixty dollars;

(e) For a gross vehicle weight exceeding six tons but not exceeding seven tons, eighty-five dollars;

(f) For a gross vehicle weight in excess of seven tons, the fee shall be that for a commercial motor vehicle having a gross vehicle weight of seven tons and, in

addition thereto, twenty-five dollars for each ton of gross vehicle weight over seven tons.

(4)(a) For fractional tons in excess of the twenty percent or the tolerance of one thousand pounds, as provided in section 60-6,300, the fee shall be computed on the basis of the next higher bracket.

(b) The fees provided by this section shall be reduced ten percent for motor vehicles used exclusively for the transportation of agricultural products.

(c) Fees for commercial motor vehicles with a gross vehicle weight in excess of thirty-six tons shall be increased by twenty percent for all such commercial motor vehicles operated on any highway not a part of the National System of Interstate and Defense Highways.

(5)(a) Such fee may be paid one-half at the time of registration and one-half on the first day of the seventh month of the registration period when the license fee exceeds two hundred ten dollars. When the second half is paid, the county treasurer or designated county official shall furnish a registration certificate and license plates issued by the department which shall be displayed on such commercial motor vehicle in the manner provided by law. In addition to the registration fee, the department shall collect a sufficient fee to cover the cost of issuing the certificate and license plates.

(b) If such second half is not paid within thirty days following the first day of the seventh month, the registration of such commercial motor vehicle shall be canceled and the registration certificate and license plates shall be returned to the county treasurer or designated county official.

(c) Such fee shall be paid prior to any subsequent registration or renewal of registration.

(6) License plates issued under this section shall be the same size and of the same basic design as regular license plates issued under section 60-3,100.

(7) A license plate or plates issued to a commercial motor vehicle with a gross weight of five tons or over shall display, in addition to the registration number, the weight that the commercial motor vehicle is licensed for, using a decal on the license plate or plates of the commercial motor vehicle in letters and numerals of such size and design as shall be determined and issued by the department.

**Source:** Laws 2005, LB 274, § 147; Laws 2007, LB286, § 50.

Registration fee is based upon the load to be hauled. Aulner v. State, 160 Neb. 741, 71 N.W.2d 305 (1955).

**60-3,148 Commercial motor vehicle; increase of gross vehicle weight; where allowed.**

No owner of a commercial motor vehicle shall be permitted to increase the gross vehicle weight for which such commercial motor vehicle is registered except at the office of the county treasurer or designated county official in the county where such commercial motor vehicle is currently registered unless the need for such increase occurs when such commercial motor vehicle is more than one hundred miles from the county seat of such county, unless authorized to do so by the Nebraska State Patrol or authorized state scale examiner as an emergency.

**Source:** Laws 2005, LB 274, § 148.

**60-3,149 Soil and water conservation vehicles; registration fee.**

(1) For the registration of trucks or combinations of trucks, truck-tractors, or trailers which are not for hire and engaged in soil and water conservation work and used for the purpose of transporting pipe and equipment exclusively used by such contractors for soil and water conservation construction, the registration fee shall be one-half of the rate for similar commercial motor vehicles registered under section 60-3,147, except that no commercial motor vehicle or commercial trailer registered under this section shall be registered for a fee of less than eighteen dollars.

(2) Such license plates shall display, in addition to the registration number, the letter A.

**Source:** Laws 2005, LB 274, § 149.

**60-3,150 Truck-tractor and semitrailer; commercial trailer; registration fee.**

For registration purposes, a truck-tractor and semitrailer unit and a commercial trailer shall be considered as separate units. The registration fee of the truck-tractor shall be the fee provided for commercial motor vehicles. Each semitrailer and each commercial trailer shall be registered upon the payment of a fee of one dollar. The department shall provide an appropriate license plate or, when appropriate, validation decal to identify such semitrailers. If any truck or truck-tractor, operated under the classification designated as local, farm, or A or with plates issued under section 60-3,113 is operated outside of the limits of its respective classification, it shall thereupon come under the classification of commercial motor vehicle.

**Source:** Laws 2005, LB 274, § 150; Laws 2007, LB286, § 51.

**60-3,151 Trailers; recreational vehicles; registration fee.**

(1) For the registration of any commercial trailer or semitrailer, the fee shall be one dollar.

(2) The fee for utility trailers shall be one dollar for each one thousand pounds gross vehicle weight or fraction thereof, up to and including nine thousand pounds. Utility trailer license plates shall display, in addition to the registration number, the letter X. Trailers other than farm trailers of more than nine thousand pounds must be registered as commercial trailers.

(3) The fee for cabin trailers having gross vehicle weight of one thousand pounds or less shall be nine dollars and more than one thousand pounds, but less than two thousand pounds, shall be twelve dollars. Cabin trailers having a gross vehicle weight of two thousand pounds or more shall be registered for a fee of fifteen dollars.

(4) Recreational vehicles having a gross vehicle weight of eight thousand pounds or less shall be registered for a fee of eighteen dollars, those having a gross vehicle weight of more than eight thousand pounds but less than twelve thousand pounds shall be registered for thirty dollars, and those having a gross vehicle weight of twelve thousand pounds or over shall be registered for forty-two dollars. When living quarters are added to a registered truck, a recreational vehicle registration may be obtained without surrender of the truck registration, in which event both the truck and recreational vehicle license plates shall be displayed on the vehicle. Recreational vehicle license plates shall be the

same size and of the same basic design as regular license plates issued pursuant to section 60-3,100.

(5) Farm trailers shall be licensed for a fee of one dollar, except that when a farm trailer is used with a registered farm truck, such farm trailer may, at the option of the owner, be registered as a separate unit for a fee of three dollars per ton gross vehicle weight and, if so registered, shall not be considered a truck and trailer combination for purposes of sections 60-3,145 and 60-3,146. Farm trailer license plates shall display, in addition to the registration number, the letter X.

(6) Fertilizer trailers shall be registered for a fee of one dollar. Fertilizer trailer license plates shall display, in addition to the registration number, the letter X.

(7) Trailers used to haul poles and cable reels owned and operated exclusively by public utility companies shall be licensed at a fee based on two dollars for each one-thousand-pound load to be hauled or any fraction thereof, and such load shall not exceed sixteen thousand pounds.

**Source:** Laws 2005, LB 274, § 151.

**60-3,152 Ambulances; hearses; registration fee.**

For all ambulances, except publicly owned ambulances, and hearses, the registration fee shall be fifteen dollars.

**Source:** Laws 2005, LB 274, § 152.

**60-3,153 Motorcycle; registration fee.**

For the registration of every motorcycle, the fee shall be six dollars.

**Source:** Laws 2005, LB 274, § 153.

**60-3,154 Taxicabs; registration fee.**

For taxicabs, used for hire, duly licensed by the governing authorities of cities and villages, the registration fee shall be fifteen dollars.

**Source:** Laws 2005, LB 274, § 154.

**60-3,155 Well-boring apparatus and well-servicing equipment; registration fee.**

For the registration of well-boring apparatus and well-servicing equipment, the registration fee shall be one-twelfth of the regular commercial registration fee as determined by gross vehicle weight. Such fee shall be collected and distributed in the same manner as other motor vehicle fees.

**Source:** Laws 2005, LB 274, § 155.

**60-3,156 Additional fees.**

In addition to the registration fees for motor vehicles and trailers, the county treasurer or designated county official or his or her agent shall collect:

(1) One dollar and fifty cents for each certificate issued and shall remit one dollar and fifty cents of each additional fee collected to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund;

(2) Fifty cents for each certificate issued and shall remit the fee to the State Treasurer for credit to the Nebraska Emergency Medical System Operations Fund;

(3) One dollar and fifty cents for each certificate issued and shall remit the fee to the State Treasurer for credit to the State Recreation Road Fund; and

(4) For the period January 1, 2003, through December 31, 2005, twenty-five cents for each certificate issued to pay for the costs of the motor vehicle insurance data base created under section 60-3,136 and shall remit such additional fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2005, LB 274, § 156.

**60-3,157 Lost or mutilated license plate or registration certificate; duplicate; fees.**

If a license plate or registration certificate is lost or mutilated or has become illegible, the person to whom such license plate and registration certificate has been issued shall immediately apply to the county treasurer or designated county official for a duplicate registration certificate or for new license plates, accompanying his or her application with a fee of one dollar for a duplicate registration certificate and a fee of two dollars and fifty cents for a duplicate or replacement license plate. No fee shall be required under this section if the vehicle or trailer was reported stolen under section 60-178.

**Source:** Laws 2005, LB 274, § 157; Laws 2009, LB175, § 2.

**60-3,158 Methods of payment authorized.**

A county treasurer or designated county official or his or her agent may accept credit cards, charge cards, debit cards, or electronic funds transfers as a means of payment for registration pursuant to section 13-609.

**Source:** Laws 2005, LB 274, § 158.

**60-3,159 Registration fees; fees for previous years.**

Upon application to register any motor vehicle or trailer, no registration fee shall be required to be paid thereon for any previous registration period during which such motor vehicle or trailer was not at any time driven or used upon any highway within this state, and the person desiring to register such motor vehicle or trailer without payment of fees for previous registration periods shall file with the county treasurer or designated county official an affidavit showing where, when, and for how long such motor vehicle or trailer was stored and that the same was not used in this state during such registration period or periods, and upon receipt thereof the county treasurer or designated county official shall issue a registration certificate.

**Source:** Laws 2005, LB 274, § 159.

**60-3,160 Governmental vehicle; exempt from fee.**

No registration fee shall be charged for any motor vehicle or trailer owned or leased and used by any city or village of this state, any rural fire protection district, the Civil Air Patrol, any public school district, any county, the state, the United States Government, any entity formed pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public

Agency Act, or any municipal public body or authority used in operating a public passenger transportation system.

**Source:** Laws 2005, LB 274, § 160.

**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.

**60-3,161 Registration; records; copy or extract provided; electronic access; fee.**

(1) The department shall keep a record of each motor vehicle and trailer registered, alphabetically by name of the owner, with cross reference in each instance to the registration number assigned to such motor vehicle and trailer. The record may be destroyed by any public officer having custody of it after three years from the date of its issuance.

(2) The department shall issue a copy of the record of a registered or titled motor vehicle or trailer to any person after receiving from the person the name on the registration, the license plate number, the vehicle identification number, or the title number of a motor vehicle or trailer, if the person provides to the department verification of identity and purpose pursuant to section 60-2906 or 60-2907. A fee of one dollar shall be charged for the copy. An extract of the entire file of motor vehicles and trailers registered or titled in the state or updates to the entire file may be provided to a person upon payment of a fee of eighteen dollars per thousand records. Any fee received by the department pursuant to this subsection shall be deposited into the Department of Motor Vehicles Cash Fund.

(3) The record of each motor vehicle or trailer registration or title maintained by the department pursuant to this section may be made available electronically through the gateway or electronic network established under section 84-1204 so long as the Uniform Motor Vehicle Records Disclosure Act is not violated. There shall be a fee of one dollar per record for individual records. For batch requests for multiple motor vehicle or trailer title and registration records selected on the basis of criteria of the individual making the request, there shall be a fee of fifty dollars for every request under two thousand records and a fee of eighteen dollars per one thousand records for any number of records over two thousand, plus a reasonable programming fee not to exceed five hundred twenty dollars. All fees collected pursuant to this subsection for electronic access to records through the gateway shall be deposited in the Records Management Cash Fund and shall be distributed as provided in any agreements between the State Records Board and the department.

**Source:** Laws 2005, LB 274, § 161; Laws 2008, LB756, § 13.

**Cross References**

**Uniform Motor Vehicle Records Disclosure Act**, see section 60-2901.

**60-3,162 Certificate of registration; illegal issuance; revocation.**

The department shall, upon a sworn complaint in writing of any person, investigate whether a certificate of registration has been issued on a motor vehicle or trailer exceeding the length, height, or width provided by law or issued contrary to any law of this state. If the department determines from the

investigation that such certificate of registration has been illegally issued, it shall have power to revoke such certificate of registration.

**Source:** Laws 2005, LB 274, § 162.

**60-3,163 Registration certificate; outstanding warrant for arrest; refusal of issuance; courts; duties.**

No motor vehicle or trailer may be registered in the State of Nebraska when there is an outstanding warrant for the arrest of the owner thereof issued out of any court located within this state and such warrant arises out of an alleged violation of a state statute or municipal ordinance involving the use of a motor vehicle or trailer. Each court in the state shall, on or before the fifth day of each month, submit to the county treasurer or designated county official of the county in which the court is located an alphabetized list of all persons against whom such warrants exist for the preceding month.

**Source:** Laws 2005, LB 274, § 163.

**60-3,164 Operation or parking of unregistered vehicle; penalty.**

(1) Any person who operates or parks a motor vehicle or who tows or parks a trailer on any highway, which motor vehicle or trailer has not been registered as required by section 60-362, shall be subject to the penalty provided in section 60-3,170.

(2) A person who parks a motor vehicle or tows a trailer on any highway, which motor vehicle or trailer has been properly registered in this state but such registration has expired, shall not be in violation of this section or section 60-362 or subject to the penalty provided in section 60-3,170, unless thirty days have passed from the expiration of the prior registration.

**Source:** Laws 2005, LB 274, § 164.

**60-3,165 Registration; noncompliance; citation; effect.**

If a citation is issued to an owner or operator of a motor vehicle or trailer for a violation of section 60-362 and the owner properly registers and licenses the motor vehicle or trailer not in compliance and pays all taxes and fees due and the owner or operator provides proof of such registration to the prosecuting attorney within ten days after the issuance of the citation, no prosecution for the offense cited shall occur.

**Source:** Laws 2005, LB 274, § 165.

**60-3,166 Law enforcement officers; arrest violators; violations; penalty; payment of taxes and fees.**

It shall be the duty of all law enforcement officers to arrest all violators of any of the provisions of sections 60-373, 60-374, 60-375, 60-376, 60-378, 60-379, and 60-3,114 to 60-3,116. Any person, firm, or corporation, including any motor vehicle, trailer, or boat dealer or manufacturer, who fails to comply with such provisions shall be guilty of a Class V misdemeanor and, in addition thereto, shall pay the county treasurer or designated county official any and all motor vehicle taxes and fees imposed in sections 60-3,185 and 60-3,190, registration fees, or certification fees due had the motor vehicle or trailer been properly registered or certified according to law.

**Source:** Laws 2005, LB 274, § 166.

**60-3,167 Financial responsibility; owner; requirements; prohibited acts; violation; penalty; dismissal of citation; when.**

(1) It shall be unlawful for any owner of a motor vehicle or trailer which is being operated or towed with In Transit stickers pursuant to section 60-376, which is being operated or towed pursuant to section 60-365 or 60-369, or which is required to be registered in this state and which is operated or towed on a public highway of this state to allow the operation or towing of the motor vehicle or trailer on a public highway of this state without having a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility. The owner shall be presumed to know of the operation or towing of his or her motor vehicle or trailer on a highway of this state in violation of this section when the motor vehicle or trailer is being operated or towed by a person other than the owner. An owner of a motor vehicle or trailer who operates or tows the motor vehicle or trailer or allows the operation or towing of the motor vehicle or trailer in violation of this section shall be guilty of a Class II misdemeanor and shall be advised by the court that his or her motor vehicle operator's license, motor vehicle certificate of registration, and license plates will be suspended by the department until he or she complies with sections 60-505.02 and 60-528. Upon conviction the owner shall have his or her motor vehicle operator's license, motor vehicle certificate of registration, and license plates suspended by the department until he or she complies with sections 60-505.02 and 60-528. The owner shall also be required to comply with section 60-528 for a continuous period of three years after the violation. This subsection shall not apply to motor vehicles or trailers registered in another state.

(2) An owner who is unable to produce a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility upon the request of a law enforcement officer shall be allowed ten days after the date of the request to produce proof to the appropriate prosecutor or county attorney that a current and effective automobile liability policy or proof of financial responsibility was in existence for the motor vehicle or trailer at the time of such request. Upon presentation of such proof, the citation shall be dismissed by the prosecutor or county attorney without cost to the owner and no prosecution for the offense cited shall occur.

(3) The department shall, for any person convicted for a violation of this section, reinstate such person's operator's license, motor vehicle certificate of registration, and license plates and rescind any order requiring such person to comply with section 60-528 without cost to such person upon presentation to the director that, at the time such person was cited for a violation of this section, a current and effective automobile liability policy or proof of financial responsibility was in existence for the motor vehicle or trailer at the time the citation was issued.

**Source:** Laws 2005, LB 274, § 167.

**60-3,168 Proof of financial responsibility required; violation; penalty.**

It shall be unlawful for any owner to pay the required registration fees when the owner does not, at the time of paying the fees or during the entire registration period, have or keep in effect a current and effective automobile liability policy or proof of financial responsibility. Any person violating this

section shall be guilty of a Class IV misdemeanor. The penalty shall be mandatory and shall not be suspended by a court.

**Source:** Laws 2005, LB 274, § 168.

**60-3,169 Farm truck; unauthorized use; penalty.**

Any person using a truck or combination of a truck or truck-tractor and trailer registered as a farm truck pursuant to section 60-3,146 in violation of the uses authorized shall be guilty of a Class IV misdemeanor and shall be required to register such truck or combination of a truck or truck-tractor and trailer as a commercial motor vehicle or commercial trailer for the entire registration period in which the violation occurred.

**Source:** Laws 2005, LB 274, § 169.

**60-3,170 Violations; penalty.**

Any person, firm, association, partnership, limited liability company, or corporation which violates any provision of the Motor Vehicle Registration Act for which a penalty is not otherwise provided shall be guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 274, § 170.

**60-3,171 Fraud; penalty.**

Any person who registers or causes to be registered any motor vehicle or trailer in the name of any person other than the owner thereof, who gives a false or fictitious name or false or fictitious residential and mailing address of the registrant, or who gives false information pursuant to section 60-386 in any application for registration of a motor vehicle or trailer shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 274, § 171.

**60-3,172 Registration in incorrect county; penalty.**

Any person applying for a motor vehicle or trailer registration in any county or location other than that specified in section 60-385 or 60-3,198 shall be deemed guilty of a Class IV misdemeanor.

**Source:** Laws 2005, LB 274, § 172.

**60-3,173 Commercial trucks and truck-tractors; commercial vehicles; prohibited acts; penalty.**

Any person who fails to return a registration certificate and license plate when required to do so under subdivision (5)(b) of section 60-3,147 and any person, firm, association, or corporation who otherwise violates section 60-3,147 or 60-3,148 shall be guilty of a Class IV misdemeanor.

**Source:** Laws 2005, LB 274, § 173.

**60-3,174 Well-boring apparatus and well-servicing equipment; prohibited acts; penalty.**

Any person using a motor vehicle or trailer registered as well-boring apparatus and well-servicing equipment for any purpose other than that for which the special equipment license plate was issued shall be guilty of a Class IV

misdemeanor and shall be required to register such motor vehicle or trailer as a commercial motor vehicle or commercial trailer for the entire year in which the violation occurred.

**Source:** Laws 2005, LB 274, § 174.

**60-3,175 Historical vehicles; prohibited acts; penalty.**

It shall be unlawful to own or operate a motor vehicle or trailer with historical license plates in violation of section 60-3,130, 60-3,131, or 60-3,134. Upon conviction of a violation of any provision of such sections, a person shall be guilty of a Class V misdemeanor.

**Source:** Laws 2005, LB 274, § 175; Laws 2006, LB 663, § 34.

**60-3,176 Undercover plates; prohibited acts; penalty.**

Any person who receives information pertaining to undercover license plates in the course of his or her employment and who discloses any such information to any unauthorized individual shall be guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 274, § 176.

**60-3,177 Nonresident vehicles; prohibited acts.**

It shall be unlawful to operate trucks, truck-tractors, trailers, or buses owned by nonresidents who are not in compliance with sections 60-3,178 to 60-3,182 or any agreement executed under the authority granted in sections 60-3,180 to 60-3,182.

**Source:** Laws 2005, LB 274, § 177.

**60-3,178 Nonresident vehicles; requirements; exception; reciprocity.**

Trucks, truck-tractors, trailers, or buses, from a jurisdiction other than Nebraska, entering Nebraska shall be required to comply with all the laws and regulations of any nature imposed on Nebraska trucks, truck-tractors, trailers, or buses unless the jurisdiction in which such trucks, truck-tractors, trailers, or buses are domiciled grants reciprocity comparable to that extended by the laws of Nebraska.

**Source:** Laws 2005, LB 274, § 178.

Reciprocity with other states on licensing of truck-tractors and trailers is provided under specified conditions. Ashton v. State, 173 Neb. 78, 112 N.W.2d 540 (1961).

**60-3,179 Nonresident vehicles; nonreciprocal jurisdiction; fees.**

In case a jurisdiction is not reciprocal as to license fees on trucks, truck-tractors, trailers, or buses, the owners of nonresident trucks, truck-tractors, trailers, or buses from those jurisdictions shall pay the same license fees as are charged residents of this state. The owners of all trucks, truck-tractors, trailers, or buses from other jurisdictions doing intrajurisdiction hauling in this state shall pay the same registration fees as those paid by residents of this state unless such trucks, truck-tractors, trailers, or buses are registered as a part of a fleet in interjurisdiction commerce as provided in section 60-3,198.

**Source:** Laws 2005, LB 274, § 179.

**60-3,180 Nonresident vehicles; reciprocal agreements authorized; terms and conditions; revision; absence of agreement; effect.**

(1) In order to effect the purposes of sections 60-3,178, 60-3,179, and 60-3,198, the director shall have the power, duty, and authority to enter into reciprocal agreements with the duly authorized representatives of other jurisdictions, including states, districts, territories, or possessions of the United States and foreign countries, states, or provinces, granting to trucks, truck-tractors, trailers, or buses or owners of trucks, truck-tractors, trailers, or buses which are properly registered or licensed in such jurisdictions, and for which evidence of compliance is supplied, benefits, privileges, and exemptions from the payment, wholly or partially, of any fees or other charges imposed upon such trucks, truck-tractors, trailers, or buses or owners with respect to the operation or ownership of such trucks, truck-tractors, trailers, or buses under the laws of this state. Such agreements or arrangements shall provide that trucks, truck-tractors, trailers, or buses registered or licensed in this state when operated upon the highways of such other jurisdictions shall receive exemptions, benefits, and privileges of a similar kind or to a similar degree as are extended to trucks, truck-tractors, trailers, or buses from such jurisdictions in this state. Such agreements may be revised or replaced by new agreements from time to time in order to promote greater uniformity among the jurisdictions. The director may withdraw from any agreement when he or she determines that it is for the best interest of the State of Nebraska upon thirty days' notice.

(2) Notwithstanding any provisions of the Nebraska statutes to the contrary or inconsistent herewith, such agreements may provide, with respect to resident or nonresident fleets of apportionable vehicles which are engaged in interjurisdiction and intrajurisdiction commerce, that the registrations of such fleets can be apportioned between this state and other jurisdictions in which such fleets operate in accordance with the method set out in section 60-3,198. A Nebraska-based fleet owner may include trucks, truck-tractors, trailers, and buses in such apportionable fleet by listing them in an application filed pursuant to section 60-3,198, and any trucks, truck-tractors, trailers, and buses so included shall be eligible for permanent license plates issued pursuant to section 60-3,203. The registration procedure required by section 60-3,198 shall be the only such registration required, and when the fees required by such section and section 60-3,203 if applicable have been paid, the trucks, truck-tractors, trailers, and buses listed on the application shall be duly registered as part of such Nebraska-based fleet and shall be considered part of a Nebraska-based fleet for purposes of taxation.

(3) In the absence of an agreement or arrangement with any jurisdiction, the director is authorized to examine the laws and requirements of such jurisdiction and to declare the extent and nature of exemptions, benefits, and privileges to be extended to trucks, truck-tractors, trailers, and buses registered in such jurisdiction or to the owners or operators of such trucks, truck-tractors, trailers, and buses.

When no written agreement or arrangement has been entered into with another jurisdiction or declaration issued pertaining thereto, any trucks, truck-tractors, trailers, and buses properly registered in such jurisdiction, and for which evidence of compliance is supplied, may be operated in this state and shall receive the same exemptions, benefits, and privileges granted by such other jurisdiction to trucks, truck-tractors, trailers, and buses registered in this state.

**Source:** Laws 2005, LB 274, § 180.

Where truck-tractor was licensed in Michigan with whom Nebraska maintained reciprocity, no license fees were required even though trailer was licensed in Iowa. Ashton v. State, 173 Neb. 78, 112 N.W.2d 540 (1961).

**60-3,181 Truck, truck-tractor, trailer, or bus; no additional registration or license fees required; when.**

(1) When a truck, truck-tractor, trailer, or bus has been duly registered in any jurisdiction, including those that are part of a Nebraska-based fleet registered pursuant to section 60-3,198, no additional registration or license fees, except as provided in section 60-3,203 if applicable, shall be required in this state when such truck, truck-tractor, trailer, or bus is operated in combination with any truck, truck-tractor, trailer, or bus properly licensed or registered in accordance with sections 60-3,179 to 60-3,182 and 60-3,198 or agreements, arrangements, or declarations pursuant to such sections.

(2) Properly registered means a truck, truck-tractor, trailer, or bus licensed or registered in one of the following: (a) The jurisdiction where the person registering the truck, truck-tractor, trailer, or bus has his or her legal residence; (b) the jurisdiction in which a truck, truck-tractor, trailer, or bus is registered, when the operation in which such truck, truck-tractor, trailer, or bus is used has a principal place of business therein, and from or in which the truck, truck-tractor, trailer, or bus is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled and the truck, truck-tractor, trailer, or bus is assigned to such principal place of business; or (c) the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions or pursuant to a declaration, the person registering the truck, truck-tractor, trailer, or bus has licensed the truck, truck-tractor, trailer, or bus as required by such jurisdiction.

**Source:** Laws 2005, LB 274, § 181.

**60-3,182 Agreements, arrangements, declarations, and amendments; requirements.**

(1) All agreements, arrangements, declarations, and amendments authorized by sections 60-3,179 to 60-3,182 and 60-3,198 shall be in writing and shall become effective when filed in the office of the director.

(2) Agreements or arrangements entered into or declarations issued under the authority of sections 60-3,179 to 60-3,182 may contain provisions denying exemptions, benefits, and privileges granted in such agreements, arrangements, or declarations to any truck, truck-tractor, trailer, or bus which is in violation of conditions stated in such agreements, arrangements, or declarations.

**Source:** Laws 2005, LB 274, § 182.

**60-3,183 Registration under International Registration Plan Act; disciplinary actions; procedure; enforcement.**

(1) The director may revoke, suspend, cancel, or refuse to issue or renew a registration certificate under sections 60-3,198 to 60-3,203 upon receipt of notice under the federal Performance and Registration Information Systems Management Program that the ability of the applicant or registration certificate holder to operate has been terminated or denied by a federal agency.

(2) 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 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 2005, LB 274, § 183; Laws 2006, LB 853, § 3.

**60-3,184 Motor vehicle tax and fee; terms, defined.**

For purposes of sections 60-3,184 to 60-3,190:

(1) Automobile means passenger cars, trucks, utility vehicles, and vans up to and including seven tons;

(2) Motor vehicle means every motor vehicle and trailer subject to the payment of registration fees or permit fees under the laws of this state and every cabin trailer registered for operation upon the highways of this state;

(3) Motor vehicle fee means the fee imposed upon motor vehicles under section 60-3,190;

(4) Motor vehicle tax means the tax imposed upon motor vehicles under section 60-3,185; and

(5) Registration period means the period from the date of registration pursuant to section 60-392 to the first day of the month following one year after such date.

**Source:** Laws 2005, LB 274, § 184; Laws 2007, LB286, § 52.

**60-3,185 Motor vehicle tax; exemptions.**

A motor vehicle tax is imposed on motor vehicles registered for operation upon the highways of this state, except:

(1) Motor vehicles exempt from the registration fee in section 60-3,160;

(2) One motor vehicle owned and used for his or her personal transportation by a disabled or blind veteran of the United States Armed Forces as defined in section 77-202.23 whose disability or blindness is recognized by the United States Department of Veterans Affairs and who was discharged or otherwise separated with a characterization of honorable if an application for the exemption has been approved under subsection (1) of section 60-3,189;

(3) Motor vehicles owned by Indians as defined in 25 U.S.C. 479;

(4) Motor vehicles owned by a member of the United States Armed Forces serving in this state in compliance with military or naval orders if such person is a resident of a state other than Nebraska;

(5) Motor vehicles owned by the state and its governmental subdivisions and exempt as provided in subdivision (1)(a) or (b) of section 77-202;

(6) Motor vehicles owned and used exclusively by an organization or society qualified for a tax exemption provided in subdivision (1)(c) or (d) of section 77-202 if an application for the exemption provided in this subdivision has been approved under subsection (2) of section 60-3,189; and

(7) Trucks, trailers, or combinations thereof registered under section 60-3,198.

**Source:** Laws 2005, LB 274, § 185.

**60-3,186 Motor vehicle tax; notice; taxes and fees; payment; proceeds; disposition.**

(1) The county treasurer or designated county official shall annually determine the motor vehicle tax on each motor vehicle registered in the county based on the age of the motor vehicle pursuant to section 60-3,187 and cause a notice of the amount of the tax to be mailed to the registrant at the address shown upon his or her registration certificate. The notice shall be printed on a form prescribed by the department and shall be mailed on or before the first day of the last month of the registration period.

(2)(a) The motor vehicle tax, motor vehicle fee, registration fee, sales tax, and any other applicable taxes and fees shall be paid to the county treasurer or designated county official prior to the registration of the motor vehicle for the following registration period. If the motor vehicle being registered has been transferred as a gift or for a nominal amount, any sales tax owed by the transferor on the purchase of the motor vehicle shall have been paid or be paid to the county treasurer or designated county official prior to the registration of the motor vehicle for the following registration period.

(b) After retaining one percent of the motor vehicle tax proceeds collected for costs, the remaining motor vehicle tax proceeds shall be allocated to each county, local school system, school district, city, and village in the tax district in which the motor vehicle has situs.

(c)(i) Twenty-two percent of the remaining motor vehicle tax proceeds shall be allocated to the county, (ii) sixty percent shall be allocated to the local school system or school district, and (iii) eighteen percent shall be allocated to the city or village, except that (A) if the tax district is not in a city or village, forty percent shall be allocated to the county, and (B) in counties containing a city of the metropolitan class, eighteen percent shall be allocated to the county and twenty-two percent shall be allocated to the city or village.

(d) The amount allocated to a local school system shall be distributed to school districts in the same manner as property taxes.

(3) Proceeds from the motor vehicle tax shall be treated as property tax revenue for purposes of expenditure limitations, matching of state or federal funds, and other purposes.

**Source:** Laws 2005, LB 274, § 186; Laws 2006, LB 248, § 1; Laws 2007, LB286, § 53.

This section provides for disposition and remittance of highway fund after it has been collected. Wayne County v. Steele, 121 Neb. 438, 237 N.W. 288 (1931).

**60-3,187 Motor vehicle tax schedules; calculation of tax.**

(1) The motor vehicle tax schedules are set out in this section.

(2) The motor vehicle tax shall be calculated by multiplying the base tax times the fraction which corresponds to the age category of the vehicle as shown in the following table:

YEAR	FRACTION
First	1.00
Second	0.90
Third	0.80
Fourth	0.70
Fifth	0.60
Sixth	0.51

**MOTOR VEHICLES**

YEAR	FRACTION
Seventh	0.42
Eighth	0.33
Ninth	0.24
Tenth and Eleventh	0.15
Twelfth and Thirteenth	0.07
Fourteenth and older	0.00

(3) The base tax shall be:

(a) Automobiles and motorcycles — An amount determined using the following table:

Value when new	Base tax
Up to \$3,999	\$ 25
\$4,000 to \$5,999	35
\$6,000 to \$7,999	45
\$8,000 to \$9,999	60
\$10,000 to \$11,999	100
\$12,000 to \$13,999	140
\$14,000 to \$15,999	180
\$16,000 to \$17,999	220
\$18,000 to \$19,999	260
\$20,000 to \$21,999	300
\$22,000 to \$23,999	340
\$24,000 to \$25,999	380
\$26,000 to \$27,999	420
\$28,000 to \$29,999	460
\$30,000 to \$31,999	500
\$32,000 to \$33,999	540
\$34,000 to \$35,999	580
\$36,000 to \$37,999	620
\$38,000 to \$39,999	660
\$40,000 to \$41,999	700
\$42,000 to \$43,999	740
\$44,000 to \$45,999	780
\$46,000 to \$47,999	820
\$48,000 to \$49,999	860
\$50,000 to \$51,999	900
\$52,000 to \$53,999	940
\$54,000 to \$55,999	980
\$56,000 to \$57,999	1,020
\$58,000 to \$59,999	1,060
\$60,000 to \$61,999	1,100
\$62,000 to \$63,999	1,140
\$64,000 to \$65,999	1,180
\$66,000 to \$67,999	1,220
\$68,000 to \$69,999	1,260
\$70,000 to \$71,999	1,300
\$72,000 to \$73,999	1,340
\$74,000 to \$75,999	1,380
\$76,000 to \$77,999	1,420
\$78,000 to \$79,999	1,460
\$80,000 to \$81,999	1,500
\$82,000 to \$83,999	1,540
\$84,000 to \$85,999	1,580
\$86,000 to \$87,999	1,620

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\$88,000 to \$89,999	1,660
\$90,000 to \$91,999	1,700
\$92,000 to \$93,999	1,740
\$94,000 to \$95,999	1,780
\$96,000 to \$97,999	1,820
\$98,000 to \$99,999	1,860
\$100,000 and over	1,900

- (b) Assembled automobiles — \$60
  - (c) Assembled motorcycles — \$25
  - (d) Cabin trailers, up to one thousand pounds — \$10
  - (e) Cabin trailers, one thousand pounds and over and less than two thousand pounds — \$25
  - (f) Cabin trailers, two thousand pounds and over — \$40
  - (g) Recreational vehicles, less than eight thousand pounds — \$160
  - (h) Recreational vehicles, eight thousand pounds and over and less than twelve thousand pounds — \$410
  - (i) Recreational vehicles, twelve thousand pounds and over — \$860
  - (j) Assembled recreational vehicles and buses shall follow the schedules for body type and registered weight
  - (k) Trucks — Over seven tons and less than ten tons — \$360
  - (l) Trucks — Ten tons and over and less than thirteen tons — \$560
  - (m) Trucks — Thirteen tons and over and less than sixteen tons — \$760
  - (n) Trucks — Sixteen tons and over and less than twenty-five tons — \$960
  - (o) Trucks — Twenty-five tons and over — \$1,160
  - (p) Buses — \$360
  - (q) Trailers other than semitrailers — \$10
  - (r) Semitrailers — \$110
  - (s) Minitrucks — \$50
- (4) For purposes of subsection (3) of this section, truck means all trucks and combinations of trucks except those trucks, trailers, or combinations thereof registered under section 60-3,198, and the tax is based on the gross vehicle weight rating as reported by the manufacturer.
- (5) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.
- (6) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle tax in the first registration period and ninety-five percent of the initial motor vehicle tax in the second registration period.
- (7) Assembled cabin trailers, assembled recreational vehicles, and assembled buses shall be designated as sixth-year motor vehicles in their first year of registration for purposes of the schedules.

(8) When a motor vehicle is registered which is required to have a title branded as previous salvage pursuant to section 60-175, the motor vehicle tax shall be reduced by twenty-five percent.

**Source:** Laws 2005, LB 274, § 187; Laws 2006, LB 248, § 2; Laws 2006, LB 765, § 7; Laws 2010, LB650, § 28.

**60-3,188 Motor vehicle tax; valuation of vehicles; department; duties.**

(1) The department shall determine motor vehicle manufacturers' suggested retail prices, gross vehicle weight ratings, and vehicle identification numbers using appropriate commercially available electronic information on a system designated by the department.

(2) For purposes of section 60-3,187, the department shall determine the value when new of automobiles and determine the gross vehicle weight ratings of motor vehicles over seven tons. The department shall make a determination for such makes and models of automobiles and motor vehicles already manufactured or being manufactured and shall, as new makes and models of such automobiles and motor vehicles become available to Nebraska residents, continue to make such determinations. The value when new is the manufacturer's suggested retail price for such new automobile or motor vehicle of that year using the manufacturer's body type and model with standard equipment and not including transportation or delivery cost.

(3) Any person or taxing official may, within ten days after a determination has been certified by the department, file objections in writing with the department stating why the determination is incorrect.

(4) Any affected person may file an objection to the determination of the department not more than fifteen days before and not later than thirty days after the registration date. The objection must be filed in writing with the department and state why the determination is incorrect.

(5) Upon the filing of objections the department shall fix a time for a hearing. Any party may introduce evidence in reference to the objections, and the department shall act upon the objections and make a written order, mailed to the objector within seven days after the order. The final decision by the department may be appealed. The appeal shall be to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act within thirty days after the written order. In an appeal, the department's determination of the manufacturer's suggested retail price shall be presumed to be correct and the party challenging the determination shall bear the burden of proving it incorrect.

**Source:** Laws 2005, LB 274, § 188; Laws 2007, LB286, § 54.

**Cross References**

Tax Equalization and Review Commission Act, see section 77-5001.

**60-3,189 Tax exemption; procedure; appeal.**

(1) A veteran of the United States Armed Forces who qualifies for an exemption from the motor vehicle tax under subdivision (2) of section 60-3,185 shall apply for the exemption to the county treasurer or designated county official not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. A renewal application shall be made annually not sooner than the first day of the last month of the registration

period or later than the last day of the registration period. The county treasurer or designated county official shall approve or deny the application and notify the applicant of his or her decision within twenty days after the filing of the application. An applicant may appeal the denial of an application to the county board of equalization within twenty days after the date the notice was mailed.

(2) An organization which qualifies for an exemption from the motor vehicle tax under subdivision (6) of section 60-3,185 shall apply for the exemption to the county treasurer or designated county official not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. For a newly acquired motor vehicle, an application for exemption must be made within thirty days after the purchase date. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer or designated county official shall examine the application and recommend either exempt or nonexempt status to the county board of equalization within twenty days after receipt of the application. The county board of equalization, after a hearing on ten days' notice to the applicant and after considering the recommendation of the county treasurer or designated county official and any other information it may obtain, shall approve or deny the exemption on the basis of law and of rules and regulations adopted and promulgated by the Tax Commissioner within thirty days after the hearing. The county board of equalization shall mail or deliver its final decision to the applicant and the county treasurer or designated county official within seven days after the date of decision. The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act within thirty days after the final decision.

**Source:** Laws 2005, LB 274, § 189; Laws 2007, LB334, § 10.

**Cross References**

Tax Equalization and Review Commission Act, see section 77-5001.

**60-3,190 Motor vehicle fee; fee schedules; Motor Vehicle Fee Fund; created; use; investment.**

(1) A motor vehicle fee is imposed on all motor vehicles registered for operation in this state. An owner of a motor vehicle which is exempt from the imposition of a motor vehicle tax pursuant to section 60-3,185 shall also be exempt from the imposition of the motor vehicle fee imposed pursuant to this section.

(2) The county treasurer or designated county official shall annually determine the motor vehicle fee on each motor vehicle registered in the county based on the age of the motor vehicle pursuant to this section and cause a notice of the amount of the fee to be mailed to the registrant at the address shown upon his or her registration certificate. The notice shall be printed on a form prescribed by the department, shall be combined with the notice of the motor vehicle tax, and shall be mailed on or before the first day of the last month of the registration period.

(3) The motor vehicle fee schedules are set out in this subsection and subsection (4) of this section. Except for automobiles with a value when new of less than \$20,000, and for assembled automobiles, the fee shall be calculated by

multiplying the base fee times the fraction which corresponds to the age category of the automobile as shown in the following table:

YEAR	FRACTION
First through fifth	1.00
Sixth through tenth	.70
Eleventh and over	.35

(4) The base fee shall be:

- (a) Automobiles, with a value when new of less than \$20,000, and assembled automobiles — \$5
- (b) Automobiles, with a value when new of \$20,000 through \$39,999 — \$20
- (c) Automobiles, with a value when new of \$40,000 or more — \$30
- (d) Motorcycles — \$10
- (e) Recreational vehicles and cabin trailers — \$10
- (f) Trucks over seven tons and buses — \$30
- (g) Trailers other than semitrailers — \$10
- (h) Semitrailers — \$30
- (i) Minitrucks — \$10.

(5) The motor vehicle tax, motor vehicle fee, and registration fee shall be paid to the county treasurer or designated official prior to the registration of the motor vehicle for the following registration period. After retaining one percent of the motor vehicle fee collected for costs, the remaining proceeds shall be remitted to the State Treasurer for credit to the Motor Vehicle Fee Fund. The State Treasurer shall return funds from the Motor Vehicle Fee Fund remitted by a county treasurer or designated county official which are needed for refunds or credits authorized by law.

(6)(a) The Motor Vehicle Fee Fund is created. On or before the last day of each calendar quarter, the State Treasurer shall distribute all funds in the Motor Vehicle Fee Fund as follows: (i) Fifty percent to the county treasurer of each county, amounts in the same proportion as the most recent allocation received by each county from the Highway Allocation Fund; and (ii) fifty percent to the treasurer of each municipality, amounts in the same proportion as the most recent allocation received by each municipality from the Highway Allocation Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(b) Funds from the Motor Vehicle Fee Fund shall be considered local revenue available for matching state sources.

(c) All receipts by counties and municipalities from the Motor Vehicle Fee Fund shall be used for road, bridge, and street purposes.

(7) For purposes of subdivisions (4)(a), (b), (c), and (f) of this section, automobiles or trucks includes all trucks and combinations of trucks or truck-tractors, except those trucks, trailers, or semitrailers registered under section 60-3,198, and the fee is based on the gross vehicle weight rating as reported by the manufacturer.

(8) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.

(9) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle fee for six registration periods.

(10) Assembled vehicles other than assembled automobiles shall follow the schedules for the motor vehicle body type.

**Source:** Laws 2005, LB 274, § 190; Laws 2007, LB286, § 55; Laws 2010, LB650, § 29.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-3,191 Repealed. Laws 2007, LB 286, § 57.**

**60-3,192 International Registration Plan Act; act, how cited.**

Sections 60-3,192 to 60-3,206 shall be known and may be cited as the International Registration Plan Act.

**Source:** Laws 2005, LB 274, § 192.

**60-3,193 International Registration Plan Act; purposes of act.**

The purposes of the International Registration Plan Act are to:

(1) Promote and encourage the fullest possible use of the highway system by authorizing registration of fleets of apportionable vehicles and the recognition of apportionable vehicles apportioned in other jurisdictions, thus contributing to the economic and social development and growth of the jurisdictions;

(2) Implement the concept of one registration plate for one vehicle;

(3) Grant exemptions from payment of certain fees when such grants are reciprocal; and

(4) Grant reciprocity to fleets of apportionable vehicles and provide for the continuance of reciprocity granted to those vehicles that are not eligible for apportioned registration under the act.

**Source:** Laws 2005, LB 274, § 193.

**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, 2010.

**Source:** Laws 2008, LB756, § 10; Laws 2009, LB331, § 4; Laws 2010, LB805, § 2.

**60-3,194 Director; powers and duties.**

The director shall ratify and do all things necessary to effectuate the International Registration Plan Act with such exceptions as are deemed advisable and such changes as are necessary.

**Source:** Laws 2005, LB 274, § 194.

**60-3,195 Conflict with rules and regulations; effect.**

If any provision of the International Registration Plan Act conflicts with rules and regulations adopted and promulgated by the department, the provisions of the act shall control.

**Source:** Laws 2005, LB 274, § 195.

**60-3,196 Apportionable vehicles; International Registration Plan; effect.**

Apportionable vehicles registered as provided in section 60-3,198 and apportionable vehicles covered under the International Registration Plan shall be deemed fully registered in all jurisdictions where apportioned or granted reciprocity for any type of movement or operation. The registrant must have proper interjurisdiction or intrajurisdiction authority from the appropriate regulatory agency of each jurisdiction of this state if not exempt from regulation by the regulatory agency.

**Source:** Laws 2005, LB 274, § 196; Laws 2006, LB 853, § 4; Laws 2007, LB239, § 3; Laws 2008, LB756, § 14.

**60-3,197 Payment of apportioned fees; effect.**

The payment to the base jurisdiction for all member and cooperating jurisdictions of apportioned fees due under the International Registration Plan Act discharges the responsibility of the registrant for payment of such apportioned fees to individual member and cooperating jurisdictions, except that the base jurisdiction shall cooperate with other declared jurisdictions in connection with applications and fees paid.

**Source:** Laws 2005, LB 274, § 197.

**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) Any owner engaged in operating a fleet of apportionable vehicles in this state in interjurisdiction commerce may, in lieu of registration of such apportionable vehicles under the general provisions of the Motor Vehicle Registration Act, register and license such fleet for operation in this state by filing a statement and the application required by section 60-3,203 with the Division of Motor Carrier Services of the department. The statement shall be in such form and contain such information as the division requires, declaring the total mileage operated by such vehicles in all jurisdictions and in this state during the preceding year and describing and identifying each such apportionable vehicle to be operated in this state during the ensuing license year. Upon receipt of such statement and application, the division shall determine the total fee payment, which shall be equal to the amount of fees due pursuant to section 60-3,203 and the amount obtained by applying the formula provided in section 60-3,204 to a fee of thirty-two dollars per ton based upon gross vehicle weight of the empty weights of a truck or truck-tractor and the empty weights of any trailer or combination thereof with which it is to be operated in combination at any one time plus the weight of the maximum load to be carried thereon at any one time, and shall notify the applicant of the amount of payment required to be made. Mileage operated in noncontracting reciprocity jurisdictions by apportionable vehicles based in Nebraska shall be applied to the portion of the formula for determining the Nebraska jurisdiction fleet distance.

Temporary authority which permits the operation of a fleet or an addition to a fleet in this state while the application is being processed may be issued upon application to the division if necessary to complete processing of the application.

Upon completion of such processing and receipt of the appropriate fees, the division shall issue to the applicant a sufficient number of distinctive registration certificates which provide a list of the jurisdictions in which the apportionable vehicle has been apportioned, the weight for which registered, and such other evidence of registration for display on the apportionable vehicle as the division determines appropriate for each of the apportionable vehicles of his or her fleet, identifying it as a part of an interjurisdiction fleet proportionately registered. All fees received as provided in this section shall be remitted to the State Treasurer for credit to the Motor Carrier Services Division Distributive Fund.

The apportionable vehicles so registered shall be exempt from all further registration and license fees under the Motor Vehicle Registration Act for movement or operation in the State of Nebraska except as provided in section 60-3,203. The proportional registration and licensing provision of this section shall apply to apportionable vehicles added to such fleets and operated in this state during the license year except with regard to permanent license plates issued under section 60-3,203.

The right of applicants to proportional registration under this section shall be subject to the terms and conditions of any reciprocity agreement, contract, or consent made by the division.

When a nonresident fleet owner has registered his or her apportionable vehicles, his or her apportionable vehicles shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce when the 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 year. Upon request of the division, the owner shall make such records available to the division at its office for audit as to accuracy of computation and payments or pay the costs of an audit at the home office of the owner by a duly appointed representative of the division if the office where the records are maintained is not within the State of Nebraska. The division may enter into agreements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner. All payments received to cover the costs of an audit shall be remitted by the division to the State Treasurer for credit to the Motor Carrier Division Cash Fund. No deficiency shall be assessed and no claim for credit

shall be allowed for any license registration year for which records on which the application was made are no longer required to be maintained.

(4) If the division claims that a greater amount of fee is due under this section than was paid, the division shall notify the owner of the additional amount claimed to be due. The owner may accept such claim and pay the amount due, or he or she may dispute the claim and submit to the division any information which he or she may have in support of his or her position. If the dispute cannot otherwise be resolved within the division, the owner may petition for an appeal of the matter. The director shall appoint a hearing officer who shall hear the dispute and issue a written decision. Any appeal shall be in accordance with the Administrative Procedure Act. Upon expiration of the time for perfecting an appeal if no appeal is taken or upon final judicial determination if an appeal is taken, the division shall deny the owner the right to further registration for a fleet license until the amount finally determined to be due, together with any costs assessed against the owner, has been paid.

(5) Every applicant who licenses any apportionable vehicles under this section and section 60-3,203 shall have his or her registration certificates issued only after all fees under such sections are paid and, if applicable, proof has been furnished of payment, in the form prescribed by the director as directed by the United States Secretary of the Treasury, of the federal heavy vehicle use tax imposed by 26 U.S.C. 4481 of the Internal Revenue Code as defined in section 49-801.01.

(6)(a) In the event of the transfer of ownership of any registered apportionable vehicle, (b) in the case of loss of possession because of fire, theft, or wrecking, junking, or dismantling of any registered apportionable vehicle, (c) when a salvage branded certificate of title is issued for any registered apportionable vehicle, (d) whenever a type or class of registered apportioned vehicle is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees and taxes, (e) upon trade-in or surrender of a registered apportionable vehicle under a lease, or (f) in case of a change in the situs of a registered apportionable vehicle to a location outside of this state, its registration shall expire, except that if the registered owner or lessee applies to the division after such transfer or loss of possession and accompanies the application with a fee of one dollar and fifty cents, he or she may have any remaining credit of vehicle fees and taxes from the previously registered apportionable vehicle applied toward payment of any vehicle fees and taxes due and owing on another registered apportionable vehicle. If such registered apportionable vehicle has a greater gross vehicle weight than that of the previously registered apportionable vehicle, the registered owner or lessee of the registered apportionable vehicle shall additionally pay only the registration fee for the increased gross vehicle weight for the remaining months of the registration year based on the factors determined by the division in the original fleet application.

(7) Whenever a Nebraska-based fleet owner files an application with the division to delete a registered apportionable vehicle from a fleet of registered apportionable vehicles (a) because of a transfer of ownership of the registered apportionable vehicle, (b) because of loss of possession due to fire, theft, or wrecking, junking, or dismantling of the registered apportionable vehicle, (c) because a salvage branded certificate of title is issued for the registered apportionable vehicle, (d) because a type or class of registered apportioned vehicle is subsequently declared by legislative act or court decision to be illegal

or ineligible to be operated or towed on the public roads and no longer subject to registration fees and taxes, (e) because of a trade-in or surrender of the registered apportionable vehicle under a lease, or (f) because of a change in the situs of the registered apportionable vehicle to a location outside of this state, the registered owner may, by returning the registration certificate or certificates and such other evidence of registration used by the division or, if such certificate or certificates or such other evidence of registration is unavailable, then by making an affidavit to the division of such transfer or loss, receive a refund of that portion of the unused registration fee based upon the number of unexpired months remaining in the registration year from the date of transfer or loss. No refund shall be allowed for any fees paid under section 60-3,203. When such apportionable vehicle is transferred or lost within the same month as acquired, no refund shall be allowed for such month. Such refund may be in the form of a credit against any registration fees that have been incurred or are, at the time of the refund, being incurred by the registered apportionable vehicle owner. The Nebraska-based fleet owner shall make a claim for a refund under this subsection within the registration period or shall be deemed to have forfeited his or her right to the refund.

(8) Whenever a Nebraska-based fleet owner files an application with the division to delete a registered apportionable vehicle from a fleet of registered apportionable vehicles because the apportionable vehicle is disabled and has been removed from service, the registered owner may, by returning the registration certificate or certificates and such other evidence of registration used by the division or, in the case of the unavailability of such certificate or certificates or such other evidence of registration, then by making an affidavit to the division of such disablement and removal from service, receive a credit for that portion of the unused registration fee deposited in the Highway Trust Fund based upon the number of unexpired months remaining in the registration year. No credit shall be allowed for any fees paid under section 60-3,203. When such apportionable vehicle is removed from service within the same month in which it was registered, no credit shall be allowed for such month. Such credit may be applied against registration fees for new or replacement vehicles incurred within one year after cancellation of registration of the apportionable vehicle for which the credit was allowed. When any such apportionable vehicle is reregistered within the same registration year in which its registration has been canceled, the fee shall be that portion of the registration fee provided to be deposited in the Highway Trust Fund for the remainder of the registration year. The Nebraska-based fleet owner shall make a claim for a credit under this subsection within the registration period or shall be deemed to have forfeited his or her right to the credit.

(9) In case of addition to the registered fleet during the registration year, the owner engaged in operating the fleet shall pay the proportionate registration fee from the date the vehicle was placed into service or, if the vehicle was previously registered outside of Nebraska, the date the prior registration expired or the date Nebraska became the base jurisdiction for the fleet, whichever is first, for the remaining balance of the registration year. The fee for any permanent license plate issued for such addition pursuant to section 60-3,203 shall be the full fee required by such section, regardless of the number of months remaining in the license year.

(10) In lieu of registration under subsections (1) through (9) of this section, the title holder of record may apply to the division for special registration, to be

known as an unladen-weight registration, for any commercial motor vehicle or combination of vehicles. Such registration shall be valid only for a period of thirty days and shall give no authority to operate the vehicle except when empty. The fee for such registration shall be twenty dollars for each vehicle, which fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. The issuance of such permits shall be governed by section 60-3,179.

(11) Any person may, in lieu of registration under subsections (1) through (9) of this section or for other jurisdictions as approved by the director, purchase a trip permit for any nonresident truck, truck-tractor, bus, or truck or truck-tractor combination. Such permit shall be valid for a period of seventy-two hours. The fee for such permit shall be twenty-five dollars for each truck, truck-tractor, bus, or truck or truck-tractor combination. Such permit shall be available at weighing stations operated by the carrier enforcement division and at various vendor stations as determined appropriate by the carrier enforcement division. The carrier enforcement division shall act as an agent for the Division of Motor Carrier Services in collecting such fees and shall remit all such fees collected to the State Treasurer for credit to the Highway Cash Fund. Trip permits shall be obtained at the first available location whether that is a weighing station or a vendor station. The vendor stations shall be entitled to collect and retain an additional fee of ten percent of the fee collected pursuant to this subsection as reimbursement for the clerical work of issuing the permits.

**Source:** Laws 2005, LB 274, § 198; Laws 2008, LB756, § 15; Laws 2009, LB331, § 5.

#### Cross References

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

The grant by the Director of Motor Vehicles of a proportional registration is a ministerial task which may be compelled by a writ of mandamus. *State ex rel. Hilt Truck Line v. Peterson*, 215 Neb. 81, 337 N.W.2d 133 (1983).

By merely filing application that included name and address of lessors in Nebraska, pursuant to this section, truck lessee did

not dual register truck for purpose of determining highway use excise tax liability under 26 U.S.C. section 4481(b). *Morgan Drive Away, Inc. v. United States*, 697 F.2d 1377 (Fed. Cir. 1983).

#### **60-3,199 Reciprocity agreement or existing arrangement; validity.**

Nothing in sections 60-3,179 to 60-3,182 or 60-3,198 shall affect the validity or operation of any reciprocity agreement or arrangement presently existing and in effect between Nebraska and any other jurisdiction, and all such agreements or arrangements shall continue until specifically canceled by the director or replaced by a new agreement or arrangement in accordance with the provisions of such sections.

**Source:** Laws 2005, LB 274, § 199.

#### **60-3,200 Apportionable vehicle; refund of fees; when.**

Whenever an apportionable vehicle is registered by the owner under section 60-362 and the motor vehicle tax and motor vehicle fee imposed in sections 60-3,185 and 60-3,190 have been paid on that apportionable vehicle for the registration period, and then the apportionable vehicle is registered under section 60-3,198, the Division of Motor Carrier Services, upon application of the owner of the apportionable vehicle on forms prescribed by the division, shall certify that the apportionable vehicle is registered under section 60-3,198 and that the owner is entitled to receive the refunds of the unused fees for the balance of the registration period as prescribed in sections 60-395 to 60-397.

**Source:** Laws 2005, LB 274, § 200.

**60-3,201 Motor Carrier Division Cash Fund; created; use; investment.**

There is hereby created the Motor Carrier Division Cash Fund. Such fund shall be used by the Division of Motor Carrier Services of the department to carry out the operations of the division including the administration of titling and registering vehicles in interjurisdiction commerce and its duties pursuant to section 66-1415. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2005, LB 274, § 201.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-3,202 Registration fees; collection and distribution; procedure; Motor Vehicle Tax Fund; created; use; investment.**

(1) As registration fees are received by the Division of Motor Carrier Services of the department pursuant to section 60-3,198, the division shall remit the fees to the State Treasurer, less a collection fee of three percent of thirty percent of the registration fees collected. The collection fee shall be credited to the Department of Revenue Property Assessment Division Cash Fund. The State Treasurer shall credit the remainder of the thirty percent of the fees collected to the Motor Vehicle Tax Fund and the remaining seventy percent of the fees collected to the Highway Trust Fund.

(2) On or before the last day of each quarter of the calendar year, the State Treasurer shall distribute all funds in the Motor Vehicle Tax Fund to the county treasurer or designated county official of each county in the same proportion as the number of original apportionable vehicle registrations in each county bears to the total of all original registrations within the state in the registration year immediately preceding.

(3) Upon receipt of motor vehicle tax funds from the State Treasurer, the county treasurer or designated county official shall distribute such funds to taxing agencies within the county in the same proportion that the levy of each such taxing agency bears to the total of such levies of all taxing agencies in the county.

(4) In the event any taxing district has been annexed, merged, dissolved, or in any way absorbed into another taxing district, any apportionment of motor vehicle tax funds to which such taxing district would have been entitled shall be apportioned to the successor taxing district which has assumed the functions of the annexed, merged, dissolved, or absorbed taxing district.

(5) On or before March 1 of each year, the department shall furnish to the State Treasurer a tabulation showing the total number of original apportionable vehicle registrations in each county for the immediately preceding calendar year, which shall be the basis for computing the distribution of motor vehicle tax funds as provided in subsection (2) of this section.

(6) The Motor Vehicle Tax Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2005, LB 274, § 202; Laws 2007, LB334, § 11.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-3,203 Permanent license plate; application; fee; renewal fee; replacement permanent plate; registration certificate replacement; deletion from fleet registration; fee.**

(1) 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.

(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 year after the year 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 application and payment of a fee of three dollars for each truck or truck-tractor and six dollars per trailer. The application for a replacement permanent plate shall be on a form developed by the division.

(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 shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

**Source:** Laws 2005, LB 274, § 203.

**60-3,204 Registration fee; calculation.**

The registration fee for apportionable vehicles shall be determined as follows:

- (1) Divide the jurisdiction distance by the total fleet distance generated during the preceding year;
- (2) Determine the total fees required under the laws of each jurisdiction for full registration of each apportionable vehicle at the regular annual or applicable fees or for the unexpired portion of the registration year; and
- (3) Multiply the sum obtained under subdivision (2) of this section by the quotient obtained under subdivision (1) of this section.

**Source:** Laws 2005, LB 274, § 204.

**60-3,205 Registration certificate; disciplinary actions; director; powers; procedure.**

(1)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act:

(i) If the applicant or certificate holder has had his or her license issued under the International Fuel Tax Agreement Act revoked or the director refused to issue or refused to renew such license; or

(ii) If the applicant or certificate holder is in violation of sections 75-392 to 75-399.

(b) Prior to taking action under this section, the director shall notify and advise the applicant or certificate holder of the proposed action and the reasons for such action in writing, by registered or certified mail, to his or her last-known business address as shown on the application for the certificate or renewal. The notice shall also include an advisement of the procedures in subdivision (c) of this subsection.

(c) The applicant or certificate holder may, within thirty days after the date of the mailing of the notice, petition the director for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the department. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or certificate holder may show cause why the proposed action should not be taken. The director shall give the applicant or certificate holder reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or certificate holder, the applicant or certificate holder may appeal the decision in accordance with the Administrative Procedure Act.

(d) Except as provided in subsections (2) and (3) of this section, the filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(e) Except as provided in subsections (2) and (3) of this section, if no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(f) If, in the judgment of the director, the applicant or certificate holder has complied with or is no longer in violation of the provisions for which the director took action under this subsection, the director may reinstate the registration certificate without delay.

(2)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act or a license under the International Fuel Tax Agreement Act if the applicant, licensee, or certificate holder has issued to the department a check or draft which has been returned because of insufficient funds, no funds, or a stop-payment order. The director may take such action no sooner than seven days after the written notice required in subdivision (1)(b) of this section has been provided. Any petition to contest such action filed pursuant to subdivision (1)(c) of this section shall not stay such action of the director.

(b) If the director takes an action pursuant to this subsection, the director shall reinstate the registration certificate or license without delay upon the payment of certified funds by the applicant, licensee, or certificate holder for any fees due and reasonable administrative costs, not to exceed twenty-five dollars, incurred in taking such action.

(c) The rules, regulations, and orders of the director and the department that pertain to hearings commenced in accordance with this section and that are in effect prior to March 17, 2006, shall remain in effect, unless changed or eliminated by the director or the department, except for those portions involving a stay upon the filing of a petition to contest any action taken pursuant to this subsection, in which case this subsection shall supersede those provisions.

(3) Any person who receives notice from the director of action taken pursuant to subsection (1) or (2) of this section shall, within three business days, return such registration certificate and license plates to the department as provided in this section. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

**Source:** Laws 2005, LB 274, § 205; Laws 2006, LB 853, § 5; Laws 2007, LB358, § 10; Laws 2009, LB331, § 6.

**Cross References**

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

**International Fuel Tax Agreement Act**, see section 66-1401.

**60-3,206 International Registration Plan Act; violations; penalty.**

Any person, firm, association, partnership, limited liability company, or corporation which violates any provision of the International Registration Plan Act is guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 274, § 206.

**60-3,207 Snowmobiles; terms, defined.**

For purposes of sections 60-3,207 to 60-3,219:

(1) Dealer means any person engaged in the business of selling snowmobiles at wholesale or retail;

(2) Manufacturer means a person, partnership, limited liability company, or corporation engaged in the business of manufacturing snowmobiles; and

(3) Operate means to ride in or on and control the operation of a snowmobile.

**Source:** Laws 2005, LB 274, § 207.

**60-3,208 Snowmobiles; registration required.**

Except as otherwise provided in sections 60-3,207 to 60-3,219, no person shall operate any snowmobile within the State of Nebraska unless such snowmobile has been registered in accordance with sections 60-3,209 to 60-3,213.

**Source:** Laws 2005, LB 274, § 208.

**60-3,209 Snowmobiles; registration; application.**

Application for registration shall be made to the county treasurer or designated county official in such form as the director prescribes and shall state the name and address of the applicant, state a description of the snowmobile, including color, manufacturer, and identification number, and be signed by at least one owner. Application forms shall be made available through the county treasurer's or designated county official's office of each county in this state. Upon receipt of the application and the appropriate fee as provided in section 60-3,210, the snowmobile shall be registered by the county treasurer or designated county official and a validation decal shall be provided which shall be affixed to the upper half of the snowmobile in such manner as the director prescribes. Snowmobiles owned by a dealer and operated for demonstration or testing purposes shall be exempt from affixing validation decals to the snowmobile but are required to carry a valid validation decal with the snowmobile at all times. Application for registration shall be made within fifteen days after the date of purchase.

**Source:** Laws 2005, LB 274, § 209.

**60-3,210 Snowmobiles; registration; fee.**

(1) The fee for registration of each snowmobile shall be:

(a) For each snowmobile owned by a person other than dealers or manufacturers, eight dollars per year and one dollar for a duplicate or transfer;

(b) For all snowmobiles owned by a dealer and operated for demonstration or testing purposes, twenty-five dollars per year; and

(c) For all snowmobiles owned by a manufacturer and operated for research, testing, experimentation, or demonstration purposes, one hundred dollars per year.

(2) Snowmobile dealer and manufacturer registrations shall not be transferable.

**Source:** Laws 2005, LB 274, § 210.

**60-3,211 Snowmobiles; certificate of registration and validation decal; expiration; renewal; procedure.**

(1) The certificate of registration and validation decal issued shall be valid for two years. The registration period for snowmobiles shall expire on the last day of September two years after the year of issuance, and renewal shall become delinquent on the first day of the following month.

(2) Such registration may be renewed every two years in the same manner as provided for the original registration.

(3) Every owner of a snowmobile shall renew his or her registration in the manner prescribed in section 60-3,209 upon payment of the registration fees provided in section 60-3,210.

**Source:** Laws 2005, LB 274, § 211.

**60-3,212 Snowmobiles; refund of fees; when.**

Upon transfer of ownership of any snowmobile or in case of loss of possession because of fire, theft, dismantlement, or junking, its registration shall expire, and the registered owner may, by returning the registration certificate and after making affidavit of such transfer or loss to the county official who issued the certificate, receive a refund of that part of the unused fees based on the number of unexpired months remaining in the registration period, except that when such snowmobile is transferred within the same calendar month in which acquired, no refund shall be allowed for such month.

**Source:** Laws 2005, LB 274, § 212.

**60-3,213 Snowmobiles; state or political subdivision; fee waived.**

A registration number shall be issued without the payment of a fee for snowmobiles owned by the state or a political subdivision thereof upon application therefor.

**Source:** Laws 2005, LB 274, § 213.

**60-3,214 Snowmobiles; registration; exemptions.**

No registration shall be required for snowmobiles:

- (1) Owned and used by the United States, another state, or a political subdivision thereof;
- (2) Registered in a country other than the United States and temporarily used within this state;
- (3) Covered by a valid license of another state and which have not been within this state for more than thirty consecutive days; and
- (4) Which are operated only on land owned or leased by the owner thereof.

**Source:** Laws 2005, LB 274, § 214.

**60-3,215 Snowmobiles; licensing or registration by political subdivision prohibited.**

No political subdivision of this state shall require licensing or registration of snowmobiles covered by the provisions of sections 60-3,207 to 60-3,219.

**Source:** Laws 2005, LB 274, § 215.

**60-3,216 Snowmobiles; reciprocity; when.**

Snowmobiles properly registered in another state shall be allowed to operate in the State of Nebraska on a reciprocal basis.

**Source:** Laws 2005, LB 274, § 216.

**60-3,217 Snowmobiles; fees; disposition.**

(1) The county treasurers and designated county officials shall act as agents for the department in the collection of snowmobile registration fees. Twenty-five cents from the funds collected for each such registration shall be retained by the county.

(2) The remaining amount of the fees from registration of snowmobiles shall be remitted to the State Treasurer who shall credit twenty-five percent to the

General Fund and seventy-five percent to the Nebraska Snowmobile Trail Cash Fund.

**Source:** Laws 2005, LB 274, § 217.

**60-3,218 Nebraska Snowmobile Trail Cash Fund; created; use; investment; Game and Parks Commission; establish rules and regulations.**

(1) There is hereby created the Nebraska Snowmobile Trail Cash Fund into which shall be deposited the portion of the fees collected from snowmobile registration as provided in section 60-3,217.

(2) The Game and Parks Commission shall use the money in the Nebraska Snowmobile Trail Cash Fund for the operation, maintenance, enforcement, planning, establishment, and marking of snowmobile trails throughout the state and for the acquisition by purchase or lease of real property to carry out the provisions of this section.

(3) The commission shall establish rules and regulations pertaining to the use and maintenance of snowmobile trails.

(4) Transfers may be made from the Nebraska Snowmobile Trail Cash Fund to the General Fund at the direction of the Legislature through June 30, 2011. Any money in the Nebraska Snowmobile Trail 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 2005, LB 274, § 218; Laws 2009, First Spec. Sess., LB3, § 35.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-3,219 Snowmobiles; records.**

The department shall keep a record of each snowmobile registered, employing such methods and practices as may be necessary to maintain an accurate record.

**Source:** Laws 2005, LB 274, § 219.

**60-3,220 Registration, rules, regulations, and orders under prior law; effect.**

(1) The repeal of Chapter 60, article 3, as it existed on September 4, 2005, and the enactment of the Motor Vehicle Registration Act is not intended to affect the validity of the registration of any motor vehicle, trailer, or snowmobile or the validity of any license plate, permit, renewal tab, or tonnage sticker issued under Chapter 60, article 3, and in existence on such date. All such license plates, permits, renewal tabs, and tonnage stickers are valid under the Motor Vehicle Registration Act as if registration had taken place under such act.

(2) The rules, regulations, and orders of the Director of Motor Vehicles and the Department of Motor Vehicles issued under Chapter 60, article 3, shall remain in effect as if issued under the Motor Vehicle Registration Act unless changed or eliminated by the director or the department to the extent such power is statutorily granted to the director and department.

**Source:** Laws 2005, LB 274, § 220.

**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) Recreational vehicle; or
- (vi) Bus;

(b) A utility trailer shall only be towed by:

- (i) A properly registered passenger car;
- (ii) A properly registered commercial motor vehicle or apportionable vehicle;
- (iii) A properly registered farm truck;
- (iv) A properly registered local truck;
- (v) A properly registered recreational vehicle;
- (vi) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;

(vii) A properly registered well-boring apparatus;

(viii) A dealer-plated vehicle;

(ix) A personal-use dealer-plated vehicle; or

(x) A properly registered bus;

(c) A farm trailer shall only be towed by a properly registered:

- (i) Passenger car;
- (ii) Commercial motor vehicle; or
- (iii) Farm truck;

(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; or

(viii) A properly registered farm truck;

(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; or

- (ii) Local truck;
  - (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; or
    - (v) A personal-use dealer-plated vehicle; and
  - (h) Trailers registered pursuant to section 60-3,198 as part of an apportioned fleet shall only be towed by:
    - (i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;
    - (ii) A properly registered local truck;
    - (iii) A properly registered well-boring apparatus;
    - (iv) A properly registered commercial motor vehicle or apportionable vehicle;
    - (v) A dealer-plated vehicle;
    - (vi) A personal-use dealer-plated vehicle;
    - (vii) A properly registered bus; or
    - (viii) A properly registered farm truck.
- (2) Nothing in this section shall be construed to 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.

**60-3,222 Payment of fee or tax; check, draft, or financial transaction returned or not honored; county treasurer; powers; notice; return of registration and license plates required; sheriff; powers.**

(1) If a fee required under the Motor Vehicle Registration Act or a tax required to be paid on any motor vehicle or trailer has been paid by check, draft, or other financial transaction, including an electronic financial transaction, and the check, draft, or financial transaction has been returned or not honored because of insufficient funds, no account, a stop-payment order, or any other reason, a county treasurer may cancel or refuse to issue or renew registration under the act.

(2) The county treasurer may take the action described in subsection (1) of this section no sooner than seven days after the notice required in subsection (3) of this section has been mailed.

(3) Prior to taking action described in subsection (1) of this section, the county treasurer shall notify the applicant or registrant of the proposed action and the reasons for such action in writing, by first-class, registered, or certified mail, mailed to the applicant's or registrant's last-known address as shown on the application for registration or renewal.

(4) If the county treasurer takes action pursuant to this section, the county treasurer shall reinstate the registration without delay upon the payment of certified funds by the applicant or registrant for any fees and taxes due and reasonable administrative costs, not to exceed twenty-five dollars, incurred in taking such action.

(5) Any person who is sent a notice from the county treasurer pursuant to subsection (1) of this section shall, within ten business days after mailing of the notice, return to the county treasurer the motor vehicle registration and license plates of the vehicle or trailer regarding which the action has been taken. If the person fails to return the registration and license plates to the county treasurer, the county treasurer shall notify the sheriff of the county in which the person resides that the person is in violation of this section. The sheriff may recover the registration and license plates and return them to the county treasurer.

**Source:** Laws 2009, LB129, § 2.

**ARTICLE 4**

**MOTOR VEHICLE OPERATORS' LICENSES**

**Cross References**

License Suspension Act, see section 43-3301.

(a) DEFINITIONS

Section

- 60-401. Repealed. Laws 1989, LB 285, § 145.
- 60-401.01. Repealed. Laws 1990, LB 742, § 6.
- 60-402. Transferred to section 60-462.

(b) OPERATORS' LICENSES

- 60-403. Transferred to section 60-484.
- 60-403.01. Transferred to section 60-4,127.
- 60-403.02. Repealed. Laws 1977, LB 314, § 7.
- 60-403.03. Transferred to section 60-485.
- 60-403.04. Transferred to section 60-4,128.
- 60-403.05. Transferred to section 60-486.
- 60-403.06. Repealed. Laws 1989, LB 285, § 145.
- 60-403.07. Repealed. Laws 1989, LB 285, § 145.
- 60-403.08. Repealed. Laws 1989, LB 285, § 145.
- 60-403.09. Repealed. Laws 1989, LB 285, § 145.
- 60-403.10. Repealed. Laws 1989, LB 285, § 145.
- 60-404. Transferred to section 60-4,113.
- 60-405. Transferred to section 60-4,116.
- 60-405.01. Repealed. Laws 1984, LB 811, § 7.
- 60-406. Transferred to section 60-4,117.
- 60-406.01. Transferred to section 60-493.
- 60-406.02. Repealed. Laws 1984, LB 711, § 3.
- 60-406.03. Transferred to section 60-495.
- 60-406.04. Transferred to section 60-4,119.
- 60-406.05. Repealed. Laws 1984, LB 811, § 7.
- 60-406.06. Transferred to section 60-482.
- 60-406.07. Repealed. Laws 1984, LB 636, § 1.
- 60-406.08. Transferred to section 60-481.
- 60-407. Transferred to section 60-4,118.
- 60-407.01. Repealed. Laws 1963, c. 359, § 8.
- 60-408. Transferred to section 60-4,114.
- 60-409. Transferred to section 60-4,115.
- 60-409.01. Repealed. Laws 1981, LB 207, § 6.
- 60-409.02. Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
- 60-409.03. Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
- 60-409.04. Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
- 60-409.05. Transferred to section 60-4,125.
- 60-409.06. Transferred to section 60-4,173.
- 60-409.07. Transferred to section 60-4,174.
- 60-409.08. Transferred to section 60-4,175.
- 60-409.09. Transferred to section 60-4,176.

## MOTOR VEHICLE OPERATORS' LICENSES

Section	
60-409.10.	Transferred to section 60-4,177.
60-409.11.	Transferred to section 60-4,178.
60-409.12.	Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
60-409.13.	Transferred to section 60-4,179.
60-410.	Transferred to section 60-488.
60-411.	Transferred to section 60-4,121.
60-411.01.	Transferred to section 60-4,122.
60-412.	Transferred to section 60-483.
60-412.01.	Transferred to section 60-494.
60-413.	Transferred to section 60-489.
60-414.	Transferred to section 60-492.
60-415.	Transferred to section 60-4,120.
60-416.	Transferred to section 60-487.
60-417.	Transferred to section 60-491.
60-418.	Transferred to section 60-4,107.
60-418.01.	Transferred to section 60-4,104.
60-419.	Transferred to section 60-4,101.
60-420.	Transferred to section 60-4,105.

### (c) PENAL PROVISIONS

60-421.	Transferred to section 60-497.
60-422.	Transferred to section 60-4,102.
60-423.	Transferred to section 60-4,103.
60-424.	Transferred to section 60-498.
60-425.	Transferred to section 60-499.
60-426.	Transferred to section 60-4,100.
60-427.	Transferred to section 60-496.
60-427.01.	Transferred to section 39-6,114.01.
60-428.	Repealed. Laws 1947, c. 148, § 5.
60-429.	Transferred to section 60-4,106.
60-430.	Transferred to section 60-4,111.
60-430.01.	Transferred to section 60-4,108.
60-430.02.	Repealed. Laws 1967, c. 390, § 2.
60-430.03.	Repealed. Laws 1959, c. 293, § 7.
60-430.04.	Repealed. Laws 1986, LB 153, § 13.
60-430.05.	Transferred to section 60-4,109.
60-430.06.	Transferred to section 60-4,110.
60-430.07.	Repealed. Laws 1980, LB 696, § 6.

### (d) STATE PATROL

60-431.	Transferred to section 81-2001.
60-431.01.	Repealed. Laws 1981, LB 497, § 1.
60-432.	Transferred to section 81-2002.
60-433.	Transferred to section 81-2003.
60-434.	Transferred to section 81-2004.
60-434.01.	Transferred to section 81-2010.
60-435.	Transferred to section 81-2005.
60-436.	Transferred to section 81-2008.
60-437.	Transferred to section 81-2006.
60-438.	Transferred to section 81-2007.
60-439.	Transferred to section 81-2009.
60-440.	Transferred to section 60-406.08.
60-440.01.	Transferred to section 81-2011.
60-440.02.	Transferred to section 81-2012.
60-440.03.	Transferred to section 81-2013.
60-441.	Transferred to section 81-2014.
60-442.	Transferred to section 81-2015.
60-443.	Transferred to section 81-2016.
60-444.	Transferred to section 81-2017.
60-445.	Transferred to section 81-2018.
60-446.	Transferred to section 81-2019.

## MOTOR VEHICLES

Section	
60-447.	Transferred to section 81-2020.
60-448.	Transferred to section 81-2021.
60-449.	Transferred to section 81-2022.
60-450.	Transferred to section 81-2023.
60-451.	Transferred to section 81-2024.
60-452.	Transferred to section 81-2025.
60-452.01.	Transferred to section 81-2026.
60-452.02.	Transferred to section 81-2027.
60-453.	Repealed. Laws 1953, c. 333, § 3.
60-454.	Repealed. Laws 1953, c. 333, § 3.
60-455.	Transferred to section 81-2028.
60-456.	Transferred to section 81-2029.
60-457.	Transferred to section 81-2030.
60-458.	Transferred to section 81-2031.
60-459.	Transferred to section 81-2032.
60-460.	Transferred to section 81-2033.
60-461.	Transferred to section 81-2034.

### (e) GENERAL PROVISIONS

60-462.	Act, how cited.
60-462.01.	Federal regulations; adopted.
60-462.02.	Legislative intent; director; department; powers and duties.
60-463.	Definitions, where found.
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60-464.	Commercial driver's license, defined.
60-465.	Commercial motor vehicle, defined.
60-465.01.	Department, defined.
60-466.	Director, defined.
60-467.	Repealed. Laws 2003, LB 562, § 22.
60-468.	Drive, defined.
60-468.01.	Full legal name, defined.
60-469.	Gross vehicle weight rating, defined.
60-470.	Highway, defined.
60-470.01.	Impoundment of operator's license, defined.
60-470.02.	Interactive wireless communication device, defined.
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60-475.01.	Principal residence, defined.
60-476.	Person, defined.
60-476.01.	Revocation of operator's license, defined.
60-476.02.	Suspension of operator's license, defined.
60-476.03.	Restricted commercial driver's license, defined.
60-477.	Repealed. Laws 2003, LB 562, § 22.
60-478.	Vehicle, defined.

### (f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

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60-479.01.	Section; applicability; fraudulent document recognition training.
60-480.	Operators' licenses; classification.
60-480.01.	Undercover drivers' licenses; issuance; confidential; unlawful disclosure; penalty.
60-481.	Driving rules; publication; copy to licensee.
60-482.	Rules and regulations.
60-483.	Operator's license; numbering; records; abstracts of operating records; fees; information to United States Selective Service System; when.
60-483.01.	National Driver Register; employer check; fee.
60-484.	Operator's license required, when; state identification card; application.
60-484.01.	Digital system authorized.

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Section	
60-484.02.	Digital images and signatures; use; confidentiality; violation; penalty.
60-485.	Outstanding warrant for arrest; issuance of operator's license prohibited; courts; duties.
60-486.	Operator's license; license suspended or revoked; effect; appeal.
60-487.	Cancellation of operator's license or commercial driver's license; when.
60-488.	Nonresidents; license requirements; immunity.
60-489.	Operator's license; duty to carry and exhibit; exception; officers; power to demand presentation.
60-490.	Operators' licenses; state identification cards; expiration; renewal.
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60-492.	Impersonating officer; penalty.
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60-494.	Operator's license; state identification card; organ and tissue donation information; department; duty.
60-495.	Organ and tissue donation; rules and regulations; Organ and Tissue Donor Awareness and Education Fund; created; use; investment.
60-496.	Violation of law; revocation of operator's license; duties of director and Nebraska State Patrol.
60-497.	Conviction of offense authorizing revocation of operator's license; surrender of license; when required; duty of director to revoke.
60-497.01.	Conviction and probation records; abstract of court record; transmission to director; duties.
60-497.02.	Convictions; order of probation; abstract; transmittal required; open for inspection by public.
60-497.03.	Conviction reports; form of transmittal; revocation or suspension of license; director; duties.
60-497.04.	Noncompliance; penalty.
60-498.	Revocation; when mandatory.
60-498.01.	Driving under influence of alcohol; operator's license; confiscation and revocation; procedures; appeal.
60-498.02.	Driving under influence of alcohol; revocation of operator's license; reinstatement; procedure; eligibility for employment driving permit and ignition interlock permit.
60-498.03.	Operator's license revocation decision; notice; contents.
60-498.04.	License revocation; appeal; notice of judgment.
60-499.	Revocation; when authorized.
60-499.01.	Revocation; reinstatement fee.
60-4,100.	Suspension; when authorized.
60-4,100.01.	Suspension; reinstatement fee.
60-4,101.	Repealed. Laws 1999, LB 704, § 53.
60-4,102.	Nonresident; driving privilege; revocation, suspension, or impoundment.
60-4,103.	Nonresident; violating terms of order; effect.
60-4,104.	Revocation or suspension; order of director; prima facie evidence.
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60-4,111.01.	Storage or compilation of information; retailer; authorized acts; sign posted; use of stored information; approval of negotiable instrument or certain payments; authorized acts; violations; penalty.

## MOTOR VEHICLES

### Section

#### (g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR VEHICLES OTHER THAN COMMERCIAL

- 60-4,112. Sections; applicability.
  - 60-4,113. Examining personnel; appointment; duties; examinations; issuance of certificate; license; state identification card; county treasurer; duties; delivery of license or card.
  - 60-4,114. County treasurer; personnel; examination of applicant; denial or refusal of certificate; appeal; medical opinion.
  - 60-4,115. Fees; allocation; identity security surcharge.
  - 60-4,116. Applicant; department; duties.
  - 60-4,117. Issuance of license by county treasurer; form; operator's license or state identification card; delivery; form; county treasurer; duties.
  - 60-4,118. Vision requirements; persons with physical impairments; physical or mental incompetence; prohibited act; penalty.
  - 60-4,118.01. Medical review of applicant or licensee; legislative intent.
  - 60-4,118.02. Health Advisory Board; created; members; terms; meetings.
  - 60-4,118.03. Health Advisory Board; examinations; reports; appeal; immunity.
  - 60-4,118.04. Health Advisory Board; rules and regulations.
  - 60-4,118.05. Age requirements; license issued; when.
  - 60-4,118.06. Ignition interlock permit; issued; when; operation restrictions; violation; penalty.
  - 60-4,119. Operators' licenses; state identification cards; color photograph or digital image; exception; procedure.
  - 60-4,120. Operator's license; state identification card; duplicate or replacement.
  - 60-4,120.01. Provisional operator's permit; application; issuance; operation restrictions.
  - 60-4,120.02. Provisional operator's permit; violations; revocation.
  - 60-4,121. Military service; renewal of operator's license; effect.
  - 60-4,122. Operator's license; state identification card; renewal procedure; law examination; exceptions.
  - 60-4,123. LPD-learner's permit; application; issuance; operation restrictions.
  - 60-4,123.01. Fourteen-year-old person; operation permitted.
  - 60-4,124. School permit; LPE-learner's permit; issuance; operation restrictions; violations; penalty.
  - 60-4,125. LPD-learner's permit; LPE-learner's permit; violations; impoundment or revocation of permit; effect on eligibility for operator's license.
  - 60-4,126. Farm permit; issuance; violations; penalty.
  - 60-4,127. Motorcycle operation; Class M license required; issuance; examination.
  - 60-4,128. Motorcycle operation without Class M license; penalty.
  - 60-4,129. Employment driving permit; issuance; conditions; violations; penalty; revocation.
  - 60-4,130. Employment driving permit; application; contents; driver improvement course; violations; penalty; loss of eligibility; appeal.
  - 60-4,130.01. Medical hardship driving permit; issuance; conditions; violations; penalty; revocation.
  - 60-4,130.02. Medical hardship driving permit; application; contents; loss of eligibility; appeal.
  - 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.
  - 60-4,130.05. Driver safety courses; rules and regulations; fee.
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- 60-4,131. Sections; applicability; terms, defined.
  - 60-4,131.01. Individuals operating commercial motor vehicles for military purposes; applicability of sections.
  - 60-4,132. Purposes of sections.
  - 60-4,133. Repealed. Laws 1993, LB 7, § 5.
  - 60-4,134. Repealed. Laws 1993, LB 7, § 5.

## MOTOR VEHICLE OPERATORS' LICENSES

Section	
60-4,135.	Repealed. Laws 1993, LB 7, § 5.
60-4,136.	Repealed. Laws 1990, LB 980, § 37.
60-4,137.	Operation of commercial motor vehicle; commercial driver's license or LPC-learner's permit required.
60-4,138.	Commercial drivers' licenses and restricted commercial drivers' licenses; classification.
60-4,139.	Commercial motor vehicle; nonresident; operating privilege.
60-4,139.01.	School bus endorsement; requirements.
60-4,140.	Multiple licenses; violation; penalty.
60-4,141.	Operation outside classification of license; restrictions; violation; penalty.
60-4,141.01.	Operation of commercial motor vehicle; restrictions; prohibited acts; violation; penalty.
60-4,142.	LPC-learner's permit; issuance.
60-4,143.	Commercial driver's license; LPC-learner's permit; issuance; restriction; surrender of other licenses.
60-4,144.	Commercial drivers' licenses; applications; examiner's certificate; contents; application; demonstration of knowledge and skills; information and documentation required.
60-4,145.	Application; operation in interstate or foreign commerce; certification required.
60-4,146.	Application; operation in intrastate commerce; certification; restrictions.
60-4,146.01.	Restricted commercial driver's license; seasonal permit; application or examiner's certificate; operation permitted; term; violation; penalty.
60-4,147.	Repealed. Laws 1990, LB 980, § 37.
60-4,147.01.	Driver's record; disclosure of convictions; requirements.
60-4,147.02.	Hazardous materials endorsement; USA PATRIOT Act requirements.
60-4,147.03.	Hazardous materials endorsement; application process.
60-4,147.04.	Hazardous materials endorsement; security threat assessment; department; powers.
60-4,147.05.	Hazardous materials endorsement; expiration; when.
60-4,147.06.	Hazardous material endorsement; transfer from another state; procedure.
60-4,148.	Commercial drivers' licenses; issuance.
60-4,149.	Commercial drivers' licenses; examination; issuance; delivery.
60-4,149.01.	Commercial drivers' licenses; law examination; exceptions; waiver.
60-4,150.	Commercial drivers' licenses; duplicate and replacement licenses; delivery.
60-4,151.	Commercial driver's license; restricted commercial driver's license; seasonal permit; form.
60-4,152.	Commercial driver's license issued to minor; form.
60-4,153.	Issuance of license; department; duties.
60-4,154.	Issuance of license; director notify Commercial Driver License Information System.
60-4,155.	Department; rules and regulations.
60-4,156.	Driving skills examination; waiver; when.
60-4,157.	Driving skills examination; waiver based on third-party tester.
60-4,158.	Third-party testers; rules and regulations; fees; violation; penalty.
60-4,159.	Licentee; convictions; disqualifications; notification required; violation; penalty.
60-4,160.	Refusal or denial of application; notice; appeal.
60-4,161.	Employment as driver; application; contents; violation; penalty.
60-4,162.	Employment as driver; employer; duties; violation; penalty.
60-4,163.	Alcoholic liquor; prohibited operation; effect.
60-4,164.	Alcoholic liquor; implied consent to submit to chemical tests; refusal or failure; penalty; officer; report.
60-4,164.01.	Alcoholic liquor; blood test; withdrawing requirements; damages; liability.
60-4,165.	Alcoholic liquor; rights of person tested.
60-4,166.	Alcoholic liquor; chemical test; unconscious person; effect on consent.
60-4,167.	Alcoholic liquor; officer's report; notice of disqualification; hearing before director; procedure.
60-4,167.01.	Alcoholic liquor; disqualification decision; director; duties.
60-4,167.02.	Alcoholic liquor; disqualification; appeal.

**§ 60-401**

**MOTOR VEHICLES**

Section

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- 60-4,168.02. Federal disqualification; effect.
- 60-4,169. Revocation; when.
- 60-4,170. Revocation; notice; failure to surrender license; violation; penalty; appeal.
- 60-4,171. Issuance of Class O or M operator's license; reinstatement of commercial driver's license; when.
- 60-4,172. Nonresident licensee; conviction within state; director; duties.

(i) **COMMERCIAL DRIVER TRAINING SCHOOLS**

- 60-4,173. Terms, defined.
- 60-4,174. Director; duties; rules and regulations; Commissioner of Education; assist.
- 60-4,175. School; license; requirements.
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(j) **STATE IDENTIFICATION CARDS**

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(k) **POINT SYSTEM**

- 60-4,182. Point system; offenses enumerated.
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- 60-4,186. Operation after revocation; violation; penalty; employment driving permit or medical hardship driving permit excepted; proof of financial responsibility.
- 60-4,187. Pardon by mayor or chairperson of board of trustees; effect.
- 60-4,188. Driver improvement course; reduce point assessment.

(a) **DEFINITIONS**

**60-401 Repealed. Laws 1989, LB 285, § 145.**

**60-401.01 Repealed. Laws 1990, LB 742, § 6.**

**60-402 Transferred to section 60-462.**

(b) **OPERATORS' LICENSES**

**60-403 Transferred to section 60-484.**

**60-403.01 Transferred to section 60-4,127.**

**60-403.02 Repealed. Laws 1977, LB 314, § 7.**

**60-403.03 Transferred to section 60-485.**

**60-403.04 Transferred to section 60-4,128.**

**60-403.05 Transferred to section 60-486.**

- 60-403.06 Repealed. Laws 1989, LB 285, § 145.
- 60-403.07 Repealed. Laws 1989, LB 285, § 145.
- 60-403.08 Repealed. Laws 1989, LB 285, § 145.
- 60-403.09 Repealed. Laws 1989, LB 285, § 145.
- 60-403.10 Repealed. Laws 1989, LB 285, § 145.
- 60-404 Transferred to section 60-4,113.
- 60-405 Transferred to section 60-4,116.
- 60-405.01 Repealed. Laws 1984, LB 811, § 7.
- 60-406 Transferred to section 60-4,117.
- 60-406.01 Transferred to section 60-493.
- 60-406.02 Repealed. Laws 1984, LB 711, § 3.
- 60-406.03 Transferred to section 60-495.
- 60-406.04 Transferred to section 60-4,119.
- 60-406.05 Repealed. Laws 1984, LB 811, § 7.
- 60-406.06 Transferred to section 60-482.
- 60-406.07 Repealed. Laws 1984, LB 636, § 1.
- 60-406.08 Transferred to section 60-481.
- 60-407 Transferred to section 60-4,118.
- 60-407.01 Repealed. Laws 1963, c. 359, § 8.
- 60-408 Transferred to section 60-4,114.
- 60-409 Transferred to section 60-4,115.
- 60-409.01 Repealed. Laws 1981, LB 207, § 6.
- 60-409.02 Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
- 60-409.03 Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
- 60-409.04 Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
- 60-409.05 Transferred to section 60-4,125.
- 60-409.06 Transferred to section 60-4,173.
- 60-409.07 Transferred to section 60-4,174.
- 60-409.08 Transferred to section 60-4,175.
- 60-409.09 Transferred to section 60-4,176.
- 60-409.10 Transferred to section 60-4,177.

- 60-409.11 Transferred to section 60-4,178.
- 60-409.12 Repealed. Laws 1985, Second Spec. Sess., LB 5, § 4.
- 60-409.13 Transferred to section 60-4,179.
- 60-410 Transferred to section 60-488.
- 60-411 Transferred to section 60-4,121.
- 60-411.01 Transferred to section 60-4,122.
- 60-412 Transferred to section 60-483.
- 60-412.01 Transferred to section 60-494.
- 60-413 Transferred to section 60-489.
- 60-414 Transferred to section 60-492.
- 60-415 Transferred to section 60-4,120.
- 60-416 Transferred to section 60-487.
- 60-417 Transferred to section 60-491.
- 60-418 Transferred to section 60-4,107.
- 60-418.01 Transferred to section 60-4,104.
- 60-419 Transferred to section 60-4,101.
- 60-420 Transferred to section 60-4,105.

(c) PENAL PROVISIONS

- 60-421 Transferred to section 60-497.
- 60-422 Transferred to section 60-4,102.
- 60-423 Transferred to section 60-4,103.
- 60-424 Transferred to section 60-498.
- 60-425 Transferred to section 60-499.
- 60-426 Transferred to section 60-4,100.
- 60-427 Transferred to section 60-496.
- 60-427.01 Transferred to section 39-6,114.01.
- 60-428 Repealed. Laws 1947, c. 148, § 5.
- 60-429 Transferred to section 60-4,106.
- 60-430 Transferred to section 60-4,111.
- 60-430.01 Transferred to section 60-4,108.
- 60-430.02 Repealed. Laws 1967, c. 390, § 2.

**60-430.03 Repealed. Laws 1959, c. 293, § 7.**

**60-430.04 Repealed. Laws 1986, LB 153, § 13.**

**60-430.05 Transferred to section 60-4,109.**

**60-430.06 Transferred to section 60-4,110.**

**60-430.07 Repealed. Laws 1980, LB 696, § 6.**

(d) STATE PATROL

**60-431 Transferred to section 81-2001.**

**60-431.01 Repealed. Laws 1981, LB 497, § 1.**

**60-432 Transferred to section 81-2002.**

**60-433 Transferred to section 81-2003.**

**60-434 Transferred to section 81-2004.**

**60-434.01 Transferred to section 81-2010.**

**60-435 Transferred to section 81-2005.**

**60-436 Transferred to section 81-2008.**

**60-437 Transferred to section 81-2006.**

**60-438 Transferred to section 81-2007.**

**60-439 Transferred to section 81-2009.**

**60-440 Transferred to section 60-406.08.**

**60-440.01 Transferred to section 81-2011.**

**60-440.02 Transferred to section 81-2012.**

**60-440.03 Transferred to section 81-2013.**

**60-441 Transferred to section 81-2014.**

**60-442 Transferred to section 81-2015.**

**60-443 Transferred to section 81-2016.**

**60-444 Transferred to section 81-2017.**

**60-445 Transferred to section 81-2018.**

**60-446 Transferred to section 81-2019.**

**60-447 Transferred to section 81-2020.**

**60-448 Transferred to section 81-2021.**

**60-449 Transferred to section 81-2022.**

**60-450 Transferred to section 81-2023.**

**60-451** Transferred to section 81-2024.

**60-452** Transferred to section 81-2025.

**60-452.01** Transferred to section 81-2026.

**60-452.02** Transferred to section 81-2027.

**60-453** Repealed. Laws 1953, c. 333, § 3.

**60-454** Repealed. Laws 1953, c. 333, § 3.

**60-455** Transferred to section 81-2028.

**60-456** Transferred to section 81-2029.

**60-457** Transferred to section 81-2030.

**60-458** Transferred to section 81-2031.

**60-459** Transferred to section 81-2032.

**60-460** Transferred to section 81-2033.

**60-461** Transferred to section 81-2034.

(e) GENERAL PROVISIONS

**60-462 Act, how cited.**

Sections 60-462 to 60-4,188 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.

**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, 2010:

(1) Beginning on an implementation date designated by the director, the federal requirements for interstate shipment of etiologic agents, 42 C.F.R. part 72; and

(2) 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.

**60-462.02 Legislative intent; director; department; powers and duties.**

It is the intent of the Legislature that the department develop, implement, and maintain processes for the issuance of operators' licenses and state identification cards designed to protect the identity of applicants for and holders of such licenses and cards and reduce identity theft, fraud, forgery, and counterfeiting to the maximum extent possible with respect to such licenses and cards. The director shall designate an implementation date for such processes which date is on or before August 1, 2009. The department shall adopt security and technology practices to enhance the enrollment, production, data storage, and credentialing system of such licenses and cards in order to maximize the integrity of the process.

**Source:** Laws 2008, LB911, § 2; Laws 2009, LB331, § 8.

**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.

**60-463.01 Cancellation of operator's license, defined.**

Cancellation of operator's license shall mean the annulment or termination by formal action of the Department of Motor Vehicles of a person's license because of some error or defect in such license or because the licensee is no longer entitled to such license, and without prejudice to application for a new license which may be made at any time after such cancellation.

**Source:** Laws 1993, LB 370, § 67.

**60-464 Commercial driver's license, defined.**

Commercial driver's license shall mean an operator's license issued in accordance with the requirements of the Motor Vehicle Operator's License Act to an individual which authorizes such individual to drive a class of commercial motor vehicle.

**Source:** Laws 1989, LB 285, § 14.

**60-465 Commercial motor vehicle, defined.**

(1) Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross combination weight rating of eleven thousand seven hundred ninety-four kilograms or more (twenty-six thousand one pounds or more) inclusive of a towed unit with a gross vehicle weight rating of more than four thousand five hundred thirty-six kilograms (ten thousand pounds);

(b) Has a gross vehicle weight rating of eleven thousand seven hundred ninety-four or more kilograms (twenty-six thousand one pounds or more);

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the federal Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under 49 C.F.R. part 172, subpart F.

(2) Commercial motor vehicle does not include (a) a farm vehicle, other than a combination of truck-tractors and semitrailers, which is (i) controlled and operated by a farmer, including operation by employees or family members of the farmer, (ii) used to transport either agricultural products, farm machinery, farm supplies, or both, to or from a farm or ranch, (iii) not used in the operations of a common or contract motor carrier, and (iv) used within one hundred fifty miles of the farmer's farm or ranch, (b) any recreational vehicle as defined in section 60-347 or motor vehicle towing a cabin trailer as defined in sections 60-314 and 60-339, (c) any emergency vehicle operated by a public or volunteer fire department, or (d) any motor vehicle owned or operated by the United States Department of Defense or Nebraska National Guard when such motor vehicle is driven by persons identified in section 60-4,131.01.

**Source:** Laws 1989, LB 285, § 15; Laws 2005, LB 76, § 4; Laws 2005, LB 274, § 235; Laws 2006, LB 853, § 8; Laws 2006, LB 1007, § 5; Laws 2010, LB805, § 4.

**60-465.01 Department, defined.**

Department means the Department of Motor Vehicles.

**Source:** Laws 2008, LB911, § 4.

**60-466 Director, defined.**

Director shall mean the Director of Motor Vehicles.

**Source:** Laws 1989, LB 285, § 16.

**60-467 Repealed. Laws 2003, LB 562, § 22.**

**60-468 Drive, defined.**

Drive shall mean to operate or be in the actual physical control of a motor vehicle.

**Source:** Laws 1989, LB 285, § 18.

**60-468.01 Full legal name, defined.**

Full legal name means an individual's first name, middle name, and last or surname without use of initials or nicknames.

**Source:** Laws 2008, LB911, § 5.

**60-469 Gross vehicle weight rating, defined.**

Gross vehicle weight rating shall mean the value specified by the manufacturer as the maximum loaded weight of a single or a combination or articulated vehicle. The gross vehicle weight rating of a combination or articulated vehicle shall be the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of the towed unit or units. In the absence of a value specified for the towed unit or units by the manufacturer, the gross vehicle weight rating of a combination or articulated vehicle shall be the gross vehicle weight rating of

the power unit plus the total weight of the towed unit or units and the loads on such towed unit or units.

**Source:** Laws 1989, LB 285, § 19.

**60-470 Highway, defined.**

Highway shall mean 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 motor vehicle travel.

**Source:** Laws 1989, LB 285, § 20.

**60-470.01 Impoundment of operator's license, defined.**

Impoundment of operator's license shall mean the seizure and holding of a person's operator's license by the court pursuant to a court order requiring such person not to operate a motor vehicle for a specified period of time when the court has not ordered a revocation of the operator's license.

**Source:** Laws 2001, LB 38, § 7.

**60-470.02 Interactive wireless communication device, defined.**

Interactive wireless communication device means any wireless electronic communication device that provides for voice or data communication between two or more parties, including, but not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant that sends or receives messages, an audio-video player that sends or receives messages, or a laptop computer.

**Source:** Laws 2007, LB415, § 3.

**60-471 Motor vehicle, defined.**

Motor vehicle means all vehicles propelled by any power other than muscular power. Motor vehicle does not include (1) self-propelled chairs used by persons who are disabled, (2) farm tractors, (3) farm tractors used occasionally outside general farm usage, (4) road rollers, (5) vehicles which run only on rails or tracks, (6) electric personal assistive mobility devices as defined in section 60-618.02, and (7) off-road vehicles, including, but not limited to, golf carts, go-carts, riding lawn mowers, garden tractors, all-terrain vehicles and utility-type vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663.

**Source:** Laws 1989, LB 285, § 21; Laws 1993, LB 370, § 68; Laws 2002, LB 1105, § 445; Laws 2010, LB650, § 30.

**60-472 Nonresident, defined.**

Nonresident shall mean every person who is not a resident of this state.

**Source:** Laws 1989, LB 285, § 22.

**60-473 Operator or driver, defined.**

Operator or driver shall mean any person who drives a motor vehicle.

**Source:** Laws 1989, LB 285, § 23.

**60-474 Operator's or driver's license, defined.**

Operator's or driver's license shall mean any license or permit to operate a motor vehicle issued under the laws of this state, including:

- (1) Any replacement or duplicate license or instruction permit;
- (2) The privilege of any person to drive a motor vehicle whether such person holds a valid license;
- (3) Any nonresident's operating privilege which shall mean the privilege conferred upon a nonresident by the laws of this state pertaining to the operation of a motor vehicle in this state by such person or the use in this state of a vehicle owned by such person;
- (4) An employment driving permit issued as provided by sections 60-4,129 and 60-4,130; and
- (5) A medical hardship driving permit issued as provided by sections 60-4,130.01 and 60-4,130.02.

**Source:** Laws 1989, LB 285, § 24; Laws 1993, LB 105, § 5; Laws 1993, LB 370, § 69.

**60-475 Owner, defined.**

Owner shall mean a person who holds legal title to a motor vehicle, a mortgagor entitled to the possession of a motor vehicle, or the conditional vendee or lessee of a motor vehicle which is the subject of an agreement for the conditional sale or lease of the motor vehicle 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.

**Source:** Laws 1989, LB 285, § 25.

**60-475.01 Principal residence, defined.**

Principal residence means the location in Nebraska where a person resides at the time of application even if such residence is temporary.

**Source:** Laws 2008, LB911, § 6.

**60-476 Person, defined.**

Person shall mean every natural person, firm, partnership, limited liability company, association, or corporation.

**Source:** Laws 1989, LB 285, § 26; Laws 1993, LB 121, § 383.

**60-476.01 Revocation of operator's license, defined.**

Revocation of operator's license shall mean the termination by a court of competent jurisdiction or by formal action of the Department of Motor Vehicles of a person's operator's license, which termination shall not be subject to renewal or restoration. Application for reinstatement of eligibility for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in the statute providing for revocation.

**Source:** Laws 1993, LB 370, § 70; Laws 2001, LB 38, § 8.

For purposes of the Motor Vehicle Operator's License Act, a motorist's ineligibility to hold a driver's license in another state constitutes a revocation as it is defined by this section. Wilczewski v. Neth, 273 Neb. 324, 729 N.W.2d 678 (2007).

**60-476.02 Suspension of operator's license, defined.**

Suspension of operator's license shall mean the temporary withdrawal by formal action of the Department of Motor Vehicles of a person's operator's license for a period specifically designated by the department, if any, and until compliance with all conditions for reinstatement.

**Source:** Laws 1993, LB 370, § 71; Laws 2001, LB 38, § 9.

**60-476.03 Restricted commercial driver's license, defined.**

Restricted commercial driver's license shall mean a class of commercial driver's license issued in accordance with the requirements of the Motor Vehicle Operator's License Act.

**Source:** Laws 1993, LB 420, § 3.

**60-477 Repealed. Laws 2003, LB 562, § 22.**

**60-478 Vehicle, defined.**

Vehicle shall mean every device in, upon, or by which any person or property is or may be transported or drawn upon a highway except devices moved solely by human power or used exclusively upon stationary rails or tracks.

**Source:** Laws 1989, LB 285, § 28.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

**60-479 Sections; applicability.**

Sections 60-479.01 to 60-4,111.01 and 60-4,182 to 60-4,188 shall apply to any operator's license subject to the Motor Vehicle Operator's License Act.

**Source:** Laws 1989, LB 285, § 29; Laws 1993, LB 370, § 72; Laws 1995, LB 467, § 7; Laws 1997, LB 210, § 3; Laws 1997, LB 256, § 5; Laws 2001, LB 38, § 10; Laws 2001, LB 574, § 2; Laws 2003, LB 209, § 2; Laws 2008, LB911, § 7.

**60-479.01 Section; applicability; fraudulent document recognition training.**

This section applies beginning on an implementation date designated by the director pursuant to section 60-462.02. 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.

**Source:** Laws 2008, LB911, § 8.

**60-480 Operators' licenses; classification.**

Operators' licenses issued by the Department of Motor Vehicles pursuant to the Motor Vehicle Operator's License Act shall be classified as follows:

(1) Class O license. The operator's license which authorizes the person to whom it is issued to operate on highways any motor vehicle except a commercial motor vehicle or motorcycle;

(2) Class M license. The operator's license or endorsement on a Class O license, provisional operator's permit, learner's permit, school permit, or commercial driver's license which authorizes the person to whom it is issued to operate a motorcycle on highways;

(3) CDL-commercial driver's license. The operator's license which authorizes the person to whom it is issued to operate a class of commercial motor vehicles or any motor vehicle, except a motorcycle, on highways;

(4) RCDL-restricted commercial driver's license. The class of commercial driver's license which, when held with an annual seasonal permit, authorizes a seasonal commercial motor vehicle operator as defined in section 60-4,146.01 to operate any Class B Heavy Straight Vehicle or Class C Small Vehicle commercial motor vehicle for purposes of a farm-related or ranch-related service industry as defined in such section within one hundred fifty miles of the employer's place of business or the farm or ranch currently being served as provided in such section or any other motor vehicle, except a motorcycle, on highways;

(5) POP-provisional operator's permit. A motor vehicle operating permit with restrictions issued pursuant to section 60-4,120.01 to a person who is at least sixteen years of age but less than eighteen years of age which authorizes the person to operate any motor vehicle except a commercial motor vehicle or motorcycle;

(6) SCP-school permit. A permit issued to a student between fourteen years and two months of age and sixteen years of age for the purpose of driving in accordance with the requirements of section 60-4,124;

(7) FMP-farm permit. A permit issued to a person for purposes of operating farm tractors and other motorized implements of farm husbandry on highways in accordance with the requirements of section 60-4,126;

(8) LPC-learner's permit. A permit which when held in conjunction with a Class O license or commercial driver's license authorizes a person to operate a commercial motor vehicle for learning purposes when accompanied by a person who is at least twenty-one years of age;

(9) LPD-learner's permit. A permit issued in accordance with the requirements of section 60-4,123 to a person at least fifteen years of age which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, for learning purposes when accompanied by a licensed operator who is at least twenty-one years of age and who possesses a valid operator's license issued by this state or another state;

(10) LPE-learner's permit. A permit issued to a person at least fourteen years of age which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, while learning to drive in preparation for application for a school permit;

(11) EDP-employment driving permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, pursuant to the requirements of sections 60-4,129 and 60-4,130;

(12) IIP-ignition interlock permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, which is equipped with an ignition interlock device;

(13) SEP-seasonal permit. A permit issued to a person who holds a restricted commercial driver's license authorizing the person to operate a commercial motor vehicle, as prescribed by section 60-4,146.01, for no more than one hundred eighty consecutive days in any twelve-month period. The seasonal permit shall be valid and run from the date of original issuance of the permit

for one hundred eighty days and from the date of annual revalidation of the permit; and

(14) MHP-medical hardship driving permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, pursuant to the requirements of sections 60-4,130.01 and 60-4,130.02.

**Source:** Laws 1989, LB 285, § 30; Laws 1990, LB 980, § 8; Laws 1993, LB 105, § 6; Laws 1993, LB 420, § 4; Laws 1998, LB 320, § 2; Laws 1999, LB 704, § 4; Laws 2001, LB 387, § 3; Laws 2005, LB 675, § 1; Laws 2008, LB736, § 1.

**60-480.01 Undercover drivers' licenses; issuance; confidential; unlawful disclosure; penalty.**

(1)(a) Undercover drivers' licenses may be issued to federal, state, county, city, or village law enforcement agencies and shall be used only for legitimate criminal investigatory purposes. Undercover drivers' licenses may also be issued to the Nebraska State Patrol, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, persons employed by the Tax Commissioner for state revenue enforcement purposes, the Department of Health and Human Services for the purposes of communicable disease control, the prevention and control of those communicable diseases which endanger the public health, the enforcement of drug control laws, or other investigation purposes, the Department of Agriculture for special investigative purposes, and the Insurance Fraud Prevention Division of the Department of Insurance for investigative purposes. Undercover drivers' licenses are not for personal use.

(b) The director shall prescribe a form for agencies to apply for undercover drivers' licenses. The form shall include a space for the name and signature of the contact person for the requesting agency, a statement that the undercover drivers' licenses are to be used only for legitimate criminal investigatory purposes, and a statement that undercover drivers' licenses are not for personal use.

(2) The agency shall include the name and signature of the contact person for the agency on the form and pay the fees prescribed in section 60-4,115. If the undercover drivers' licenses will be used for the investigation of a specific event rather than for ongoing investigations, the agency shall designate on the form an estimate of the length of time the undercover drivers' licenses will be needed. The contact person in the agency shall sign the form and verify the information contained in the form.

(3) Upon receipt of a completed form, the director shall determine whether the undercover drivers' licenses will be used by an approved agency for a legitimate purpose pursuant to subsection (1) of this section. If the director determines that the undercover drivers' licenses will be used for such a purpose, he or she may issue the undercover drivers' licenses in the form and under the conditions he or she determines to be necessary. The decision of the director regarding issuance of undercover drivers' licenses is final.

(4) The Department of Motor Vehicles shall keep records pertaining to undercover drivers' licenses confidential, and such records shall not be subject to public disclosure. Any person who receives information pertaining to undercover drivers' licenses in the course of his or her employment and who

discloses any such information to any unauthorized individual shall be guilty of a Class III misdemeanor.

(5) The contact person shall return the undercover drivers' licenses to the Department of Motor Vehicles if:

- (a) The undercover drivers' licenses expire and are not renewed;
- (b) The purpose for which the undercover drivers' licenses were issued has been completed or terminated;
- (c) The persons for whom the undercover drivers' licenses were issued cease to be employees of the agency; or
- (d) The director requests their return.

**Source:** Laws 1997, LB 256, § 6; Laws 2007, LB296, § 228; Laws 2009, LB28, § 2; Laws 2009, LB331, § 9.

**60-481 Driving rules; publication; copy to licensee.**

The director pursuant to law shall publish a synopsis or summary of the statutory driving rules of this state, together with such cautionary and advisory comments as may to him or her seem fit, and shall deliver a copy of such synopsis or summary without charge with each operator's license. Such rules shall contain a summary of the state's laws for operating a motor vehicle to avoid arrest.

**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.

**60-482 Rules and regulations.**

The director shall adopt and promulgate such rules and regulations as may be necessary to carry out the Motor Vehicle Operator's License Act.

**Source:** Laws 1977, LB 90, § 7; Laws 1981, LB 204, § 100; R.S.1943, (1988), § 60-406.06; Laws 1989, LB 285, § 32; Laws 1994, LB 1061, § 3.

**60-483 Operator's license; numbering; records; abstracts of operating records; fees; information to United States Selective Service System; when.**

(1) The director shall assign a distinguishing number to each operator's license issued and shall keep a record of the same which shall be open to public inspection by any person requesting inspection of such record who qualifies under section 60-2906 or 60-2907. Any person requesting such driver record information shall furnish to the Department of Motor Vehicles (a) verification of identity and purpose that the requester is entitled under section 60-2906 or 60-2907 to disclosure of the personal information in the record, (b) the name of the person whose record is being requested, and (c) when the name alone is insufficient to identify the correct record, the department may request additional identifying information. The department shall, upon request of any requester, furnish a certified abstract of the operating record of any person, in either hard copy or electronically, and shall charge the requester a fee of three dollars per abstract.

(2) The department shall remit any revenue generated under subsections (1) through (5) of this section to the State Treasurer, and the State Treasurer shall

credit eight and one-third percent to the Department of Motor Vehicles Cash Fund, fifty-eight and one-third percent to the General Fund, and thirty-three and one-third percent to the Records Management Cash Fund.

(3) The director shall, upon receiving a request and an agreement from the United States Selective Service System to comply with requirements of this section, furnish driver record information to the United States Selective Service System to include the name, post office address, date of birth, sex, and social security number of licensees. The United States Selective Service System shall pay all costs incurred by the department in providing the information but shall not be required to pay any other fee required by law for information. No driver record information shall be furnished to the United States Selective Service System regarding any female, nor regarding any male other than those between the ages of seventeen years and twenty-six years. The information shall only be used in the fulfillment of the required duties of the United States Selective Service System and shall not be furnished to any other person.

(4) The director shall keep a record of all applications for operators' licenses that are disapproved with a brief statement of the reason for disapproval of the application.

(5) The director may establish a monitoring service which provides information on operating records that have changed due to any adjudicated traffic citation or administrative action. The director shall charge a fee of six cents per operating record searched pursuant to this section and the fee provided in subsection (1) of this section for each abstract returned as a result of the search.

(6) Driver record header information, including name, license number, date of birth, address, and physical description, from every driver record maintained by the department may be made available so long as the Uniform Motor Vehicle Records Disclosure Act is not violated. Monthly updates, including all new records, may also be made available. There shall be a fee of eighteen dollars per thousand records. All 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 1929, c. 149, § 9, p. 516; C.S.1929, § 60-409; Laws 1937, c. 141, § 19, p. 516; Laws 1941, c. 176, § 2, p. 688; C.S.Supp., 1941, § 60-409; R.S.1943, § 60-412; Laws 1961, c. 315, § 9, p. 1005; Laws 1961, c. 316, § 9, p. 1014; Laws 1963, c. 360, § 1, p. 1154; Laws 1965, c. 384, § 1, p. 1238; Laws 1973, LB 319, § 1; Laws 1974, LB 974, § 1; Laws 1978, LB 502, § 1; Laws 1983, LB 326, § 1; Laws 1984, LB 694, § 2; Laws 1984, LB 711, § 1; Laws 1987, LB 300, § 2; Laws 1987, LB 767, § 1; R.S.1943, (1988), § 60-412; Laws 1989, LB 285, § 33; Laws 1993, LB 491, § 10; Laws 1995, LB 467, § 9; Laws 1997, LB 590, § 2; Laws 1997, LB 635, § 19; Laws 1997, LB 720, § 17; Laws 2000, LB 1317, § 6; Laws 2001, LB 106, § 1; Laws 2003, LB 562, § 3; Laws 2004, LB 560, § 37.

**Cross References**

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

**60-483.01 National Driver Register; employer check; fee.**

An employer may apply to the Department of Motor Vehicles for a file check from the National Driver Register on a current or prospective employee. The employer shall pay a fee of two dollars for each check. Upon receipt of the application and fee, the department shall furnish the check to the employer and remit the fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 1995, LB 467, § 8.

**60-484 Operator’s license required, when; state identification card; application.**

(1)(a) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. Except as otherwise provided in the Motor Vehicle Operator’s License Act, no resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of the State of Nebraska until the person has obtained an operator’s license for that purpose.

(b) Application for an operator’s license may be made in a manner prescribed by the department. Such application may be made to an examiner in any county. The examiner shall personally conduct the examination of the applicant and deliver to each successful applicant an examiner’s certificate containing the statements made pursuant to subdivision (c) of this subsection.

(c) In addition to any other information and questions necessary to comply with the requirements and purposes of the act, the applicant (i) shall provide his or her name, age, post office address, place of residence unless the applicant is a program participant under the Address Confidentiality Act, date of birth, gender, social security number, and brief description of himself or herself, (ii) may complete the voter registration portion pursuant to section 32-308, (iii) shall be provided the advisement language required by subsection (5) of section 60-6,197, (iv) shall answer the following:

(A) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(I) lost voluntary control or consciousness ... yes ... no

(II) experienced vertigo or multiple episodes of dizziness or fainting ... yes ... no

(III) experienced disorientation ... yes ... no

(IV) experienced seizures ... yes ... no

(V) experienced impairment of memory, memory loss ... yes ... no

Please explain: .....

(B) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain: .....

(C) Since the issuance of your last driver’s license/permit has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive: ....., and (v) may answer the following:

(A) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(B) Do you wish to be an organ and tissue donor?

(C) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(D) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(d) Application for an operator's license shall be made under oath or affirmation of the applicant.

(e) The social security number shall not be printed on the operator's license and shall be used only (i) to furnish driver record information to the United States Selective Service System under section 60-483, (ii) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, (iii) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, or (iv) to furnish information regarding an applicant for or holder of a commercial driver's license with a hazardous materials endorsement to the Transportation Security Administration of the United States Department of Homeland Security or its agent.

(f)(i) Except for an individual under the age of eighteen years, each individual applying for an operator's license or a state identification card shall furnish proof of date of birth and identity by a valid Nebraska operator's license, a valid Nebraska learner's permit, a valid Nebraska school permit, a valid operator's license from another state or jurisdiction of the United States, a certified birth certificate, a certified birth registration, a valid United States passport, a valid United States military identification card, United States military discharge papers, other United States-based identification as approved by the director, or information preserved in the digital system implemented under section 60-484.01.

(ii) Any individual under the age of eighteen years applying for an operator's license or a state identification card shall provide a certified copy of his or her birth certificate, a certified birth registration, or other reliable proof of his or her identity and age accompanied by a certification signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant may be required to furnish proof to the examiner that the parent or guardian signing the certification is in fact the parent or guardian of such applicant.

(2)(a) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. Except as otherwise provided in the Motor Vehicle Operator's License Act, no resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of this state until the person has obtained an operator's license for that purpose.

(b) Application for an operator's license or a state identification card shall be made in a manner prescribed by the department. Such application may be made to department personnel in any county. Department personnel shall conduct the examination of the applicant and deliver to each successful applicant an issuance certificate containing the statements made pursuant to subdivision (c) of this subsection.

(c) The applicant (i) shall provide his or her full legal name, date of birth, mailing address, gender, race or ethnicity, and social security number, two forms of proof of address of his or her principal residence unless the applicant is a program participant under the Address Confidentiality Act, evidence of identity as required by subdivision (2)(f) of this subsection, and a brief physical description of himself or herself, (ii) may complete the voter registration portion pursuant to section 32-308, (iii) shall be provided the advisement language required by subsection (5) of section 60-6,197, (iv) shall answer the following:

(A) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(I) lost voluntary control or consciousness ... yes ... no

(II) experienced vertigo or multiple episodes of dizziness or fainting ... yes ... no

(III) experienced disorientation ... yes ... no

(IV) experienced seizures ... yes ... no

(V) experienced impairment of memory, memory loss ... yes ... no

Please explain: .....

(B) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain: .....

(C) Since the issuance of your last driver's license/permit, has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive: ....., and (v) may answer the following:

(A) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(B) Do you wish to be an organ and tissue donor?

(C) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(D) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(d) Application for an operator's license or state identification card shall include a signed oath, affirmation, or declaration of the applicant that the information provided on the application for the license or card is true and correct.

(e) The social security number shall not be printed on the operator's license or state identification card and shall be used only (i) to furnish information to the United States Selective Service System under section 60-483, (ii) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, (iii) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, (iv) to furnish information regarding an applicant for or holder of a commercial driver's license with a hazardous materials endorsement to the Transportation Security Administration of the United States Department of Homeland Security

or its agent, or (v) to furnish information to the Department of Revenue under section 77-362.02.

(f)(i) Each individual applying for an operator's license or a state identification card shall furnish proof of date of birth and identity with documents containing a photograph or with nonphoto identity documents which include his or her full legal name and date of birth. Such documents shall include, but not be limited to, any valid Nebraska operator's license or Nebraska state identification card, a valid operator's license or identification card from another state or jurisdiction of the United States, a certified birth certificate, a valid United States passport, or any other United States-based identification as approved by the director.

(ii) Any individual under the age of eighteen years applying for an operator's license or a state identification card shall provide a certified copy of his or her birth certificate or, if such individual is unable to provide a certified copy of his or her birth certificate, other reliable proof of his or her identity and age, as required in subdivision (2)(f)(i) of this section, accompanied by a certification signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant also may be required to furnish proof to department personnel that the parent or guardian signing the certification is in fact the parent or guardian of such applicant.

(iii) An applicant may present other documents as proof of identification and age designated by the director. Any documents accepted shall be recorded according to a written exceptions process established by the director.

**Source:** Laws 1929, c. 148, § 1, p. 512; C.S.1929, § 60-401; Laws 1937, c. 141, § 11, p. 510; C.S.Supp.,1941, § 60-401; R.S.1943, § 60-403; Laws 1945, c. 141, § 1, p. 446; Laws 1947, c. 207, § 1, p. 675; Laws 1957, c. 366, § 35, p. 1269; Laws 1961, c. 315, § 2, p. 998; Laws 1961, c. 316, § 2, p. 1007; Laws 1984, LB 811, § 2; Laws 1986, LB 878, § 1; Laws 1986, LB 153, § 9; Laws 1987, LB 300, § 1; R.S.1943, (1988), § 60-403; Laws 1989, LB 285, § 35; Laws 1991, LB 457, § 44; Laws 1992, LB 1178, § 1; Laws 1994, LB 76, § 571; Laws 1994, LB 211, § 2; Laws 1995, LB 467, § 10; Laws 1996, LB 939, § 1; Laws 1996, LB 1073, § 1; Laws 1997, LB 635, § 20; Laws 1999, LB 147, § 1; Laws 1999, LB 704, § 5; Laws 2000, LB 1317, § 7; Laws 2001, LB 34, § 1; Laws 2001, LB 387, § 4; Laws 2001, LB 574, § 5; Laws 2003, LB 228, § 12; Laws 2004, LB 208, § 4; Laws 2004, LB 559, § 1; Laws 2005, LB 1, § 1; Laws 2005, LB 76, § 5; Laws 2008, LB911, § 9; Laws 2010, LB879, § 3.

#### Cross References

**Address Confidentiality Act**, see section 42-1201.

Driving a motor vehicle requires that driver be licensed; there is no unfettered constitutional right to travel by whatever means a person chooses. *State v. Meints*, 223 Neb. 199, 388 N.W.2d 813 (1986).

Licensure of drivers hereunder is in interest of public safety and, when one drives in violation of statute, it is evidence of negligence which may be considered by the jury. *Benton v. State*, 124 Neb. 485, 247 N.W. 21 (1933).

#### 60-484.01 Digital system authorized.

It is the intent of the Legislature to authorize the Department of Motor Vehicles to begin issuing operators' licenses and state identification cards using digital images and digital signatures and to allow for electronic renewal of

certain operators' licenses and state identification cards. The department shall implement such a digital system.

**Source:** Laws 2001, LB 574, § 3; Laws 2005, LB 1, § 2.

**60-484.02 Digital images and signatures; use; confidentiality; violation; penalty.**

(1) Each applicant for an operator's license or state identification card shall have his or her digital image taken. Digital images shall be preserved for use as prescribed in sections 60-4,119, 60-4,151, and 60-4,180. The images shall be used for issuing operators' licenses and state identification cards. The images may be retrieved only by the Department of Motor Vehicles for issuing renewal, duplicate, and replacement operators' licenses and state identification cards and may not be otherwise released except in accordance with subsection (3) of this section.

(2) Upon application for an operator's license or state identification card, each applicant shall provide his or her signature in a form prescribed by the department. Digital signatures shall be preserved for use on original, renewal, duplicate, and replacement operators' licenses and state identification cards and may not be otherwise released except in accordance with subsection (3) of this section.

(3) No officer, employee, agent, or contractor of the department or law enforcement officer shall release a digital image or a digital signature except to a federal, state, or local law enforcement agency, a certified law enforcement officer employed in an investigative position by a federal, state, or local agency, or a driver licensing agency of another state for the purpose of carrying out the functions of the agency or assisting another agency in carrying out its functions upon the verification of the identity of the person requesting the release of the information and the verification of the purpose of the requester in requesting the release. Any officer, employee, agent, or contractor of the department or law enforcement officer that knowingly discloses or knowingly permits disclosure of a digital image or digital signature in violation of this section shall be guilty of a Class I misdemeanor.

**Source:** Laws 2001, LB 574, § 4; Laws 2004, LB 560, § 38; Laws 2005, LB 1, § 3; Laws 2009, LB372, § 1; Laws 2010, LB805, § 5.

**60-485 Outstanding warrant for arrest; issuance of operator's license prohibited; courts; duties.**

No person may be licensed to operate a motor vehicle by the State of Nebraska when there is an outstanding warrant for the arrest of such person issued out of any court located within this state and such warrant arises out of an alleged violation of a state statute or municipal ordinance involving the use of a motor vehicle. Each court in the state shall, on or before the fifth day of each month, submit to the Department of Motor Vehicles an alphabetized list of all persons against whom such warrants exist for the preceding month.

**Source:** Laws 1969, c. 488, § 1, p. 2018; R.S.1943, (1988), § 60-403.03; Laws 1989, LB 285, § 36.

**60-486 Operator's license; license suspended or revoked; effect; appeal.**

(1) No person shall be licensed to operate a motor vehicle by the State of Nebraska if such person has an operator's license currently under suspension or revocation in this state or any other state or jurisdiction in the United States.

(2) If a license is issued to a person while his or her operator's license was suspended or revoked in this state or any other state or jurisdiction, the Department of Motor Vehicles may cancel the license upon forty-five days' written notice by registered or certified mail to the licensee's last-known address. The cancellation may be appealed as provided in section 60-4,105.

(3) When such a person presents to the department an official notice from the state or jurisdiction that suspended or revoked his or her motor vehicle operator's license that such suspension or revocation has been terminated, he or she may then be licensed to operate a motor vehicle by the State of Nebraska.

**Source:** Laws 1986, LB 153, § 7; R.S.1943, (1988), § 60-403.05; Laws 1989, LB 285, § 37; Laws 1999, LB 704, § 6; Laws 2001, LB 38, § 13.

**60-487 Cancellation of operator's license or commercial driver's license; when.**

(1) If any magistrate or judge finds in his or her judgment of conviction that the application or examiner's certificate pursuant to which the director has issued an operator's license under the Motor Vehicle Operator's License Act contains any false or fraudulent statement deliberately and knowingly made to any officer as to any matter material to the issuance of such license or does not contain required or correct information or that the person to whom the license was issued was not eligible to receive such license, then the license shall be absolutely void from the date of issue and such motor vehicle operator shall be deemed to be not licensed to operate a motor vehicle. Such license shall be at once canceled of record in his or her office by the director upon receipt of a copy of such judgment of conviction. The director may, upon his or her own motion, summarily cancel any license for any of the reasons set forth in this section if such reason or reasons affirmatively appear on his or her official records.

(2) If the director determines, in a check of an applicant's license status and record prior to issuing a commercial driver's license, or at any time after the commercial driver's license is issued, that the applicant falsified information contained in the application, the director may summarily cancel the person's commercial driver's license or his or her pending application as provided in subsection (1) of this section and disqualify the person from operating a commercial motor vehicle for sixty days.

**Source:** Laws 1929, c. 148, § 10, p. 517; C.S.1929, § 60-410; Laws 1937, c. 141, § 20, p. 517; Laws 1941, c. 124, § 1, p. 469; C.S.Supp.,1941, § 60-410; R.S.1943, § 60-416; R.S.1943, (1988), § 60-416; Laws 1989, LB 285, § 38; Laws 1991, LB 420, § 7; Laws 1999, LB 704, § 7; Laws 2001, LB 38, § 14; Laws 2003, LB 562, § 4.

**60-488 Nonresidents; license requirements; immunity.**

(1) A nonresident shall not be prevented from operating a motor vehicle upon the highways of this state during the period within which he or she may

lawfully operate such motor vehicle in the state under the general motor vehicle laws of this state, but in no event shall such immunity extend beyond a period of thirty days continuous residence in the State of Nebraska.

(2) Subsection (1) of this section shall be subject to the following limitations:

(a) Such nonresident shall be duly licensed under the motor vehicle laws of the state of his or her residence or have complied with the laws of the state of his or her residence relating to the registration or licensing of motor vehicles and conformed to the laws of such state of residence in relation to the operators of motor vehicles;

(b) A nonresident who is serving in this state on active duty as a member of the United States Armed Forces, or the spouse of any such person or a dependent of such member of the armed forces, shall be exempt from the licensing requirements of this state if he or she is duly licensed under the laws of the state of his or her residence;

(c) A nonresident who is considered to be a full-time student in any institution of postsecondary education in this state shall be exempt from the licensing requirements of this state if such person is duly licensed under the laws of the state of his or her residence; and

(d) A nonresident certified by the Department of Labor as engaged in temporary agricultural employment in Nebraska for a period of not to exceed sixty days may be granted an additional thirty days' immunity if a similar immunity is granted by the state of his or her permanent residence to residents of Nebraska while temporarily employed in agricultural employment in such state.

**Source:** Laws 1929, c. 148, § 11, p. 517; C.S.1929, § 60-411; R.S.1943, § 60-410; Laws 1965, c. 383, § 2, p. 1236; Laws 1969, c. 505, § 1, p. 2080; Laws 1976, LB 846, § 1; R.S.1943, (1988), § 60-410; Laws 1989, LB 285, § 39; Laws 1996, LB 974, § 1; Laws 1999, LB 3, § 3.

Nonresident can only operate a motor vehicle in this state in accordance with its laws. State v. Smith, 181 Neb. 846, 152 N.W.2d 16 (1967).

**60-489 Operator's license; duty to carry and exhibit; exception; officers; power to demand presentation.**

Except for a farm permit issued under section 60-4,126, the operator's license shall at all times be carried by the licensee when operating a motor vehicle on the highways of this state and shall be presented by the licensee for examination, or he or she shall present proof of ownership of the same, upon demand by any officer, employee, or agent of the Nebraska State Patrol or police or peace officer recognized as such by the laws of this state. Such officer, employee, or agent shall, in every case of making demand on the motor vehicle operator to show an operator's license, first display proper evidence of his or her lawful authority to act as an officer of the law. Except as provided in section 29-215, no officer, except an officer, agent, or employee of the Nebraska State Patrol, the Superintendent of Law Enforcement and Public Safety, the county sheriff, or their authorized deputies or subordinates, shall exercise the authority to demand presentation of an operator's license outside the boundaries of any incorporated cities and villages. A farm permit issued under section 60-4,126 need not be carried on the person but shall be produced for examina-

tion within twenty-four hours after a lawful demand therefor has been made under this section.

**Source:** Laws 1929, c. 148, § 9, p. 516; C.S.1929, § 60-409; Laws 1937, c. 141, § 19, p. 516; Laws 1941, c. 176, § 2, p. 688; C.S.Supp.,1941, § 60-409; R.S.1943, § 60-413; Laws 1971, LB 725, § 2; R.S.1943, (1988), § 60-413; Laws 1989, LB 285, § 40; Laws 1994, LB 254, § 3; Laws 2001, LB 574, § 6.

A violation of a city ordinance which tracks this section is a two-point violation under section 39-669.26 (transferred to section 60-4,182), for which a report to the Director of Motor Vehicles is required by section 39-669.22 (transferred to section 60-497.01). *Maciejewski v. Sullivan*, 193 Neb. 598, 228 N.W.2d 294 (1975).

The offense of failing to carry an operator's license when operating a motor vehicle on the public highways is a traffic

violation for which two points are to be assessed, and for which a report to the Department of Motor Vehicles is required. *Coffee v. Sullivan*, 191 Neb. 781, 217 N.W.2d 918 (1974).

Person is not permitted to operate a motor vehicle until he has secured a current operator's license. *Martindale v. State*, 181 Neb. 64, 147 N.W.2d 6 (1966).

### **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 annually on the licensee's birthday for all such licenses issued prior to January 1, 2007, and 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, for all such licenses issued on or after January 1, 2007.

(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.

#### **60-491 Prohibited acts.**

It shall be unlawful for any person:

(1) To display or cause or permit to be displayed or have in his or her possession any canceled, revoked, suspended, impounded, fictitious, or fraudulently altered operator's license or state identification card issued by the State of Nebraska or any other state;

(2) To lend his or her operator's license or state identification card to any person or knowingly permit the use thereof by another;

(3) To display or represent as one's own any operator's license or state identification card not issued to him or her by the State of Nebraska or any other state;

(4) To fail or refuse to surrender to the director upon his or her lawful demand any operator's license or state identification card which has been suspended, revoked, or canceled;

(5) To use a false or fictitious name in applying for an operator's license or state identification card or knowingly to make a false statement or knowingly to conceal a material fact or otherwise commit a fraud in applying for an operator's license or state identification card;

(6) To permit any unlawful use of an operator's license or state identification card issued to him or her by the State of Nebraska or any other state;

(7) To do any act forbidden or fail to perform any act required by the Motor Vehicle Operator's License Act;

(8) To make any false affidavit or knowingly to swear or affirm falsely to any matter or thing required by the terms of the act to be sworn to or affirmed. Such person shall be guilty of perjury and, upon conviction thereof, shall be punished as other persons committing perjury are punishable;

(9) To cause or knowingly permit his or her child or ward under the age of sixteen years to drive a motor vehicle upon any highway when such minor is not authorized under the act or is in violation of any of the provisions of the act;

(10) To authorize or knowingly permit a motor vehicle owned by him or her or under his or her control to be driven upon any highway by any person who is not authorized under the act or is in violation of any of the provisions of the act; or

(11) To manufacture any fraudulent state identification card whether of the State of Nebraska or any other state.

**Source:** Laws 1937, c. 141, § 26, p. 521; Laws 1941, c. 124, § 6, p. 474; C.S.Supp.,1941, § 60-431; R.S.1943, § 60-417; R.S.1943, (1988),

§ 60-417; Laws 1989, LB 284, § 10; Laws 1989, LB 285, § 41; Laws 1991, LB 335, § 1; Laws 1999, LB 704, § 9; Laws 2001, LB 38, § 15.

A person who violates subsection (10) of this section is guilty of negligence and liable for damages proximately resulting from the negligent operation of the motor vehicle. *DeWester v. Watkins*, 275 Neb. 173, 745 N.W.2d 330 (2008).

**60-492 Impersonating officer; penalty.**

Any unauthorized person impersonating an officer under color of the Motor Vehicle Operator's License Act shall be guilty of a Class IV felony.

**Source:** Laws 1929, c. 148, § 9, p. 517; C.S.1929, § 60-409; Laws 1937, c. 141, § 19, p. 516; Laws 1941, c. 176, § 2, p. 689; C.S.Supp.,1941, § 60-409; R.S.1943, § 60-414; Laws 1977, LB 39, § 78; R.S.1943, (1988), § 60-414; Laws 1989, LB 285, § 42.

**60-493 Organ and tissue donation; county treasurer or examiner; distribute brochure; additional information; department; duty.**

When a person applies for an operator's license or state identification card, the county treasurer or examiner of the Department of Motor Vehicles shall distribute a brochure provided by an organ and tissue procurement organization and approved by the Department of Health and Human Services containing a description and explanation of the Revised Uniform Anatomical Gift Act to each person applying for a new or renewal license or card.

If an individual desires to receive additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska as indicated on an application or examiner's certificate under section 60-484, 60-4,144, or 60-4,181, the department shall notify a representative of the federally designated organ procurement organization for Nebraska within five working days of the name and address of such individual.

**Source:** Laws 1977, LB 115, § 3; R.S.1943, (1988), § 60-406.01; Laws 1989, LB 285, § 43; Laws 1992, LB 1178, § 2; Laws 1996, LB 1044, § 280; Laws 1999, LB 704, § 10; Laws 2001, LB 34, § 2; Laws 2004, LB 559, § 2; Laws 2007, LB296, § 229; Laws 2010, LB1036, § 31.

**Cross References**

Revised Uniform Anatomical Gift Act, see section 71-4824.

**60-494 Operator's license; state identification card; organ and tissue donation information; department; duty.**

(1) Each operator's license and state identification card shall include a special notation on the front of the license or card if the licensee or cardholder is at least sixteen years of age and indicates on the application or examiner's certificate under section 60-484, 60-4,144, or 60-4,181 his or her wish to be an organ donor, a tissue donor, or both.

(2) The status as an organ donor, a tissue donor, or both shall be renewed upon renewal of each license or card if the licensee or cardholder, at the time of renewal, indicates the desire to renew the status and the notation authorized in subsection (1) of this section has been marked. The status as an organ donor, a tissue donor, or both is not changed by the suspension, cancellation, revocation, or impoundment of the license or card.

(3) Any person whose operator's license or state identification card indicates his or her status as an organ donor, a tissue donor, or both may obtain a replacement license or card without a notation of such status. The fee for such replacement license or card shall be the fee provided in section 60-4,115.

(4) A licensee or cardholder may also change his or her status as a donor by (a) Internet access to the Donor Registry of Nebraska, (b) telephone request to the registry, or (c) other methods approved by the federally designated organ procurement organization for Nebraska.

(5) The Department of Motor Vehicles shall electronically transfer to the federally designated organ procurement organization for Nebraska all information which appears on the face of an original or replacement operator's license or state identification card except the image and signature of each person whose license or card includes the notation described in subsection (1) of this section.

**Source:** Laws 1984, LB 711, § 2; Laws 1985, LB 585, § 1; R.S.1943, (1988), § 60-412.01; Laws 1989, LB 285, § 44; Laws 1992, LB 1178, § 3; Laws 1999, LB 704, § 11; Laws 2001, LB 34, § 3; Laws 2001, LB 574, § 8; Laws 2004, LB 559, § 3; Laws 2010, LB1036, § 32.

**60-495 Organ and tissue donation; rules and regulations; Organ and Tissue Donor Awareness and Education Fund; created; use; investment.**

(1) The director shall adopt and promulgate such rules and regulations and prepare and furnish all forms and information necessary to carry out sections 60-493 to 60-495 and the duties of the department under the Revised Uniform Anatomical Gift Act.

(2) The Organ and Tissue Donor Awareness and Education Fund is created. The county treasurer shall remit all funds contributed under sections 60-484, 60-4,144, and 60-4,181 to the State Treasurer for credit to the fund. The Department of Health and Human Services shall administer the Organ and Tissue Donor Awareness and Education Fund for the promotion of organ and tissue donation. The department shall use the fund to assist organizations such as the federally designated organ procurement organization for Nebraska and the State Anatomical Board in carrying out activities which promote organ and tissue donation through the creation and dissemination of educational information. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1977, LB 115, § 5; R.S.1943, (1988), § 60-406.03; Laws 1989, LB 285, § 45; Laws 1999, LB 147, § 2; Laws 2010, LB1036, § 33.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

Revised Uniform Anatomical Gift Act, see section 71-4824.

**60-496 Violation of law; revocation of operator's license; duties of director and Nebraska State Patrol.**

Upon conviction of any person in any court within this state of any violation of (1) any law of this state pertaining to the operation of motor vehicles or (2)

any city or village ordinance pertaining to the operation of a motor vehicle in such a manner as to endanger life, limb, or property, except for operating a motor vehicle while under the influence of alcoholic liquor or any drug, the judge of such court may, in his or her discretion, order the revocation of the operator's license of such convicted person to operate a motor vehicle for any purpose for a period of time not less than ten days nor more than one year, unless a greater period of revocation is made mandatory by other provisions of law, or may impound the license for a period of not more than ninety days and order that such person not operate a motor vehicle during the period such license is impounded. Such judge shall immediately notify in detail the director of the action and findings of the court as provided for in sections 60-497.01 to 60-497.04. If the judgment of conviction provides for the revocation of the person's operator's license, the director shall immediately revoke the license and make available to the Superintendent of Law Enforcement and Public Safety an updated record of such revocation. It shall then be the duty of the Nebraska State Patrol to enforce the conditions of such revocation recited in any judgment of conviction.

**Source:** Laws 1929, c. 148, § 12, p. 518; C.S.1929, § 60-412; Laws 1937, c. 140, § 2, p. 505; Laws 1941, c. 124, § 2, p. 470; C.S.Supp.,1941, § 60-412; R.S.1943, § 60-427; Laws 1947, c. 148, § 4, p. 411; Laws 1957, c. 274, § 1, p. 1000; Laws 1957, c. 366, § 40, p. 1273; Laws 1969, c. 508, § 1, p. 2085; Laws 1969, c. 509, § 1, p. 2087; Laws 1973, LB 4, § 2; Laws 1986, LB 153, § 11; R.S.1943, (1988), § 60-427; Laws 1989, LB 285, § 46; Laws 1993, LB 370, § 73; Laws 2001, LB 38, § 16.

This section authorizes suspension of operator's license for endangering life, limb, or property on charge under appropriate statute or ordinance, not for speeding alone. *State v. Mann*, 196 Neb. 824, 246 N.W.2d 604 (1976).

A municipal court is authorized to suspend a driver's license upon conviction under a city or village ordinance for operating a motor vehicle while under the influence of intoxicating liquor. *State v. Lookabill*, 176 Neb. 415, 126 N.W.2d 403 (1964).

Revocation of driver's license does not apply to a simple charge of speeding. *Olson v. State*, 160 Neb. 604, 71 N.W.2d 124 (1955).

On conviction of speeding, driver's license may be suspended. *Hyslop v. State*, 159 Neb. 802, 68 N.W.2d 698 (1955).

Suspension of driver's license as part of sentence was authorized. *Kroger v. State*, 158 Neb. 73, 62 N.W.2d 312 (1954).

License to drive motor vehicle is not a contract between state and licensee which cannot be revoked, and driver's license can be revoked for one year upon his conviction of driving while intoxicated. *Smith v. State*, 124 Neb. 587, 247 N.W. 421 (1933).

**60-497 Conviction of offense authorizing revocation of operator's license; surrender of license; when required; duty of director to revoke.**

Whenever any person is convicted of any offense for which the Motor Vehicle Operator's License Act or the Nebraska Rules of the Road authorizes the revocation of the operator's license, the court in which such conviction is had shall, if revocation is adjudged, require the surrender to it of all operators' licenses then held by the person so convicted. The court shall thereupon forward the operators' licenses together with the action and findings of the court, as provided for in sections 60-497.01 to 60-497.04, to the director. Every court having jurisdiction over offenses committed under the act or any other law of this state regulating the operation of motor vehicles on highways or streets shall forward, in the manner and form provided for in such sections, the action and findings of the court to the director upon the conviction of any person in such court for a violation of any of such laws.

The director shall, upon receipt of such abstract of the judgment of conviction, immediately revoke the operator's license of the person so convicted, as provided in the abstract of the judgment of conviction.

For purposes of the act and the rules, conviction shall mean a final conviction, and forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

**Source:** Laws 1937, c. 141, § 22, p. 517; Laws 1941, c. 124, § 3, p. 471; C.S.Supp.,1941, § 60-427; R.S.1943, § 60-421; Laws 1957, c. 273, § 1, p. 999; R.S.1943, (1988), § 60-421; Laws 1989, LB 285, § 47; Laws 1993, LB 370, § 74; Laws 2001, LB 38, § 17.

**Cross References**

Nebraska Rules of the Road, see section 60-601.

Loss of privilege of operating a motor vehicle by suspension or revocation is determinable from records of Department of Motor Vehicles. State v. Ruggiere, 180 Neb. 869, 146 N.W.2d 373 (1966).

**60-497.01 Conviction and probation records; abstract of court record; transmission to director; duties.**

(1) An abstract of the court record of every case in which a person is convicted of violating any provision of the Motor Vehicle Operator's License Act, the Motor Vehicle Safety Responsibility Act, the Nebraska Rules of the Road, or section 28-524, as from time to time amended by the Legislature, or any traffic regulations in city or village ordinances shall be transmitted within thirty days of sentencing or other disposition by the court to the director. Any abstract received by the director more than thirty days after the date of sentencing or other disposition shall be reported by the director to the State Court Administrator.

(2) Any person violating section 28-306, 60-696, 60-697, 60-6,196, 60-6,197, 60-6,213, or 60-6,214 who is placed on probation shall be assessed the same points under section 60-4,182 as if such person were not placed on probation unless a court has ordered that such person must obtain an ignition interlock permit in order to operate a motor vehicle with an ignition interlock device pursuant to section 60-6,211.05 and sufficient evidence is presented to the department that such a device is installed. For any other violation, the director shall not assess such person with any points under section 60-4,182 for such violation when the person is placed on probation until the director is advised by the court that such person previously placed on probation has violated the terms of his or her probation and such probation has been revoked. Upon receiving notice of revocation of probation, the director shall assess to such person the points which such person would have been assessed had the person not been placed on probation. When a person fails to successfully complete probation, the court shall notify the director immediately.

**Source:** Laws 1931, c. 110, § 58, p. 326; Laws 1941, c. 124, § 9, p. 476; C.S.Supp.,1941, § 39-1189; R.S.1943, § 39-794; Laws 1953, c. 219, § 7, p. 771; Laws 1957, c. 164, § 1, p. 579; Laws 1957, c. 366, § 15, p. 1255; Laws 1957, c. 165, § 1, p. 582; Laws 1972, LB 1058, § 2; Laws 1972, LB 1032, § 247; Laws 1973, LB 317, § 1; Laws 1973, LB 226, § 25; R.S.Supp.,1973, § 39-794; Laws 1975, LB 379, § 1; Laws 1987, LB 79, § 1; Laws 1991, LB 420, § 2; R.S.Supp.,1992, § 39-669.22; Laws 1993, LB 370, § 75; Laws 1993, LB 575, § 15; Laws 1993, LB 564, § 13; Laws 2001, LB 38, § 18; Laws 2006, LB 925, § 2; Laws 2008, LB736, § 2; Laws 2009, LB63, § 32.

## Cross References

**Motor Vehicle Safety Responsibility Act**, see section 60-569.  
**Nebraska Rules of the Road**, see section 60-601.

A certified abstract for conviction report must include judgment of conviction to authorize revocation or suspension of motor vehicle operator's license. *Hyland v. State*, 194 Neb. 737, 235 N.W.2d 236 (1975).

A violation of a city ordinance which tracks section 60-413 is a two-point violation under section 39-669.26 (transferred to section 60-4,182) for which a report to the Director of Motor Vehicles is required by this section. *Maciejewski v. Sullivan*, 193 Neb. 598, 228 N.W.2d 294 (1975).

The offense of failing to carry an operator's license when operating a motor vehicle on the public highways is a traffic violation for which two points are to be assessed, and for which a report to the Department of Motor Vehicles is required. *Coffee v. Sullivan*, 191 Neb. 781, 217 N.W.2d 918 (1974).

Where docket entry shown in abstract failed to meet the required criteria hereunder, the purported conviction was improperly relied on in proceeding to revoke operator's license under point system. *Baker v. Sullivan*, 191 Neb. 707, 217 N.W.2d 483 (1974).

The determinations required in this and companion sections are simple ministerial matters. *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972).

Certified abstract is required to be sent to Director of Department of Motor Vehicles only where the accused is convicted or his bail is forfeited. *State ex rel. Line v. Kuhlman*, 167 Neb. 674, 94 N.W.2d 373 (1959).

This section applies to certification of conviction by county court. *Bradford v. Ress*, 167 Neb. 338, 93 N.W.2d 17 (1958).

### **60-497.02 Convictions; order of probation; abstract; transmittal required; open for inspection by public.**

An abstract of the judgment of conviction or order of probation shall be transmitted to the Director of Motor Vehicles and the National Crime Information Center upon conviction of any person of or placing such person on probation for manslaughter or other felony in the commission of which a vehicle was used. The director and the National Crime Information Center shall keep such conviction reports in their offices, and the reports shall be open to the inspection of any person during reasonable business hours.

**Source:** Laws 1931, c. 110, § 58, p. 326; Laws 1941, c. 124, § 9, p. 477; C.S.Supp.,1941, § 39-1189; R.S.1943, § 39-795; Laws 1953, c. 219, § 8, p. 772; Laws 1957, c. 164, § 2, p. 579; Laws 1957, c. 366, § 16, p. 1256; Laws 1957, c. 165, § 2, p. 582; Laws 1969, c. 317, § 2, p. 1144; Laws 1973, LB 317, § 2; Laws 1973, LB 226, § 26; R.S.Supp.,1973, § 39-795; Laws 1991, LB 420, § 3; R.S.Supp.,1992, § 39-669.23; Laws 1993, LB 370, § 76.

The determinations required in this and companion sections are simple ministerial matters. *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972).

This section applies to certification of conviction by justice of the peace. *Bradford v. Ress*, 167 Neb. 338, 93 N.W.2d 17 (1958).

Certificate made by judge or clerk of county court is not required to be attested by seal. *Strasser v. Ress*, 165 Neb. 858, 87 N.W.2d 619 (1958).

### **60-497.03 Conviction reports; form of transmittal; revocation or suspension of license; director; duties.**

To enable the director punctually and economically to perform his or her ministerial duties in revoking or suspending operators' licenses and to insure uniformity in the keeping of the records of suspended operators' licenses and operators' licenses ordered revoked by courts of the state, the director shall authorize electronic transmission of abstract-of-conviction reports. The director shall prescribe the standard format of abstract-of-conviction reports.

In the administration of any section of the Motor Vehicle Operator's License Act, the powers and duties conferred upon the director or his or her subordinates or successors with respect to the revocation or suspension of any operator's license are ministerial in character. The director shall revoke operators' licenses only when positively directed to do so by the terms of the abstract of the judgment of conviction transmitted by the trial court except as otherwise

provided in the Motor Vehicle Operator's License Act, the Motor Vehicle Safety Responsibility Act, or the Nebraska Rules of the Road.

**Source:** Laws 1931, c. 110, § 58, p. 326; Laws 1941, c. 124, § 9, p. 476; C.S.Supp.,1941, § 39-1189; R.S.1943, § 39-796; Laws 1953, c. 219, § 9, p. 772; Laws 1957, c. 164, § 3, p. 580; Laws 1957, c. 366, § 17, p. 1256; Laws 1957, c. 165, § 3, p. 583; Laws 1969, c. 317, § 3, p. 1145; Laws 1972, LB 1032, § 248; Laws 1973, LB 226, § 27; C.S.Supp.,1972, § 39-796; Laws 1991, LB 420, § 4; R.S.Supp.,1992, § 39-669.24; Laws 1993, LB 370, § 77; Laws 1993, LB 575, § 16; Laws 1999, LB 704, § 12; Laws 2001, LB 38, § 19.

#### Cross References

**Motor Vehicle Safety Responsibility Act**, see section 60-569.  
**Nebraska Rules of the Road**, see section 60-601.

A certified abstract for conviction report must include judgment of conviction to authorize revocation or suspension of motor vehicle operator's license. *Hyland v. State*, 194 Neb. 737, 235 N.W.2d 236 (1975).

The amount by which the speed limit was exceeded is a part of the information to be shown on the abstract for conviction report. *Melanson v. State*, 188 Neb. 446, 197 N.W.2d 401 (1972).

The determinations required in this and companion sections are simple ministerial matters. *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972).

While the duties of the Director of Motor Vehicles are ministerial, he is required to relate the reports of convictions to the applicable statute violated. *Westenburg v. Weedlun*, 187 Neb. 679, 193 N.W.2d 566 (1972).

It is not necessary that abstract of state offense involved the use of a motor vehicle. *Lutjemeyer v. Dennis*, 186 Neb. 46, 180 N.W.2d 679 (1970).

Revocation of license under point system is a ministerial act. *Bradford v. Ress*, 167 Neb. 338, 93 N.W.2d 17 (1958).

Duty to revoke license under point system law upon receipt of proof of convictions is ministerial. *Stewart v. Ress*, 164 Neb. 876, 83 N.W.2d 901 (1957).

#### 60-497.04 Noncompliance; penalty.

Failure, refusal, or neglect by any officer to comply with any of the provisions of sections 60-497.01 to 60-497.03 shall constitute misconduct in office and shall be grounds for his or her removal therefrom.

**Source:** Laws 1931, c. 110, § 58, p. 326; Laws 1941, c. 124, § 9, p. 477; C.S.Supp.,1941, § 39-1189; R.S.1943, § 39-797; R.S.1943, (1988), § 39-669.25; Laws 1993, LB 370, § 78.

#### 60-498 Revocation; when mandatory.

The director shall immediately revoke the operator's license of any person upon receiving a copy of judgment of such person's conviction of any of the following offenses when such conviction becomes final:

- (1) Manslaughter resulting from the operation of a motor vehicle;
- (2) Driving a motor vehicle while under the influence of alcoholic liquor or any drug as provided in city or village ordinances or in section 60-6,196. The period of revocation shall, in each case except for revocations pursuant to sections 60-498.01 to 60-498.04 and offenses specified in section 60-4,168, correspond with the period that is determined by the court;
- (3) Any felony in the commission of which a motor vehicle is used;
- (4) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
- (5) Perjury or making of a false affidavit or statement under oath to the director, examining officer, or other officer under the Motor Vehicle Operator's

License Act or under any law relating to the ownership or operation of motor vehicles;

(6) Conviction or forfeiture of bail, not vacated, upon three charges of reckless driving committed within a period of twelve months; or

(7) Willful reckless driving as provided in city or village ordinances or as described in section 60-6,214.

**Source:** Laws 1937, c. 141, § 23, p. 518; Laws 1941, c. 124, § 4, p. 472; C.S.Supp.,1941, § 60-428; R.S.1943, § 60-424; Laws 1953, c. 214, § 7, p. 759; R.S.1943, (1988), § 60-424; Laws 1989, LB 285, § 48; Laws 1991, LB 420, § 8; Laws 1992, LB 291, § 15; Laws 1993, LB 370, § 79; Laws 2003, LB 209, § 3.

Conclusory notation of "D.U.I." provides no factual reason for an officer's decision to arrest a driver on suspicion of driving under the influence of alcohol instead of merely citing the driver for speeding when excessive speed was the initial reason for the stop. *Snyder v. Department of Motor Vehicles*, 274 Neb. 168, 736 N.W.2d 731 (2007).

In an administrative license revocation proceeding, the sworn report of the arresting officer must, at a minimum, contain the information specified in subsection (3) of section 60-498.01 in order to confer jurisdiction. *Snyder v. Department of Motor Vehicles*, 274 Neb. 168, 736 N.W.2d 731 (2007).

**60-498.01 Driving under influence of alcohol; operator's license; confiscation and revocation; procedures; appeal.**

(1) Because persons who drive while under the influence of alcohol present a hazard to the health and safety of all persons using the highways, a procedure is needed for the swift and certain revocation of the operator's license of any person who has shown himself or herself to be a health and safety hazard (a) by driving with an excessive concentration of alcohol in his or her body or (b) by driving while under the influence of alcohol.

(2) If a person arrested as described in subsection (2) of section 60-6,197 refuses to submit to the chemical test of blood, breath, or urine required by section 60-6,197, the test shall not be given except as provided in section 60-6,210 for the purpose of medical treatment and the arresting peace officer, as agent for the Director of Motor Vehicles, shall verbally serve notice to the arrested person of the intention to immediately confiscate and revoke the operator's license of such person and that the revocation will be automatic thirty days after the date of arrest unless a petition for hearing is filed within ten days after the date of arrest as provided in subsection (6) of this section. The arresting peace officer shall within ten days forward to the director a sworn report stating (a) that the person was arrested as described in subsection (2) of section 60-6,197 and the reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) that the person refused to submit to the required test.

(3) If a person arrested as described in subsection (2) of section 60-6,197 submits to the chemical test of blood or breath required by section 60-6,197, the test discloses the presence of alcohol in any of the concentrations specified in section 60-6,196, and the test results are available to the arresting peace officer while the arrested person is still in custody, the arresting peace officer, as agent for the director, shall verbally serve notice to the arrested person of the intention to immediately confiscate and revoke the operator's license of such person and that the revocation will be automatic thirty days after the date of arrest unless a petition for hearing is filed within ten days after the date of arrest as provided in subsection (6) of this section. The arresting peace officer shall within ten days forward to the director a sworn report stating (a) that the person was arrested as described in subsection (2) of section 60-6,197 and the

reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196.

(4) On behalf of the director, the arresting peace officer submitting a sworn report under subsection (2) or (3) of this section shall serve notice of the revocation on the arrested person, and the revocation shall be effective thirty days after the date of arrest. The notice of revocation shall contain a statement explaining the operation of the administrative revocation procedure. The peace officer shall also provide to the arrested person an addressed envelope and a petition form which the arrested person may use to request a hearing before the director to contest the revocation. The petition form shall clearly state on its face that the petition must be completed and delivered to the Department of Motor Vehicles or postmarked within ten days after receipt or the person's right to a hearing to contest the revocation will be foreclosed. The director shall prepare and approve the form for the petition, the addressed envelope, and the notice of revocation and shall provide them to law enforcement agencies.

If the person has an operator's license, the arresting peace officer shall take possession of the license and issue a temporary operator's license valid for thirty days. The arresting peace officer shall forward the operator's license to the department along with the sworn report made under subsection (2) or (3) of this section.

(5)(a) If the results of a chemical test indicate the presence of alcohol in a concentration specified in section 60-6,196, the results are not available to the arresting peace officer while the arrested person is in custody, and the notice of revocation has not been served as required by subsection (4) of this section, the peace officer shall forward to the director a sworn report containing the information prescribed by subsection (3) of this section within ten days after receipt of the results of the chemical test. If the sworn report is not received within ten days, the revocation shall not take effect.

(b) Upon receipt of the report, the director shall serve the notice of revocation on the arrested person by certified or registered mail to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses. The notice of revocation shall contain a statement explaining the operation of the administrative revocation procedure. The director shall also provide to the arrested person an addressed envelope and a petition form which the arrested person may use to request a hearing before the director to contest the revocation. The petition form shall clearly state on its face that the petition must be completed and delivered to the department or postmarked within ten days after receipt or the person's right to a hearing to contest the revocation will be foreclosed. The director shall prepare and approve the form for the petition, the addressed envelope, and the notice of revocation. The revocation shall be effective thirty days after the date of mailing.

(c) If the records of the director indicate that the arrested person possesses an operator's license, the director shall include with the notice of revocation a temporary operator's license which expires thirty days after the date of mailing. Any arrested person who desires a hearing and has been served a notice of revocation pursuant to this subsection shall return his or her operator's license

with the petition requesting the hearing. If the operator's license is not included with the petition requesting the hearing, the director shall deny the petition.

(6)(a) An arrested person's operator's license confiscated pursuant to subsection (4) of this section shall be automatically revoked upon the expiration of thirty days after the date of arrest. An arrested person's operator's license confiscated pursuant to subsection (5) of this section shall be automatically revoked upon the expiration of thirty days after the date of mailing of the notice of revocation by the director. The arrested person shall postmark or return to the director a petition within ten days after the receipt of the notice of revocation if the arrested person desires a hearing. The petition shall be in writing and shall state the grounds on which the person is relying to prevent the revocation from becoming effective. The hearing and any prehearing conference may be conducted in person or by telephone, television, or other electronic means at the discretion of the director, and all parties may participate by such means at the discretion of the director.

(b) The director shall conduct the hearing within twenty days after a petition is filed. Upon receipt of a petition, the director shall notify the petitioner of the date and location for the hearing by certified or registered mail postmarked at least seven days prior to the hearing date. The filing of the petition shall not prevent the automatic revocation of the petitioner's operator's license at the expiration of the thirty-day period. A continuance of the hearing to a date beyond the expiration of the temporary operator's license shall stay the expiration of the temporary license when the request for continuance is made by the director.

(c) At hearing the issues under dispute shall be limited to:

(i) In the case of a refusal to submit to a chemical test of blood, breath, or urine:

(A) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section; and

(B) Did the person refuse to submit to or fail to complete a chemical test after being requested to do so by the peace officer; or

(ii) If the chemical test discloses the presence of alcohol in a concentration specified in section 60-6,196:

(A) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section; and

(B) Was the person operating or in the actual physical control of a motor vehicle while having an alcohol concentration in violation of subsection (1) of section 60-6,196.

(7) The director shall adopt and promulgate rules and regulations to govern the conduct of the hearing and insure that the hearing will proceed in an orderly manner. The director may appoint a hearing officer to preside at the hearing, administer oaths, examine witnesses, take testimony, and report to the director. All proceedings before the hearing officer shall be recorded. Upon receipt of the arresting peace officer's sworn report, the director's order of revocation has prima facie validity and it becomes the petitioner's burden to

establish by a preponderance of the evidence grounds upon which the operator's license revocation should not take effect. The director shall make a determination of the issue within seven days after the conclusion of the hearing. A person whose operator's license is revoked following a hearing requested pursuant to this section may appeal the order of revocation as provided in section 60-498.04.

**Source:** Laws 1972, LB 1095, § 5; C.S.Supp.,1972, § 39-727.16; Laws 1992, LB 872, § 4; Laws 1992, LB 291, § 9; R.S.Supp.,1992, § 39-669.15; Laws 1993, LB 370, § 300; Laws 1996, LB 939, § 3; Laws 1998, LB 309, § 15; Laws 2001, LB 38, § 51; R.S.Supp.,2002, § 60-6,205; Laws 2003, LB 209, § 4; Laws 2004, LB 208, § 5.

1. Constitutionality
2. Refusal to submit to test
3. Rules and regulations
4. Venue
5. Prima facie case
6. Miscellaneous

#### 1. Constitutionality

The administrative license revocation provisions pertaining to motorists who refuse to submit to chemical testing do not violate the due process or equal protection rights of those motorists by treating them differently than motorists who submit to, but fail, such testing. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

The due process rights of a motorist who refuses to submit to chemical testing are not violated by this section even though the statutory scheme does not operate to reinstate the motorist's administratively revoked driver's license if he or she is acquitted of the criminal refusal charge. *Kenley v. Neth*, 271 Neb. 402, 712 N.W.2d 251 (2006).

This section does not violate the Equal Protection Clauses of the federal and state Constitutions by treating motorists who refuse to submit to chemical testing differently than motorists who submit to, but fail, such testing. *Kenley v. Neth*, 271 Neb. 402, 712 N.W.2d 251 (2006).

Although this section does not allow a motorist to challenge the validity of the initial traffic stop, it does not violate due process because the Fourth Amendment exclusionary rule is not applicable in civil license revocation proceedings. *Chase v. Neth*, 269 Neb. 882, 697 N.W.2d 675 (2005).

This section does not create an unconstitutional classification between those who submit to urine tests and those who submit to blood and breath tests pursuant to this section. *Kalisek v. Abramson*, 257 Neb. 517, 599 N.W.2d 834 (1999).

Administrative license revocation statutes are reviewed using the rational relationship standard of review. The administrative license revocation statutes do not violate equal protection, nor do they constitute cruel and unusual punishment. *Schindler v. Department of Motor Vehicles*, 256 Neb. 782, 593 N.W.2d 295 (1999).

The Legislature intended administrative license revocation to be a civil sanction, and the sanction is not so punitive in purpose or effect as to negate the Legislature's intent; therefore, administrative license revocation for failure to submit to a chemical test does not violate double jeopardy. *State v. Howell*, 254 Neb. 247, 575 N.W.2d 861 (1998).

The purpose of administrative license revocation is to protect the public from the health and safety hazards of driving and to deter drunk driving. Criminal prosecution and punishment following a hearing under this section do not violate the Double Jeopardy Clause of the U.S. Constitution. *State v. Young*, 249 Neb. 539, 544 N.W.2d 808 (1996).

#### 2. Refusal to submit to test

The sworn report of the arresting officer must indicate (1) that the person was arrested as described in section 60-6,197(2) and the reasons for the arrest, (2) that the person was requested to submit to the required test, and (3) that the person refused to submit to the required test. *Nothnagel v. Neth*, 276 Neb. 95, 752 N.W.2d 149 (2008).

Failure to produce an adequate breath sample constitutes a refusal to submit to breath test. *Porter v. Jensen*, 223 Neb. 438, 390 N.W.2d 511 (1986).

A motorist's subsequent offer to take a blood alcohol test previously refused does not nullify or cure such driver's initial refusal to take the test requested by the arresting officer. *Hoyle v. Peterson*, 216 Neb. 253, 343 N.W.2d 730 (1984).

Adoption of this section did not change rule that refusal to submit to test may be shown in prosecution for driving while under influence of intoxicating liquor. *State v. Meints*, 189 Neb. 264, 202 N.W.2d 202 (1972).

#### 3. Rules and regulations

When the applicable rules and regulations are not strictly complied with, the Department of Motor Vehicles cannot obtain the benefit of a presumption that all facts recited in the sworn report are true. *Morrissey v. Department of Motor Vehicles*, 264 Neb. 456, 647 N.W.2d 644 (2002).

Due process is denied where the rules and regulations governing the administrative license revocation procedure were not on file with the Secretary of State for at least 5 days at the time of the arrest. *Dannehl v. Department of Motor Vehicles*, 3 Neb. App. 492, 529 N.W.2d 100 (1995).

#### 4. Venue

For purposes of subsection (6)(a) of this section, an administrative license revocation hearing is held at the location of the hearing officer. *Gracey v. Zwonechek*, 263 Neb. 796, 643 N.W.2d 381 (2002).

Pursuant to subsection (6)(a) of this section, generalized objections directed to the method by which a license revocation hearing was being held are not objections to venue. *Davis v. Wimes*, 263 Neb. 504, 641 N.W.2d 37 (2002).

Subsection (6)(a) of this section is a venue statute. *Reiter v. Wimes*, 263 Neb. 277, 640 N.W.2d 19 (2002).

Subsection (6)(a) of this section, establishing the location for administrative license revocation hearings, is a venue statute. A telephonic hearing under the Administrative Procedure Act pertaining to license revocation is subject to the terms of subsection (6)(a) of this section. *Muir v. Nebraska Dept. of Motor Vehicles*, 260 Neb. 450, 618 N.W.2d 444 (2000).

**5. Prima facie case**

The arresting officer's sworn report triggers the administrative license revocation process by establishing a prima facie basis for revocation. *Nothnagel v. Neth*, 276 Neb. 95, 752 N.W.2d 149 (2008).

A sworn statement containing the recitations required by this section establishes a prima facie case under the provisions of the administrative license revocation statutes. *McPherrin v. Conrad*, 248 Neb. 561, 537 N.W.2d 498 (1995).

The burden is upon the state to make a prima facie case for revocation before the director. *Mackey v. Director of Motor Vehicles*, 194 Neb. 707, 235 N.W.2d 394 (1975).

**6. Miscellaneous**

An acknowledgment on a sworn report which does not set forth the name of the individual making the acknowledgment, i.e., the arresting officer, does not substantially comply with the requirements of Nebraska law. *Johnson v. Neth*, 276 Neb. 886, 758 N.W.2d 395 (2008).

Sworn reports in administrative license revocation proceedings are, by definition, affidavits. *Johnson v. Neth*, 276 Neb. 886, 758 N.W.2d 395 (2008).

Although this section limits the issues under dispute, it does not prohibit evidence pertinent to the issue of enhancement after those issues have been resolved. *Stenger v. Department of Motor Vehicles*, 274 Neb. 819, 743 N.W.2d 758 (2008).

In an administrative license revocation proceeding, the sworn report of the arresting officer must, at a minimum, contain the information specified in subsection (3) of this section in order to confer jurisdiction. *Snyder v. Department of Motor Vehicles*, 274 Neb. 168, 736 N.W.2d 731 (2007).

In an administrative license revocation proceeding, the sworn report of the arresting officer must, at a minimum, contain the information specified in the applicable statute in order to confer jurisdiction. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

The failure to hold a hearing within the time provided in subsection (6)(b) of this section does not invalidate the administrative license revocation proceeding unless the motorist can show that he or she was prejudiced by the delay. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

A report that does not contain the affirmation of an "arresting peace officer" that the facts recited in the report are true is not a proper "sworn report" as required by this section. *Arndt v.*

*Department of Motor Vehicles*, 270 Neb. 172, 699 N.W.2d 39 (2005).

An arresting officer's sworn report must, at a minimum, contain the information specified in this section in order to confer jurisdiction upon the Department of Motor Vehicles to revoke an operator's license. *Hahn v. Neth*, 270 Neb. 164, 699 N.W.2d 32 (2005).

Pursuant to subsection (2) of this section, the administrative license revocation process must be based on a valid arrest, because the sworn report which triggers the administrative license revocation must be prepared by an "arresting peace officer" who has "validly arrested" a driver. *Young v. Neth*, 263 Neb. 20, 637 N.W.2d 884 (2002).

Under subsection (6)(c)(i)(A) of this section, a peace officer must have probable cause prior to revoking a driver's license for refusal to submit to a chemical test. *State v. Howell*, 254 Neb. 247, 575 N.W.2d 861 (1998).

Pursuant to subsection (3) of this section, after January 1, 1993, a person who agrees to submit to a chemical test and fails it is subject to automatic administrative license revocation. *Smith v. State*, 248 Neb. 360, 535 N.W.2d 694 (1995).

The oath to an affidavit is not required to be administered with any particular ceremony, but the affiant must perform some corporal act whereby he consciously takes upon himself the obligation of an oath. *Moore v. Peterson*, 218 Neb. 615, 358 N.W.2d 193 (1984).

This section simply forstalls a forcible taking of a specimen. *Wiseman v. Sullivan*, 190 Neb. 724, 211 N.W.2d 906 (1973).

This section is *pari materia* with section 39-727.03 (transferred to section 60-6,197), and other sections mentioned in opinion. *Stevenson v. Sullivan*, 190 Neb. 295, 207 N.W.2d 680 (1973).

Although this section requires the "sworn report" required by subsection (2) of this section to include the "reasons for [the] arrest," an arresting officer need not specifically delineate on the sworn report all of the information contained on an attached probable cause form, so long as the sworn report provides adequate notice that one is being accused of driving under the influence and/or failure of a chemical test. *Taylor v. Wimes*, 10 Neb. App. 432, 632 N.W.2d 366 (2001).

When an arrested driver is released before the results of blood alcohol content testing are known to the arresting officer, then under subsection (5)(a) of this section (60-6,205 (Reissue 1993)) the arresting officer is "unable to serve" notice, and the statutory provision allowing service by certified mail by the Department of Motor Vehicles becomes operative. *Kuebler v. Abramson*, 4 Neb. App. 420, 544 N.W.2d 513 (1996).

**60-498.02 Driving under influence of alcohol; revocation of operator's license; reinstatement; procedure; eligibility for employment driving permit and ignition interlock permit.**

(1) At the expiration of thirty days after the date of arrest as described in subsection (2) of section 60-6,197 or if after a hearing pursuant to section 60-498.01 the director finds that the operator's license should be revoked, the director shall (a) revoke the operator's license of a person arrested for refusal to submit to a chemical test of blood, breath, or urine as required by section 60-6,197 for a period of one year and (b) revoke the operator's license of a person who submits to a chemical test pursuant to such section which discloses the presence of a concentration of alcohol specified in section 60-6,196 for a period of ninety days unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding twelve-year period at the time the order of revocation is issued, in which case the period of revocation shall be one year. Except as otherwise provided in section 60-6,211.05, a new operator's license shall not be issued to

such person until the period of revocation has elapsed. If the person subject to the revocation is a nonresident of this state, the director shall revoke only the nonresident's operating privilege as defined in section 60-474 of such person and shall immediately forward the operator's license and a statement of the order of revocation to the person's state of residence.

(2)(a) At the expiration of thirty days after an order of revocation is entered under subdivision (1)(b) of this section, any person whose operator's license has been administratively revoked for a period of ninety days for submitting to a chemical test pursuant to section 60-6,197 which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 may make application to the director for issuance of an employment driving permit pursuant to section 60-4,130.

(b) At the expiration of sixty days after an order of revocation is entered under subdivision (1)(a) of this section, any person whose operator's license has been administratively revoked for refusal to submit to a chemical test pursuant to section 60-6,197, may make application to the director for issuance of an employment driving permit pursuant to section 60-4,130 unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding twelve-year period at the time the order of revocation is issued.

(3)(a) At the expiration of thirty days after an order of administrative license revocation for ninety days is entered under subdivision (1)(b) of this section, any person who submitted to a chemical test pursuant to section 60-6,197 which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 is eligible for an order to allow application for an ignition interlock permit to operate a motor vehicle equipped with an ignition interlock device pursuant to section 60-6,211.05 upon presentation of sufficient evidence to the department that such a device is installed.

(b) At the expiration of sixty days after an order of administrative license revocation for one year is entered under subdivision (1)(b) of this section, any person who submitted to a chemical test pursuant to section 60-6,197 which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 is eligible for an order to allow application for an ignition interlock permit in order to operate a motor vehicle equipped with an ignition interlock device pursuant to section 60-6,211.05 upon presentation of sufficient evidence to the department that such a device is installed.

(c) At the expiration of sixty days after an order of administrative license revocation is entered under subdivision (1)(a) of this section, any person who refused to submit to a chemical test pursuant to section 60-6,197 is eligible for an order to allow application for an ignition interlock permit in order to operate a motor vehicle equipped with an ignition interlock device pursuant to section 60-6,211.05 upon presentation of sufficient evidence to the department that such a device is installed, unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding twelve-year period at the time the order of revocation is issued.

(d) A person operating a motor vehicle pursuant to this subsection shall only operate the motor vehicle to and from his or her residence, his or her place of

employment, his or her school, an alcohol treatment program, or an ignition interlock service facility. Such permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this subsection shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(4) A person may have his or her eligibility for a license reinstated upon payment of a reinstatement fee as required by section 60-694.01.

(5)(a) A person whose operator's license is subject to revocation pursuant to subsection (3) of section 60-498.01 shall have all proceedings dismissed or his or her operator's license immediately reinstated without payment of the reinstatement fee upon receipt of suitable evidence by the director that:

(i) Within the thirty-day period following the date of arrest, the prosecuting attorney responsible for the matter declined to file a complaint alleging a violation of section 60-6,196 and notified the director by first-class mail or facsimile transmission of such decision and the director received such notice within such period or the notice was postmarked within such period; or

(ii) The defendant, after trial, was found not guilty of violating section 60-6,196 or such charge was dismissed on the merits by the court.

(b) The director shall adopt and promulgate rules and regulations establishing standards for the presentation of suitable evidence of compliance with subdivision (a) of this subsection.

(c) If a charge is filed for a violation of section 60-6,196 pursuant to an arrest for which all proceedings were dismissed under this subsection, the prosecuting attorney shall notify the director by first-class mail or facsimile transmission of the filing of such charge and the director may reinstate an administrative license revocation under this section as of the date that the director receives notification of the filing of the charge, except that a revocation shall not be reinstated if it was dismissed pursuant to section 60-498.01.

**Source:** Laws 1972, LB 1095, § 6; C.S.Supp.,1972, § 39-727.17; Laws 1974, LB 679, § 3; Laws 1982, LB 568, § 7; Laws 1986, LB 153, § 8; Laws 1988, LB 377, § 3; Laws 1992, LB 291, § 11; R.S.Supp.,1992, § 39-669.16; Laws 1993, LB 370, § 301; Laws 1993, LB 491, § 1; Laws 1993, LB 564, § 12; Laws 1998, LB 309, § 16; Laws 2001, LB 38, § 52; R.S.Supp.,2002, § 60-6,206; Laws 2003, LB 209, § 5; Laws 2004, LB 208, § 6; Laws 2008, LB736, § 3; Laws 2009, LB497, § 2; Laws 2010, LB924, § 1.

When the Department of Motor Vehicles provided the motorist a copy of his driver abstract before the revocation hearing and an opportunity to challenge the accuracy of his driver abstract at the revocation hearing, the requirements of due process were met. *Stenger v. Department of Motor Vehicles*, 274 Neb. 819, 743 N.W.2d 758 (2008).

The administrative license revocation provisions pertaining to motorists who refuse to submit to chemical testing do not violate the due process or equal protection rights of those motorists by treating them differently than motorists who submit to, but fail, such testing. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

Administrative revocation of a driver's license under this section is a civil sanction and does not constitute punishment for purposes of double jeopardy. *State v. Isham*, 261 Neb. 690, 625 N.W.2d 511 (2001).

Administrative license revocation statutes are reviewed using the rational relationship standard of review. The administrative license revocation statutes do not violate equal protection, nor

do they constitute cruel and unusual punishment. *Schindler v. Department of Motor Vehicles*, 256 Neb. 782, 593 N.W.2d 295 (1999).

The proscription that there can be no revocation of one's driver's license and operating privileges if the refusal to submit to a chemical test is reasonable under the circumstances contained in this section (formerly section 39-669.16 (Reissue 1988)), relates only to administrative license revocations by the Director of Motor Vehicles. In a criminal proceeding, however, the inquiry centers on the existence of reasonable grounds for the arresting officer to believe that an operator was driving while under the influence of alcohol. *State v. Boyd*, 242 Neb. 144, 493 N.W.2d 344 (1992).

Pursuant to subsection (4) of this section, a Department of Motor Vehicles regulation cannot, as a prerequisite to dismissing an administrative license revocation proceeding, require a prosecuting attorney to provide one of four particular reasons for failing to file a criminal driving under the influence of alcohol charge, as such a requirement modifies, alters, and

restricts the provisions of this section. *Dozler v. Conrad*, 3 Neb. App. 735, 532 N.W.2d 42 (1995).

### 60-498.03 Operator's license revocation decision; notice; contents.

(1) The Director of Motor Vehicles shall reduce the decision revoking an operator's license under sections 60-498.01 to 60-498.04 to writing, and the director shall notify the person in writing of the revocation. The notice shall set forth the period of revocation and be served by mailing it to such person by certified or registered mail to the address provided to the director at the hearing or, if the person does not appear at the hearing, to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses.

(2) If the director does not revoke the operator's license, the director shall immediately notify the person in writing of the decision. The notice shall set forth the time and place the person may obtain his or her license. The notice shall be mailed by certified or registered mail as provided in subsection (1) of this section. No reinstatement fee shall be charged for return of the confiscated operator's license pursuant to this subsection.

**Source:** Laws 1972, LB 1095, § 7; C.S.Supp.,1972, § 39-727.18; Laws 1992, LB 291, § 12; R.S.Supp.,1992, § 39-669.17; Laws 1993, LB 370, § 302; Laws 2001, LB 38, § 53; R.S.Supp.,2002, § 60-6,207; Laws 2003, LB 209, § 6.

Administrative license revocation statutes are reviewed using the rational relationship standard of review. The administrative license revocation statutes do not violate equal protection, nor do they constitute cruel and unusual punishment. *Schindler v. Department of Motor Vehicles*, 256 Neb. 782, 593 N.W.2d 295 (1999).

A refusal to submit to a chemical test for alcohol occurs when the licensee, after being asked to submit to a test, so conducts himself as to justify a reasonable person in the requesting officer's position in believing that the licensee understood that

he was asked to submit to a test and manifested an unwillingness to do so. *Wohlgemuth v. Pearson*, 204 Neb. 687, 285 N.W.2d 102 (1979).

A preliminary refusal followed by a consent to submit to a test for blood alcohol content does not furnish a basis for imposition of the sanction prescribed by the statute if a test was in fact performed and the state was not prejudiced by the delay in performing the test. *Sedlacek v. Pearson*, 204 Neb. 625, 284 N.W.2d 556 (1979).

### 60-498.04 License revocation; appeal; notice of judgment.

Any person who feels himself or herself aggrieved because of the revocation of his or her operator's license under sections 60-498.01 to 60-498.04 may appeal therefrom to the district court of the county where the alleged events occurred for which he or she was arrested in accordance with the Administrative Procedure Act. The district court shall allow any party to an appeal to appear by telephone at any proceeding before the court for purposes of the appeal. Such appeal shall suspend the order of revocation until the final judgment of a court finds against the person so appealing. The court shall provide notice of the final judgment to the Department of Motor Vehicles. The period of revocation shall commence at the time of final judgment of the court for the full period of the time of revocation.

**Source:** Laws 1972, LB 1095, § 8; C.S.Supp.,1972, § 39-727.19; Laws 1988, LB 352, § 31; R.S.1943, (1988), § 39-669.18; Laws 1993, LB 370, § 303; Laws 1998, LB 309, § 17; R.S.1943, (1998), § 60-6,208; Laws 2003, LB 209, § 7.

#### Cross References

Administrative Procedure Act, see section 84-920.

Neither this section nor subsection (2)(a) of section 84-917 provides that its jurisdictional provisions are exclusive. Reiter v. Wimes, 263 Neb. 277, 640 N.W.2d 19 (2002).

Administrative license revocation statutes are reviewed using the rational relationship standard of review. The administrative license revocation statutes do not violate equal protection, nor do they constitute cruel and unusual punishment. Schindler v. Department of Motor Vehicles, 256 Neb. 782, 593 N.W.2d 295 (1999).

The venue requirements of this section governing the right to appeal are mandatory and must be complied with in order for the appellate court to acquire jurisdiction. An appeal from an order of the Director of Motor Vehicles revoking an operator's

license for refusing to take a blood, breath, or urine test must be filed in the district court of the county in which the alleged events occurred for which the operator was arrested. Jackson v. Jensen, 225 Neb. 671, 407 N.W.2d 758 (1987).

On appeal to district court from order of Director of Motor Vehicles under section 39-669.16 (transferred to section 60-498.02) revoking operator's license, the burden is on licensee to establish ground for reversal. Mackey v. Director of Motor Vehicles, 194 Neb. 707, 235 N.W.2d 394 (1975).

On appeal from order of revocation of a motor vehicle operator's license under the implied consent law, review is de novo as in equity. Wiseman v. Sullivan, 190 Neb. 724, 211 N.W.2d 906 (1973).

### **60-499 Revocation; when authorized.**

The director may revoke the operator's license of a person upon receipt of a copy of a judgment of conviction from the trial magistrate or judge which states that the licensee:

- (1) Has committed an offense for which mandatory revocation is required upon conviction as set forth in section 60-498;
- (2) Has been involved as a driver in an accident resulting in the death or personal injury of another or in serious property damage;
- (3) Is a habitually reckless or negligent driver of a motor vehicle;
- (4) Is a habitual violator of the traffic laws;
- (5) Is incompetent to drive a motor vehicle;
- (6) Has permitted an unlawful or fraudulent use of such license;
- (7) Was not entitled to the issuance of the license;
- (8) Failed to give the required or correct information in his or her application;
- (9) Committed fraud in his or her application process; or
- (10) Has, as a nonresident, suffered revocation or suspension of his or her operator's license or of his or her driving privilege by the trial court and the director and has, during the period of revocation or suspension, violated the terms of that revocation or suspension by exercising the driving privilege under a new operator's license fraudulently obtained or otherwise.

**Source:** Laws 1937, c. 141, § 23, p. 518; Laws 1941, c. 124, § 4, p. 473; C.S.Supp.,1941, § 60-428; R.S.1943, § 60-425; R.S.1943, (1988), § 60-425; Laws 1989, LB 285, § 49; Laws 1991, LB 420, § 9; Laws 1999, LB 704, § 13; Laws 2001, LB 38, § 20.

### **60-499.01 Revocation; reinstatement fee.**

Whenever an operator's license is revoked under the Motor Vehicle Operator's License Act, the licensee shall pay a reinstatement fee to the Department of Motor Vehicles to reinstate his or her eligibility for a license in addition to complying with the other provisions of the act. The reinstatement fee shall be one hundred twenty-five dollars. The department shall remit the fees to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2001, LB 38, § 11.

### **60-4,100 Suspension; when authorized.**

(1) The director shall suspend the operator's license of any resident of this state:

(a) Who has violated a promise to comply with the terms of a traffic citation issued by a law enforcement officer for a moving violation in any jurisdiction outside this state pursuant to the Nonresident Violator Compact of 1977 until satisfactory evidence of compliance with the terms of the citation has been furnished to the director; or

(b) Who has violated a promise to comply with the terms of a traffic citation issued by a law enforcement officer for a moving violation in any jurisdiction inside this state until satisfactory evidence of compliance with the terms of the citation has been furnished to the director.

(2) The court having jurisdiction over the offense for which the citation has been issued shall notify the director of a violation of a promise to comply with the terms of the citation only after twenty working days have elapsed from the date of the failure to comply.

(3) Upon notice to the director that a resident has violated a promise to comply with the terms of a traffic citation as provided in this section, the director shall not suspend such resident's license until he or she has sent written notice to such resident by first-class mail to the person's last-known mailing address or, if such address is unknown, to the last-known residence address of such person as shown by the records of the Department of Motor Vehicles. Such notice shall state that such resident has twenty working days after the date of the notice to show the director that the resident has complied with the terms of such traffic citation. No suspension shall be entered by the director if the resident complies with the terms of a citation during such twenty working days. If the resident fails to comply on or before twenty working days after the date of notice, the director shall summarily suspend the operator's license and issue an order. The order shall be sent by registered or certified mail to the person's last-known mailing address as shown by the records of the department.

(4) The reinstatement fee required under section 60-4,100.01 shall be waived if five years have passed since issuance of the license suspension order under this section.

**Source:** Laws 1937, c. 141, § 23, p. 518; Laws 1941, c. 124, § 4, p. 472; C.S.Supp.,1941, § 60-428; R.S.1943, § 60-426; Laws 1981, LB 344, § 2; Laws 1986, LB 153, § 10; R.S.1943, (1988), § 60-426; Laws 1989, LB 285, § 50; Laws 1991, LB 420, § 10; Laws 1993, LB 491, § 11; Laws 1997, LB 10, § 1; Laws 2001, LB 38, § 21.

**Cross References**

Nonresident Violator Compact of 1977, see section 1-119, Vol. 2A, Appendix.

**60-4,100.01 Suspension; reinstatement fee.**

Whenever an operator's license is suspended under the Motor Vehicle Operator's License Act, the licensee shall pay a reinstatement fee to the Department of Motor Vehicles as a prerequisite to reinstatement of such license in addition to complying with the other provisions of the act. Upon expiration of the applicable period of suspension and payment of the reinstatement fee, the operator's license shall be returned unless it is no longer valid. The reinstatement

ment fee shall be fifty dollars. The department shall remit the fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2001, LB 38, § 12.

**60-4,101 Repealed. Laws 1999, LB 704, § 53.**

**60-4,102 Nonresident; driving privilege; revocation, suspension, or impoundment.**

The privilege of driving a motor vehicle on the highways of this state given to a nonresident shall be subject to suspension or revocation by the director or revocation or impoundment by the trial magistrate or judge in like manner and for like cause as an operator's license may be suspended, revoked, or impounded. The director may, upon receiving a copy of a judgment of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, transmit a certified copy of such judgment of conviction to the motor vehicle administrator in the state wherein the person so convicted is a resident.

**Source:** Laws 1937, c. 141, § 23, p. 518; Laws 1941, c. 124, § 4, p. 472; C.S.Supp.,1941, § 60-428; R.S.1943, § 60-422; R.S.1943, (1988), § 60-422; Laws 1989, LB 285, § 52; Laws 1991, LB 420, § 12; Laws 2001, LB 38, § 22.

Defendant's analysis of this section failed to take into account other sections of statute. State v. Smith, 181 Neb. 846, 152 N.W.2d 16 (1967).

**60-4,103 Nonresident; violating terms of order; effect.**

Any nonresident who violates the terms of the court or administrative order by which his or her operator's license or driving privilege was revoked, suspended, or impounded shall be subject to section 60-4,108.

**Source:** Laws 1941, c. 124, § 4, p. 473; C.S.Supp.,1941, § 60-428; R.S. 1943, § 60-423; Laws 1959, c. 293, § 1, p. 1098; Laws 1977, LB 39, § 79; R.S.1943, (1988), § 60-423; Laws 1989, LB 285, § 53; Laws 2001, LB 38, § 23.

Defendant's analysis of this section failed to take into account other sections of statute. State v. Smith, 181 Neb. 846, 152 N.W.2d 16 (1967).

**60-4,104 Revocation or suspension; order of director; prima facie evidence.**

A copy of the order of the director suspending or revoking any operator's license or the privilege of operating a motor vehicle, duly certified by the director and bearing the seal of the Department of Motor Vehicles, shall be admissible in evidence without further proof and shall be prima facie evidence of the facts therein stated in any proceeding, civil or criminal, in which such suspension or revocation is an issuable fact.

**Source:** Laws 1961, c. 318, § 1, p. 1018; R.S.1943, (1988), § 60-418.01; Laws 1989, LB 285, § 54.

An order of the Director of Motor Vehicles revoking or suspending an operator's license is prima facie evidence of the facts therein, shifting the burden to the driver to rebut the correctness of that order. Delgado v. Abramson, 254 Neb. 606, 578 N.W.2d 833 (1998).

Copy of order of suspension certified in name of director by properly designated subordinate is admissible in evidence. State v. Applegarth, 196 Neb. 773, 246 N.W.2d 216 (1976).

**60-4,105 Appeal; procedure.**

(1) Unless otherwise provided by statute, any person aggrieved by a final decision or order of the director or the Department of Motor Vehicles to cancel, suspend, revoke, or refuse to issue or renew any operator's license, any decision of the director made after consideration of advice from the Health Advisory Board, or suspension of an operator's license under the License Suspension Act may appeal to either the district court of the county in which the person originally applied for the license or the district court of the county in which such person resides or, in the case of a nonresident, to the district court of Lancaster County within thirty days after the date of the final decision or order.

(2) Summons shall be served on the department within thirty days after the filing of the petition in the manner provided for service of a summons in section 25-510.02. Within thirty days after service of the petition and summons, the department shall prepare and transmit to the petitioner a certified copy of the official record of the proceedings before the department. The department shall require payment of a five-dollar fee prior to the transmittal of the official record. The petitioner shall file the transcript with the court within fourteen days after receiving the transcript from the department.

(3) The district court shall hear the appeal as in equity without a jury and determine anew all questions raised before the director. Either party may appeal from the decision of the district court to the Court of Appeals.

(4) The appeal procedures described in the Administrative Procedure Act shall not apply to this section.

**Source:** Laws 1937, c. 141, § 29, p. 522; Laws 1941, c. 124, § 8, p. 475; C.S.Supp.,1941, § 60-433; R.S.1943, § 60-420; Laws 1984, LB 697, § 1; Laws 1988, LB 352, § 105; R.S.1943, (1988), § 60-420; Laws 1989, LB 285, § 55; Laws 1989, LB 352, § 1; Laws 1991, LB 732, § 121; Laws 1994, LB 211, § 3; Laws 1997, LB 752, § 139; Laws 1999, LB 704, § 14; Laws 2002, LB 876, § 79.

**Cross References**

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

**License Suspension Act**, see section 43-3301.

1. Appeal
2. Miscellaneous

**1. Appeal**

Filing of transcript of the proceedings of the Department of Motor Vehicles relating to the revocation of a driver's license within the time set out in this section is a necessary step to the acquisition of subject matter jurisdiction of an implied consent proceeding by the district court and the Supreme Court. *Ernest v. Jensen*, 226 Neb. 759, 415 N.W.2d 121 (1987).

Normally, trial court's findings in revocation case are reviewed de novo in Supreme Court, but sustaining motion to dismiss appeal to district court will be affirmed where evidence presents no questions of fact. *Porter v. Jensen*, 223 Neb. 438, 390 N.W.2d 511 (1986).

Filing in the district court does not satisfy the requirement of this section that the bond be filed in the office of the director of the Department of Motor Vehicles within twenty days of the order concerning which complaint is made. *Bammer v. Jensen*, 222 Neb. 400, 384 N.W.2d 263 (1986).

The execution, approval, and filing of the bond required by this section are necessary steps to the acquisition of subject matter jurisdiction of an implied consent proceeding by the

district court. *Bammer v. Jensen*, 222 Neb. 400, 384 N.W.2d 263 (1986).

When seeking to appeal an order of the director of the Department of Motor Vehicles, the appellant must execute and file the required bond within twenty days of the date of the final order complained of; such filing is a jurisdictional requirement and condition precedent to the initiation of the appellate process. *Black v. State*, 218 Neb. 572, 358 N.W.2d 181 (1984).

An appeal from an order of the Department of Motor Vehicles under this section to revoke a driver's license under section 39-669.16 (transferred to section 60-498.02) is in the nature of a proceeding in review of administrative agency, and such appeal is commenced or perfected by filing a petition within thirty days of the service of the final decision of the director and causing a summons to issue on the petition and be served within six months of such filing. Making an administrative agency a party defendant in an appeal under the provisions of this section or section 84-917(2) is not an action against the state within the meaning of section 24-319 (transferred to section 25-21,201) et seq. so as to require service of summons on the Governor and Attorney General. *Leach v. Dept. of Motor Vehicles*, 213 Neb. 103, 327 N.W.2d 615 (1982).

On appeal to the district court from an order of the Director of the Department of Motor Vehicles made under section 39-669.16 (transferred to section 60-498.02), revoking a motor vehicle operator's license, the burden of proof is on the licensee to establish by a preponderance of the evidence the ground for reversal. *Barton v. Director of Department of Motor Vehicles*, 194 Neb. 765, 235 N.W.2d 863 (1975).

On appeal to district court from order of Director of Motor Vehicles under section 39-669.16 (transferred to section 60-498.02) revoking operator's license, the burden is on licensee to establish ground for reversal. *Mackey v. Director of Department of Motor Vehicles*, 194 Neb. 707, 235 N.W.2d 394 (1975).

The requirement that a petition on appeal be filed in the district court within thirty days from filing of final order of the director is mandatory and jurisdictional. *Miller v. Sullivan*, 194 Neb. 127, 230 N.W.2d 226 (1975).

Filing required bond within twenty days after revocation under point system is jurisdictional and a condition precedent to initiation of appeal process. *Buettner v. Sullivan*, 191 Neb. 592, 216 N.W.2d 872 (1974).

On appeal from order of revocation of a motor vehicle operator's license under the implied consent law, review is de novo as in equity. *Wiseman v. Sullivan*, 190 Neb. 724, 211 N.W.2d 906 (1973).

On appeal from the order of the Director of Motor Vehicles, the director shall furnish a transcript of the proceedings had before him and the appellant shall file it in the district court as provided in this section. *Doran v. Johns*, 186 Neb. 321, 182 N.W.2d 900 (1971).

Filing of approved bond within twenty days is a condition precedent to initiation of appeal; approval of bond by Auditor of Public Accounts is a jurisdictional requirement. *Lydick v. Johns*, 185 Neb. 716, 178 N.W.2d 581 (1970).

In an appeal from an implied consent proceeding such district court as used in this section refers to district court for county where events occurred for which arrest was made. *Peck v. Dunlevey*, 184 Neb. 812, 172 N.W.2d 613 (1969).

Appeal may be taken from revocation of driver's license under implied consent law. *Prucha v. Department of Motor Vehicles*, 172 Neb. 415, 110 N.W.2d 75 (1961).

Statutes provide for direct attack by appeal from revocation of operator's license. *Stewart v. Ress*, 164 Neb. 876, 83 N.W.2d 901 (1957).

## 2. Miscellaneous

The director acts ministerially in revoking driver's license under point system, and appeal procedures contemplate a full evidentiary hearing which meets due process requirements of federal and state constitutions. *State v. Lessert*, 188 Neb. 243, 196 N.W.2d 166 (1972).

In addition to provision for appeal from revocation of motor vehicle operator's license under section 39-7,130 (transferred to section 60-4,184), R.R.S.1943, the procedures authorized by this section are available. *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972).

At a hearing before the Director of Motor Vehicles to revoke an operator's license under the Implied Consent Law, findings of fact are sufficient to support a revocation order if they concisely state conclusions favorable to the order upon each contested issue of fact. *Prigge v. Johns*, 186 Neb. 761, 186 N.W.2d 497 (1971).

Validity of prior judgment of conviction cannot be raised on direct appeal. *Bradford v. Ress*, 167 Neb. 338, 93 N.W.2d 17 (1958).

Procedure under this section was properly invoked to challenge revocation of license under point system act. *Durfee v. Ress*, 163 Neb. 768, 81 N.W.2d 148 (1957).

### 60-4,106 Appeal; effect.

Appeal from the sentence of conviction shall constitute an appeal from the revocation of the operator's license of the person so convicted.

**Source:** Laws 1929, c. 148, § 12, p. 518; C.S.1929, § 60-412; Laws 1937, c. 140, § 2, p. 505; Laws 1941, c. 124, § 2, p. 471; C.S.Supp.,1941, § 60-412; R.S.1943, § 60-429; R.S.1943, (1988), § 60-429; Laws 1989, LB 285, § 56; Laws 2001, LB 38, § 24.

### 60-4,107 Suspension or revocation; operation of vehicle prohibited; employment driving permit or medical hardship driving permit excepted.

Any resident or nonresident whose operator's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in the Motor Vehicle Operator's License Act shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and if permitted under the act. Such persons shall be eligible to operate a motor vehicle, except a commercial motor vehicle, under an employment driving permit as provided by section 60-4,129 or a medical hardship driving permit as provided in section 60-4,130.01.

**Source:** Laws 1937, c. 141, § 24, p. 520; Laws 1941, c. 124, § 5, p. 473; C.S.Supp.,1941, § 60-429; Laws 1943, c. 135, § 1, p. 465; R.S. 1943, § 60-418; Laws 1975, LB 259, § 4; R.S.1943, (1988), § 60-418; Laws 1989, LB 285, § 57; Laws 1993, LB 105, § 7.

Circumstantial evidence may serve to establish the operation or actual physical control of a motor vehicle. *State v. Hanger*, 241 Neb. 812, 491 N.W.2d 55 (1992).

A former Nebraska resident whose Nebraska driver's license is suspended or revoked and who obtains a license issued by another state before the period of suspension or revocation expires is not authorized to operate a motor vehicle in Nebraska until a new license is obtained when and if permitted by this act. *State v. Workman*, 233 Neb. 503, 446 N.W.2d 16 (1989).

The gravamen of or the misconduct prohibited by this section and section 39-669.30 (transferred to section 60-4,186) is operation of a motor vehicle after judicial or administrative deprivation of the operator's privilege or license to operate a motor vehicle on the public highways of the State of Nebraska. Although the terms suspension and revocation were used interchangeably in this case, such misuse did not arise to the stature

of sufficient prejudice to warrant reversal of judgment. *State v. Jost*, 219 Neb. 162, 361 N.W.2d 526 (1985).

This act refers to sections 60-401 to 60-440, and they have nothing to do with point system revocations. *Buettner v. Sullivan*, 191 Neb. 592, 216 N.W.2d 872 (1974).

While operator's license is suspended in this state, operation under license issued by another state can be had only when and if permitted. *State v. Smith*, 181 Neb. 846, 152 N.W.2d 16 (1967).

The privilege of operating a motor vehicle is not restored after revocation or suspension by lapse of time alone. *State v. Ruggiere*, 180 Neb. 869, 146 N.W.2d 373 (1966).

After suspension of license, right to operate motor vehicle depends upon the receipt of a new license. *Tyrrell v. State*, 173 Neb. 859, 115 N.W.2d 459 (1962).

### **60-4,108 Operating motor vehicle during period of suspension, revocation, or impoundment; penalties; juvenile; violation; handled in juvenile court.**

(1) It shall be unlawful for any person to operate a motor vehicle during any period that he or she is subject to a court order not to operate any motor vehicle for any purpose or during any period that his or her operator's license has been revoked or impounded pursuant to conviction or convictions for violation of any law or laws of this state, by an order of any court, or by an administrative order of the director. Except as otherwise provided by subsection (3) of this section or by other law, any person so offending shall (a) for a first such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of one year from the date ordered by the court and also order the operator's license of such person to be revoked for a like period and (b) for each subsequent such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of two years from the date ordered by the court and also order the operator's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

(2) It shall be unlawful for any person to operate a motor vehicle (a) during any period that his or her operator's license has been suspended, (b) after a period of revocation but before issuance of a new license, or (c) after a period of impoundment but before the return of the license. Except as provided in subsection (3) of this section, any person so offending shall be guilty of a Class III misdemeanor, and the court may, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of one year from the date ordered by the court, except that if the person at the time of sentencing shows proof of reinstatement of his or her suspended operator's license, proof of issuance of a new license, or proof of return of the impounded license, the person shall only be fined in an amount not to exceed one hundred dollars. If the court orders the person not to operate a motor vehicle for a period of one year from the date ordered by the court, the court shall also order the operator's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

(3) If a juvenile whose operator's license or permit has been impounded by a juvenile court operates a motor vehicle during any period that he or she is subject to the court order not to operate any motor vehicle or after a period of impoundment but before return of the license or permit, such violation shall be handled in the juvenile court and not as a violation of this section.

**Source:** Laws 1957, c. 275, § 2, p. 1002; Laws 1959, c. 293, § 3, p. 1099; Laws 1977, LB 39, § 81; Laws 1979, LB 149, § 1; Laws 1985, LB 356, § 1; Laws 1986, LB 153, § 12; R.S.1943, (1988), § 60-430.01; Laws 1989, LB 285, § 58; Laws 1997, LB 772, § 4; Laws 2001, LB 38, § 25; Laws 2010, LB800, § 34.

The penalty of 1 or 2 years' suspension found in this section does not constitute cruel and unusual punishment. *State v. Green*, 236 Neb. 33, 458 N.W.2d 472 (1990).

Sentence which ordered suspension of driver's license for one year following release from jail upon conviction of second offense driving while under suspension does not conform to sentencing requirements of this statute. *State v. Moore*, 215 Neb. 229, 337 N.W.2d 782 (1983).

Not abuse of discretion for court to deny probation and impose mandatory sentence under the statute following conviction. *State v. Adams*, 198 Neb. 729, 255 N.W.2d 280 (1977).

This section provides only penalty for driving motor vehicle while driver's license is suspended. *Stuckey v. Rohnert*, 179 Neb. 727, 140 N.W.2d 9 (1966).

Penalty for violation of this section is increased upon conviction of second offense. *State v. Steemer*, 175 Neb. 342, 121 N.W.2d 813 (1963).

The provisions of this section providing an increased penalty for second offense is not ex post facto as to a first offense committed prior to the enactment thereof. *State v. Steemer*, 175 Neb. 342, 121 N.W.2d 813 (1963).

**60-4,109 Operating motor vehicle during period of suspension, revocation, or impoundment; city or village ordinance; penalties.**

(1) Upon conviction of any person in any court within this state of a violation of any city or village ordinance pertaining to the operation of a motor vehicle by such person during any period that he or she is subject to a court order not to operate any motor vehicle for any purpose or during any period that his or her operator's license has been revoked or impounded pursuant to any law of this state, such person shall (a) for a first such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of one year from the date ordered by the court and also order the operator's license of such person to be revoked for a like period and (b) for each subsequent such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of two years from the date ordered by the court and also order the operator's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

(2) Upon conviction of any person in any court within this state of a violation of any city or village ordinance pertaining to the operation of a motor vehicle by such person (a) during any period that his or her operator's license has been suspended pursuant to any law of this state, (b) after a period of revocation but before issuance of a new license, or (c) after a period of impoundment but before the return of the license, such person shall be guilty of a Class III misdemeanor, and the court may, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of one year from the date ordered by the court, except that if the person at the time of sentencing shows proof of reinstatement of his or her suspended operator's license, proof of issuance of a new license, or proof of return of the impounded license, the person shall only be fined in an amount not to exceed one hundred dollars. If the court orders the person not to operate a motor

vehicle for a period of one year after the date ordered by the court, the court shall also order the operator's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

**Source:** Laws 1959, c. 293, § 4, p. 1099; R.S.1943, (1988), § 60-430.05; Laws 1989, LB 285, § 59; Laws 1997, LB 772, § 5; Laws 2001, LB 38, § 26.

This section authorizes a city or village to prohibit the operation of a motor vehicle by a driver while his license is suspended. State v. Smith, 181 Neb. 846, 152 N.W.2d 16 (1967).

**60-4,110 Operating motor vehicle during period of suspension, revocation, or impoundment; impounding of motor vehicle; release, when authorized; restitution authorized.**

(1) Every motor vehicle, regardless of the registered owner of the motor vehicle, being operated by a person whose operator's license has been suspended, revoked, or impounded pursuant to a conviction or convictions for violation of section 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02 or by an order of any court or an administrative order of the director is hereby declared a public nuisance. The motor vehicle may be seized upon the arrest of the operator of the motor vehicle and impounded at the expense of the owner of the motor vehicle. If such operator's license is suspended, revoked, or impounded pursuant to section 60-498.01, 60-498.02, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02, the motor vehicle shall be impounded for not less than ten days nor more than thirty days. No motor vehicle impounded under this section shall be impounded for a period of time exceeding thirty days except as provided in subsection (3) of this section.

(2) Any motor vehicle impounded shall be released:

(a) To the holder of a bona fide lien on the motor vehicle executed prior to such impoundment when possession of the motor vehicle is requested as provided by law by such lienholder for purposes of foreclosing and satisfying his or her lien on the motor vehicle;

(b) To the titled owner of the motor vehicle when the titled owner is a lessor. Upon learning the address or telephone number of the rental or leasing company which owns the motor vehicle, the impounding law enforcement agency shall immediately contact the company and inform it that the motor vehicle is available for the company to take possession; or

(c) To the registered owner, a registered co-owner, or a spouse of the owner upon good cause shown by an affidavit or otherwise to the court before which the complaint is pending against the operator that the impounded motor vehicle is essential to the livelihood of the owner, co-owner, or spouse or the dependents of such owner, co-owner, or spouse.

(3) Any person who, at the direction of a peace officer, tows and stores a motor vehicle pursuant to this section shall have a lien upon such motor vehicle while in his or her possession for reasonable towing and storage charges and shall have a right to retain such motor vehicle until such charges are paid.

(4) If the registered owner of a motor vehicle was not the operator of the motor vehicle whose actions caused the motor vehicle to be impounded, the registered owner of the motor vehicle may recover civilly from the operator of

the motor vehicle all expenses incurred by reason of the impoundment. In the case of a criminal action, the court may order such operator of the motor vehicle to pay restitution to the registered owner in an amount equal to any expenses incurred with respect to impoundment.

**Source:** Laws 1961, c. 321, § 1, p. 1024; Laws 1961, c. 322, § 1, p. 1025; R.S.1943, (1988), § 60-430.06; Laws 1989, LB 285, § 60; Laws 1998, LB 309, § 4; Laws 2003, LB 209, § 8.

**60-4,111 Violation; general penalty provisions.**

Whoever violates any provision of the Motor Vehicle Operator's License Act for which no specific penalty is provided shall be guilty of a Class III misdemeanor.

**Source:** Laws 1937, c. 141, § 27, p. 522; Laws 1941, c. 124, § 7, p. 475; C.S.Supp.,1941, § 60-432; R.S.1943, § 60-430; Laws 1959, c. 293, § 2, p. 1098; Laws 1971, LB 20, § 1; Laws 1977, LB 39, § 80; R.S.1943, (1988), § 60-430; Laws 1989, LB 285, § 61.

Conviction and sentence of unlicensed driver affirmed. State v. Meints, 223 Neb. 199, 388 N.W.2d 813 (1986).

This section sets forth the general penalty for violation of the operator's license act. State v. Ruggiere, 180 Neb. 869, 146 N.W.2d 373 (1966).

Conviction for second offense committed after amendment of this section was proper even though first offense was committed prior to amendment. State v. Steemer, 175 Neb. 342, 121 N.W.2d 813 (1963).

**60-4,111.01 Storage or compilation of information; retailer; 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. The retailer 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. A retailer who knowingly stores more information than the age and identification number from the operator's license or state identification card shall be guilty of a Class IV felony.

(b) Information scanned, compiled, stored, or preserved pursuant to subdivision (a) of this subsection may not be retained longer than eighteen months unless required by state or federal law.

(4) In order to approve a negotiable instrument, an electronic funds transfer, or a similar method of payment, a person having use of or access to machine-readable information encoded on an operator's license or a state identification card may:

(a) Scan, compile, store, or preserve such information in order to provide the information to a check services company subject to and in compliance with the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as such act existed on January 1, 2010, for the purpose of effecting, administering, or enforcing a transaction requested by the holder of the license or card or preventing fraud or other criminal activity; or

(b) Scan and store such information only as necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability or to resolve a dispute or inquiry by the holder of the license or card.

(5) Except as provided in subdivision (4)(a) of this section, information scanned, compiled, stored, or preserved pursuant to this section may not be traded or sold to or shared with a third party; used for any marketing or sales purpose by any person, including the retailer who obtained the information; or, unless pursuant to a court order, reported to or shared with any third party. A person who violates this subsection shall be guilty of a Class IV felony.

**Source:** Laws 2001, LB 574, § 30; Laws 2010, LB261, § 1.

(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR  
VEHICLES OTHER THAN COMMERCIAL

**60-4,112 Sections; applicability.**

Sections 60-4,114, 60-4,116, and 60-4,118 to 60-4,130.05 shall apply to the operation of any motor vehicle except a commercial motor vehicle.

**Source:** Laws 1989, LB 285, § 62; Laws 1991, LB 44, § 2; Laws 1993, LB 105, § 8; Laws 1994, LB 211, § 4; Laws 1998, LB 320, § 4; Laws 2001, LB 38, § 27; Laws 2003, LB 562, § 5; Laws 2008, LB911, § 10.

**60-4,113 Examining personnel; appointment; duties; examinations; issuance of certificate; license; state identification card; county treasurer; duties; delivery of license or card.**

(1) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. In and for each county in the State of Nebraska, the director shall appoint as his or her agents one or more examiners who shall examine all applicants for an operator's license as provided in section 60-4,114 except as otherwise provided in subsection (8) of section 60-4,122. The director may, in his or her discretion, also appoint one or more

examining officers with similar powers as are set forth in section 60-4,114. The same examiner may be assigned to one or more counties by the director. Each county shall furnish office space for the administration of the operator's license examination. The examiner shall conduct the examination of applicants and deliver to each successful applicant a certificate entitling such applicant to secure an operator's license. If the examiner refuses to issue such certificate for cause, he or she shall state such cause in writing and deliver the same to the applicant. The successful applicant shall, within ninety days, present his or her certificate to the county treasurer who shall immediately issue the operator's license and collect the fee therefor. The county treasurer shall report the issuance of such licenses to the department within five days after issuance.

(2)(a) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. In and for each county in the State of Nebraska, the director shall appoint as his or her agents one or more department personnel who shall examine all applicants for a state identification card or an operator's license as provided in section 60-4,114 except as otherwise provided in subsection (8) of section 60-4,122. The same department personnel may be assigned to one or more counties by the director. Each county shall furnish office space for the administration of the operator's license examination. The department personnel shall conduct the examination of applicants and deliver to each successful applicant an issuance certificate. The certificate may be presented to the county treasurer of any county within ninety days after issuance, and the county treasurer shall collect the fee and surcharge as provided in section 60-4,115 and issue a receipt which is valid for up to thirty days. If an operator's license is being issued, the receipt shall also authorize driving privileges for such thirty-day period. If the department personnel refuse to issue an issuance certificate for cause, the department personnel shall state such cause in writing and deliver such written cause to the applicant.

(b) The department may provide for the central production and issuance of operators' licenses and state identification cards. Production shall take place at a secure production facility designated by the director. The licenses and cards shall be of such a design and produced in such a way as to discourage, to the maximum extent possible, fraud in applicant enrollment, identity theft, and the forgery and counterfeiting of such licenses and cards. Delivery of an operator's license or state identification card shall be to the mailing address provided by the applicant at the time of application.

**Source:** Laws 1929, c. 148, § 2, p. 513; C.S.1929, § 60-402; Laws 1937, c. 141, § 12, p. 511; C.S.Supp.,1941, § 60-402; R.S.1943, § 60-404; Laws 1945, c. 141, § 2, p. 447; Laws 1945, c. 142, § 1, p. 454; Laws 1957, c. 366, § 36, p. 1270; Laws 1961, c. 307, § 4, p. 972; Laws 1961, c. 315, § 3, p. 999; Laws 1961, c. 316, § 3, p. 1009; Laws 1961, c. 317, § 1, p. 1016; Laws 1967, c. 389, § 1, p. 1212; Laws 1976, LB 329, § 1; Laws 1977, LB 90, § 3; R.S.1943, (1988), § 60-404; Laws 1989, LB 285, § 64; Laws 1999, LB 704, § 15; Laws 2001, LB 574, § 9; Laws 2008, LB911, § 11.

**60-4,114 County treasurer; personnel; examination of applicant; denial or refusal of certificate; appeal; medical opinion.**

(1) The county treasurer may employ such additional clerical help as may be necessary to assist him or her in the performance of the ministerial duties required of him or her under the Motor Vehicle Operator's License Act and, for such additional expense, shall be reimbursed as set out in section 60-4,115.

(2) The director may, in his or her discretion, appoint one or more examining officers who shall personally examine all applicants who apply for an initial license or whose licenses have been revoked or canceled to ascertain such person's ability to operate a motor vehicle properly and safely.

(3) Except as otherwise provided in section 60-4,122, the application process, in addition to the other requisites of the act, shall include the following:

(a) An inquiry into the medical condition and visual ability of the applicant to operate a motor vehicle;

(b) An inquiry into the applicant's ability to drive and maneuver a motor vehicle;

(c) An inquiry touching upon the applicant's knowledge of the motor vehicle laws of this state, which shall include sufficient questions to indicate familiarity with the provisions thereof; and

(d) An inquiry into the applicant's knowledge of the laws for operating a motor vehicle to avoid arrest.

(4) If an applicant is denied or refused a certificate for license by the examiners, such applicant shall have the right to an immediate appeal to the director from the decision of such examiners. It shall be the duty of the director to review the appeal and issue a final order, to be made not later than ten days after the receipt of the appeal by the director, except that if the director requests the advice of the Health Advisory Board on the matter, the director shall have up to forty-five days after the day a medical or vision problem is referred to him or her to consult with members of the board to obtain the medical opinion necessary to make a decision and shall issue a final order not later than ten days following receipt of the medical opinion. After consideration of the advice of the board, the director shall make a determination of the applicant's physical or mental ability to operate a motor vehicle and shall issue a final order. The order shall be in writing, shall be accompanied by findings of fact and conclusions of law, and shall be sent by registered or certified mail to the applicant's last-known address. The order may be appealed as provided in section 60-4,105.

**Source:** Laws 1929, c. 148, § 6, p. 514; C.S.1929, § 60-406; Laws 1931, c. 101, § 1, p. 272; Laws 1937, c. 141, § 16, p. 514; C.S.Supp.,1941, § 60-406; R.S.1943, § 60-408; Laws 1945, c. 141, § 5, p. 450; Laws 1947, c. 207, § 2, p. 676; Laws 1957, c. 366, § 38, p. 1272; Laws 1961, c. 307, § 5, p. 972; Laws 1961, c. 315, § 6, p. 1003; Laws 1961, c. 316, § 6, p. 1013; Laws 1972, LB 1439, § 1; Laws 1981, LB 76, § 2; R.S.1943, (1988), § 60-408; Laws 1989, LB 285, § 63; Laws 1994, LB 211, § 9; Laws 1999, LB 704, § 16; Laws 2001, LB 38, § 28; Laws 2001, LB 574, § 10.

Proper amount of license fee for all applicants holding a motor vehicle operator's license on September 1, 1937, was seventy-five cents. *Cross v. Theobald*, 135 Neb. 199, 280 N.W. 841 (1938).

Under former act, collection and retention by county treasurer of fee of twenty-five cents was not in conflict with general

statute governing compensation of county treasurer, and was not void as extra compensation. *Mehrens v. Bauman*, 120 Neb. 110, 231 N.W. 701 (1930).

**MOTOR VEHICLE OPERATORS' LICENSES**

§ 60-4,115

**60-4,115 Fees; allocation; identity security surcharge.**

(1) Fees for operators' licenses and state identification cards shall be collected and distributed according to the table in subsection (2) of this section, except for the ignition interlock permit and associated fees as outlined in subsection (4) of this section. County officials shall remit the county portion of the fees collected to the county treasurer for placement in the county general fund. All other fees collected shall be remitted to the State Treasurer for credit to the appropriate fund. The State Treasurer shall transfer an amount equal to three dollars and fifty cents times the number of original or renewal Class M licenses issued pursuant to section 60-4,127 during the previous year from the Department of Motor Vehicles Cash Fund to the Motorcycle Safety Education 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
<b>State identification card:</b>				
Valid for 1 year or less	5.00	2.75	1.25	1.00
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Valid for more than 2 years but not more than 3 years	14.00	2.75	5.25	6.00
Valid for more than 3 years but not more than 4 years	19.00	2.75	8.00	8.25
Valid for more than 4 years for person under 21	24.00	2.75	10.25	11.00
Valid for 5 years	24.00	3.50	10.25	10.25
Duplicate or replacement	11.00	2.75	6.00	2.25
<b>Class O or M operator's license:</b>				
Valid for 1 year or less	5.00	2.75	1.25	1.00
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Valid for more than 2 years but not more than 3 years	14.00	2.75	5.25	6.00
Valid for more than 3 years but not more than 4 years	19.00	2.75	8.00	8.25
Valid for 5 years	24.00	3.50	10.25	10.25
<b>Bioptic or telescopic lens restriction:</b>				
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
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
<b>Provisional operator's permit:</b>				
Original	15.00	2.75	12.25	0
<b>Bioptic or telescopic lens restriction:</b>				
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
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
<b>LPD-learner's permit:</b>				
Original	8.00	.25	5.00	2.75
Duplicate or replacement	11.00	2.75	6.00	2.25

§ 60-4,115

MOTOR VEHICLES

	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
Document				
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
Duplicate or 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
Duplicate or 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
Duplicate or replacement	5.00	.25	0	4.75
Temporary	5.00	.25	0	4.75
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Driving permits:				
Employment	45.00	0	5.00	40.00
Medical hardship	45.00	0	5.00	40.00
Duplicate or 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
Duplicate or 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
LPC-learner's permit:				
Original or renewal	10.00	.25	5.00	4.75
Duplicate or 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
Duplicate or replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	10.00	.25	5.00	4.75
School bus permit:				
Original or renewal	5.00	0	5.00	0
Duplicate or replacement	5.00	0	5.00	0
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0

(3) If the department issues an operator's license or a state identification card, 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 Probation Cash Fund.

(b) The fee for a duplicate or replacement ignition interlock permit shall be ten dollars. Twenty-five cents of the fee shall be remitted to the county treasurer for credit to the county general fund. Five dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Four dollars and seventy-five cents of the fee shall be remitted to the State Treasurer for credit to the Probation Cash 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) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. 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.

**60-4,116 Applicant; department; duties.**

Prior to the issuance of any original or renewal operator's license or the reissuance of any such license with a change of any classification, endorsement, or restriction, the Department of Motor Vehicles shall:

(1) Check the driving record of the applicant as maintained by the department or by any other state which has issued an operator's license to the applicant;

(2) Beginning September 30, 2005, contact the Commercial Driver License Information System to determine whether the applicant possesses any valid commercial driver's license issued by any other state, whether such license or the applicant's privilege to operate a commercial motor vehicle has been suspended, revoked, or canceled, or whether the applicant has been disqualified from operating a commercial motor vehicle; and

(3) Contact the National Driver Register to determine if the applicant (a) has been disqualified from operating any motor vehicle or (b) has had an operator's license suspended, revoked, or canceled.

**Source:** Laws 2003, LB 562, § 6.

**60-4,117 Issuance of license by county treasurer; form; operator's license or state identification card; delivery; form; county treasurer; duties.**

(1)(a) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. Upon presentation of the certificate for an operator's license issued by the examining officer to the applicant for such license, the county treasurer shall issue such license to the applicant. The license shall be in full force and effect until the expiration date thereon, until officially revoked, suspended, canceled by an order of the director, or until ordered revoked or impounded by a court of competent jurisdiction.

(b) The operator's license shall be in a form prescribed by the department. The license may include security features prescribed by the department. The license shall be conspicuously marked Nebraska Operator's License, shall be, to the maximum extent practicable, tamper proof, and shall include the following information:

- (i) The name and residential and post office address of the holder;
- (ii) The holder's color photograph or digital image;
- (iii) A physical description of the holder, including sex, height, weight, and eye and hair colors;
- (iv) The holder's date of birth;
- (v) The holder's signature;
- (vi) The class of motor vehicle which the holder is authorized to operate and any endorsements or restrictions;
- (vii) The dates between which the license is valid;
- (viii) The organ and tissue donation information specified in section 60-494; and
- (ix) Such other facts and information as the director may determine.

(c) Machine-readable information encoded on an operator's license shall be limited to the information appearing on the face of the license.

(2)(a) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. Upon presentation of an issuance certificate for an operator's license or state identification card issued by department personnel to the applicant, the county treasurer shall collect the applicable fee and surcharge as prescribed in section 60-4,115 and issue a receipt which is valid for up to thirty days. If there is cause for an operator's license to be issued, the receipt shall also authorize driving privileges for such thirty-day period. The license or card shall be delivered as provided in section 60-4,113.

(b) The operator's license and state identification card shall be in a form prescribed by the department. The license and card may include security features prescribed by the department. The license and card shall be conspicuously marked Nebraska Operator's License or Nebraska Identification Card, shall be, to the maximum extent practicable, tamper and forgery proof, and shall include the following information:

- (i) The full legal name and principal residence address of the holder;
- (ii) The holder's full facial digital image;
- (iii) A physical description of the holder, including gender, height, weight, and eye and hair colors;
- (iv) The holder's date of birth;
- (v) The holder's signature;
- (vi) The class of motor vehicle which the holder is authorized to operate and any applicable endorsements or restrictions;
- (vii) The issuance and expiration date of the license or card;
- (viii) The organ and tissue donation information specified in section 60-494; and
- (ix) Such other marks and information as the director may determine.

(c) Each operator's license and state identification card shall contain the following encoded, machine-readable information: The holder's full legal name; date of birth; gender; race or ethnicity; document issue date; document expiration date; principal residence address; unique identification number; revision date; inventory control number; and state of issuance.

**Source:** Laws 1929, c. 148, § 4, p. 513; C.S.1929, § 60-404; Laws 1937, c. 141, § 14, p. 512; C.S.Supp.,1941, § 60-404; R.S.1943, § 60-406; Laws 1959, c. 286, § 2, p. 1082; Laws 1961, c. 315, § 4, p. 1000; Laws 1961, c. 316, § 4, p. 1008; Laws 1977, LB 90, § 4; R.S. 1943, (1988), § 60-406; Laws 1989, LB 285, § 67; Laws 2001, LB 34, § 4; Laws 2001, LB 38, § 29; Laws 2001, LB 574, § 12; Laws 2008, LB911, § 13.

**60-4,118 Vision requirements; persons with physical impairments; physical or mental incompetence; prohibited act; penalty.**

(1) No operator's license shall be granted to any applicant until such applicant satisfies the examiner that he or she possesses sufficient powers of eyesight to enable him or her to obtain a Class O license and to operate a motor vehicle on the highways of this state with a reasonable degree of safety. The Department of Motor Vehicles, with the advice of the Health Advisory Board, shall adopt and promulgate rules and regulations:

(a) Requiring a minimum acuity level of vision. Such level may be obtained through the use of standard eyeglasses, contact lenses, or bioptic or telescopic lenses which are specially constructed vision correction devices which include a lens system attached to or used in conjunction with a carrier lens; and

(b) Requiring a minimum field of vision. Such field of vision may be obtained through standard eyeglasses, contact lenses, or the carrier lens of the bioptic or telescopic lenses.

(2) If a vision aid is used by the applicant to meet the vision requirements of this section, the operator's license of the applicant shall be restricted to the use

of such vision aid when operating the motor vehicle. If the applicant fails to meet the vision requirements, the examiner shall require the applicant to present an optometrist's or ophthalmologist's statement certifying the vision reading obtained when testing the applicant within ninety days of the applicant's license examination. If the vision reading meets the vision requirements prescribed by the department, the vision requirements of this section shall have been met. If the vision reading demonstrates that the applicant is required to use bioptic or telescopic lenses to operate a motor vehicle, the statement from the optometrist or ophthalmologist shall also indicate when the applicant needs to be reexamined for purposes of meeting the vision requirements for an operator's license as prescribed by the department. If such time period is two years or more after the date of the application, the license shall be valid for two years. If such time period is less than two years, the license shall be valid for such time period.

(3) If the applicant for an operator's license discloses that he or she has any other physical impairment which may affect the safety of operation by such applicant of a motor vehicle, the examiner shall require the applicant to show cause why such license should be granted and, through such personal examination and demonstration as may be prescribed by the director with the advice of the Health Advisory Board, to show the necessary ability to safely operate a motor vehicle on the highways. The director may also require the person to appear before the board or a designee of the board. If the examiner, board, or designee is then satisfied that such applicant has the ability to safely operate a motor vehicle, an operator's license may be issued to the applicant subject, at the discretion of the director, to a limitation to operate only such motor vehicles at such time, for such purpose, and within such area as the license shall designate.

(4)(a) The director may, when requested by a law enforcement officer, when the director has reason to believe that a person may be physically or mentally incompetent to operate a motor vehicle, or when a person's driving record appears to the department to justify an examination, request the advice of the Health Advisory Board and may give notice to the person to appear before an examiner, the board, or a designee of the director for examination concerning the person's ability to operate a motor vehicle safely. Any such request by a law enforcement officer shall be accompanied by written justification for such request and shall be approved by a supervisory law enforcement officer, police chief, or county sheriff.

(b) A refusal to appear before an examiner, the board, or a designee of the director for an examination after notice to do so shall be unlawful and shall result in the immediate cancellation of the person's operator's license by the director.

(c) If the person cannot qualify at the examination by an examiner, his or her operator's license shall be immediately surrendered to the examiner and forwarded to the director who shall cancel the person's operator's license.

(d) If in the opinion of the board the person cannot qualify at the examination by the board, the board shall advise the director. If the director determines after consideration of the advice of the board that the person lacks the physical or mental ability to operate a motor vehicle, the director shall notify the person in writing of the decision. Upon receipt of the notice, the person shall immedi-

ately surrender his or her operator's license to the director who shall cancel the person's operator's license.

(e) Refusal to surrender an operator's license on demand shall be unlawful, and any person failing to surrender his or her operator's license as required by this subsection shall be guilty of a Class III misdemeanor.

**Source:** Laws 1929, c. 148, § 5, p. 514; C.S.1929, § 60-405; Laws 1931, c. 104, § 2, p. 277; Laws 1937, c. 141, § 15, p. 512; C.S.Supp.,1941, § 60-405; R.S.1943, § 60-407; Laws 1945, c. 141, § 4, p. 449; Laws 1949, c. 179, § 11, p. 511; Laws 1951, c. 200, § 1, p. 753; Laws 1955, c. 240, § 1, p. 751; Laws 1955, c. 241, § 1, p. 754; Laws 1957, c. 272, § 1, p. 995; Laws 1959, c. 286, § 3, p. 1082; Laws 1959, c. 292, § 1, p. 1094; Laws 1961, c. 315, § 5, p. 1000; Laws 1961, c. 316, § 5, p. 1009; Laws 1963, c. 358, § 1, p. 1144; Laws 1963, c. 359, § 1, p. 1148; Laws 1965, c. 381, § 1, p. 1230; Laws 1965, c. 219, § 2, p. 637; Laws 1967, c. 234, § 2, p. 621; Laws 1971, LB 725, § 1; Laws 1973, LB 90, § 1; Laws 1974, LB 611, § 1; Laws 1974, LB 821, § 14; Laws 1977, LB 39, § 76; Laws 1984, LB 710, § 1; Laws 1984, LB 811, § 4; Laws 1987, LB 224, § 22; Laws 1988, LB 1093, § 1; Laws 1989, LB 284, § 5; R.S.1943, (1988), § 60-407; Laws 1989, LB 285, § 68; Laws 1990, LB 742, § 3; Laws 1993, LB 564, § 15; Laws 1994, LB 211, § 10; Laws 1995, LB 37, § 9; Laws 1995, LB 467, § 12; Laws 1998, LB 309, § 6; Laws 1998, LB 320, § 6; Laws 1999, LB 585, § 2; Laws 1999, LB 704, § 18; Laws 2001, LB 38, § 30; Laws 2001, LB 387, § 5; Laws 2006, LB 1008, § 3.

The contributory negligence of a minor driver under this section may be imputed to a parent accompanying, directly supervising, and controlling the minor in the operation of a vehicle. *Boker v. Luebbe*, 198 Neb. 282, 252 N.W.2d 297 (1977).

Operation of motor vehicle by minor under sixteen years of age was not within coverage of omnibus clause of insurance policy. *State Farm Mutual Auto. Ins. Co. v. Kersey*, 171 Neb. 212, 106 N.W.2d 31 (1960).

Legislature has recognized the use of the automobile by school children as a common means of transportation. *School Dist. No. 228 v. State Board of Education*, 164 Neb. 148, 82 N.W.2d 8 (1957).

Minimum age fixed by law for driving automobiles, within meaning of the exclusionary clause of insurance policy, is fourteen years. *Hertzel v. Western Mutual Fire Ins. Co.*, 143 Neb. 19, 8 N.W.2d 313 (1943).

Inspection stations and garages are not required to inspect motor vehicles without compensation. *Beisner v. Cochran*, 138 Neb. 445, 293 N.W. 289 (1940).

Provision limiting right to operate motor vehicles to persons of sixteen years or over, and denying it to persons under sixteen, is not arbitrary or unreasonable, and is not deprivation of property without due process. *State ex rel. Oleson v. Graunke*, 119 Neb. 440, 229 N.W. 329 (1930).

#### **60-4,118.01 Medical review of applicant or licensee; legislative intent.**

The Legislature finds and declares that:

(1) The operation of a motor vehicle on the highways of the state is a privilege and that no person should operate a motor vehicle on the highways of this state if not physically or mentally capable of safely doing so;

(2) The approval or denial of an application for an operator's license or the revocation of an operator's license may provide or prevent an opportunity for the applicant or licensee to obtain or maintain gainful employment; and

(3) Under certain circumstances, careful medical review and evaluation of an applicant for an operator's license or of a licensee is necessary to protect the interest of the applicant or licensee and the health, safety, and welfare of the public.

**Source:** Laws 1994, LB 211, § 5.

#### **60-4,118.02 Health Advisory Board; created; members; terms; meetings.**

(1) There is hereby created the Health Advisory Board which shall consist of six health care providers appointed by the director with the advice and recommendation of the Department of Health and Human Services. The members of the board shall consist of one general practice physician, one physician engaged in the practice of ophthalmology, one physician engaged in the practice of orthopedic surgery, one physician engaged in the practice of neurological medicine and surgery, one optometrist, and one psychiatrist. Each member of the board shall be licensed to practice his or her profession pursuant to the Uniform Credentialing Act.

(2) Of the initial members of the board, two shall be appointed for four years, two shall be appointed for three years, and two shall be appointed for two years. Thereafter, each member shall be appointed for a term of four years and until a successor is appointed and qualified. If a vacancy occurs for any reason other than the expiration of a term, the Director of Motor Vehicles may appoint a person licensed in the same type of professional practice as the member being replaced to serve out the unexpired term. Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The board shall meet as necessary at the call of the director. At the initial meeting of the board following completion of the initial appointments, the board shall select from among its members a chairperson and shall designate any other officers or committees as it deems necessary. The board may select officers and committees annually or as necessary to fill vacancies and to carry out duties of the board.

**Source:** Laws 1994, LB 211, § 6; Laws 1996, LB 1044, § 281; Laws 2007, LB296, § 230; Laws 2007, LB463, § 1174.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**60-4,118.03 Health Advisory Board; examinations; reports; appeal; immunity.**

Whenever the director requests the advice of the Health Advisory Board concerning the physical or mental ability of an applicant for or holder of an operator's license to operate a motor vehicle as provided in sections 60-4,114 and 60-4,118, the board may formulate its advice from records and reports or may cause an examination and report to be made by one or more members of the board or any qualified person designated by the board. The applicant or licensee may cause a written report to be forwarded to the board by a physician of his or her choice. The director shall give due consideration to any such report.

Reports received or made by the board or any of its members for the purpose of assisting the director in determining whether a person is qualified to be licensed shall be for the confidential use of the board, the director, and any designees of the director and may not be divulged to any person other than the applicant or licensee or used in evidence in any legal proceeding, except that a report may be admitted in an appeal of an order of the director based on the report. Any person aggrieved by a decision of the director made after consideration of advice given by the board may appeal the decision as provided in section 60-4,105.

No member of the board and no person examining any applicant or licensee shall be liable in tort or otherwise for any opinion, recommendation, or report presented to the board or the director if such action was taken in good faith and without malice.

**Source:** Laws 1994, LB 211, § 7.

**60-4,118.04 Health Advisory Board; rules and regulations.**

The director shall adopt and promulgate rules and regulations as necessary to carry out sections 60-4,118.01 to 60-4,118.03.

**Source:** Laws 1994, LB 211, § 8.

**60-4,118.05 Age requirements; license issued; when.**

(1) No operator's license referred to in section 60-4,118 shall, under any circumstances, be issued to any person who has not attained the age of seventeen years.

(2) No operator's license shall be issued to a person under eighteen years of age applying for an operator's license under section 60-4,118 unless such person:

(a) Has possessed a valid provisional operator's permit for at least a twelve-month period beginning on the date of issuance of such person's provisional operator's permit; and

(b) Has not accumulated three or more points pursuant to section 60-4,182 during the twelve-month period immediately preceding the date of the application for the operator's license.

(3) The department may waive the written examination and the driving test required under section 60-4,118 for any person seventeen to twenty-one years of age applying for his or her initial operator's license if he or she has been issued a provisional operator's permit. The department shall not waive the written examination and the driving test required under this section if the person is applying for a commercial driver's license or permit or if the operator's license being applied for contains a class or endorsement which is different from the class or endorsement of the provisional operator's permit.

**Source:** Laws 2001, LB 38, § 31; Laws 2008, LB911, § 14.

**60-4,118.06 Ignition interlock permit; issued; when; operation restrictions; violation; penalty.**

(1) Upon receipt by the director of (a) a certified copy of a court order issued pursuant to section 60-6,211.05, a certified copy of an order for installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to subdivision (1), (2), or (3) of section 60-6,197.03, or a copy of an order from the Board of Pardons pursuant to section 83-1,127.02, (b) sufficient evidence that the person has surrendered his or her operator's license to the Department of Motor Vehicles and installed an approved ignition interlock device in accordance with such order, and (c) payment of the fee provided in section 60-4,115, such person may apply for an ignition interlock permit. A person subject to administrative license revocation under section 60-498.02 shall be eligible for an ignition interlock permit as provided in such section. The director shall issue an ignition interlock permit for the operation of a motor vehicle equipped with an ignition interlock device. Any person issued an

ignition interlock permit pursuant to a court order shall only operate the motor vehicle equipped with an ignition interlock device to and from his or her residence, his or her place of employment, his or her school, an alcohol treatment program, or an ignition interlock service facility. The permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this subsection shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(2) Upon expiration of the revocation period or upon expiration of an order issued by the Board of Pardons pursuant to section 83-1,127.02, a person may apply to the department in writing for issuance of an operator's license. Regardless of whether the license surrendered by such person under subsection (1) of this section has expired, the person shall apply for a new operator's license pursuant to the Motor Vehicle Operator's License Act.

(3) A person who operates a motor vehicle in violation of the purposes for operation indicated on the ignition interlock permit shall be guilty of a Class II misdemeanor, shall have his or her ignition interlock permit revoked, and shall serve the balance of any revocation period without the privilege to operate a motor vehicle using an ignition interlock device.

**Source:** Laws 2001, LB 38, § 32; Laws 2003, LB 209, § 9; Laws 2008, LB736, § 5; Laws 2009, LB497, § 4; Laws 2010, LB924, § 2.

**60-4,119 Operators' licenses; state identification cards; color photograph or digital image; exception; procedure.**

(1) All state identification cards and operators' licenses, except farm permits and except as otherwise provided in subsection (2) of this section and section 60-4,120, shall include a color photograph or a digital image of the cardholder or licensee as provided in section 60-484.02. State identification cards and operators' licenses shall be issued by the county treasurer or the Department of Motor Vehicles. The director shall negotiate and enter into a contract to provide the necessary equipment, supplies, and forms for the issuance of the licenses and cards. All costs incurred by the Department of Motor Vehicles under this section shall be paid by the state out of appropriations made to the department. All costs of taking the photographs or digital images shall be paid by the issuer from the fees provided to the issuer pursuant to section 60-4,115.

(2) A person who is out of the state at the time of renewal of his or her operator's license may apply for a license without a photograph upon payment of a fee as provided in section 60-4,115. The license may be issued at any time within one year after the expiration of the original license. Such application shall be made to the department, and the department shall issue the license.

(3) Any operator's license and any state identification card issued to a minor as defined in section 53-103.23, as such definition may be amended from time to time by the Legislature, shall be of a distinct designation, of a type prescribed by the director, from the operator's license or state identification card of a person who is not a minor.

**Source:** Laws 1977, LB 90, § 1; Laws 1978, LB 574, § 3; Laws 1981, LB 46, § 1; Laws 1982, LB 877, § 1; Laws 1984, LB 811, § 3; Laws 1986, LB 575, § 1; Laws 1989, LB 284, § 4; R.S.1943, (1988), § 60-406.04; Laws 1989, LB 285, § 69; Laws 1990, LB 980, § 9;

**MOTOR VEHICLE OPERATORS' LICENSES**

**§ 60-4,120**

Laws 1993, LB 201, § 1; Laws 1995, LB 467, § 13; Laws 1999, LB 704, § 19; Laws 2001, LB 574, § 13; Laws 2005, LB 1, § 6; Laws 2010, LB861, § 80.

Applicant who otherwise qualifies for a motor vehicle license may not be denied such a license for failure to allow her photograph to be taken when the applicant refuses to have photograph taken because of deeply held religious beliefs. *Quaring v. Peterson*, 728 F.2d 1121 (8th Cir. 1984).

**60-4,120 Operator's license; state identification card; duplicate or replacement.**

(1) Except as provided in subsection (4) of this section for persons temporarily out of the state, any person duly licensed or holding a valid state identification card issued under the Motor Vehicle Operator's License Act who loses his or her operator's license or card may obtain a duplicate upon filing with the county treasurer or the Department of Motor Vehicles an application showing such loss and furnishing proof of identification in accordance with section 60-484. If satisfied that the loss is genuine, the issuer shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a duplicate license or card. No more than two duplicates of a license or card may be issued in this manner. Upon the issuance of any duplicate or replacement license or card, the license or card from which the duplicate or replacement is issued shall be void.

(2) If any person changes his or her name because of marriage or divorce or by court order or a common-law name change, he or she shall apply to the county treasurer for a replacement operator's license or state identification card and furnish proof of identification in accordance with section 60-484. If any person changes his or her address, the person shall apply to the county treasurer for a replacement operator's license or state identification card and furnish satisfactory evidence of such change. The application shall be made within sixty days after the change of name or address. The license or card shall be issued upon payment of the fee prescribed in section 60-4,115.

(3) In the event a mutilated and unreadable operator's license is held by any person duly licensed under the act or a mutilated and unreadable state identification card which was issued under the act is held by a person, such person may obtain a replacement license or card upon showing the original mutilated or unreadable license or card to the county treasurer. A replacement license or card may be issued, without a photograph, to any person who is out of the state at the time of application for the replacement license or card. Such license or card shall state on its face that it shall become invalid thirty days after such person resumes residence in the state. If the county treasurer is satisfied that the license or card is mutilated or unreadable, the county treasurer shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a replacement license or card.

(4) If any person duly licensed under the act loses his or her operator's license or if any holder of a state identification card loses his or her card while temporarily out of the state, he or she may apply for a duplicate operator's license or card without a photograph by filing with the county treasurer an application and affidavit showing such loss. Upon the officer being satisfied that the loss is genuine, the officer shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a duplicate operator's license or card without a photograph. Upon the issuance of the duplicate, the original license or card shall be void.

(5) Any person holding a valid operator's license or state identification card without a photograph shall surrender such license or card to the treasurer of his or her county of residence within thirty days after resuming residency in this state. After the thirty-day period, such license or card shall be considered invalid. Upon the timely surrender of the license or card and payment of the fee prescribed in section 60-4,115, such person shall be issued an operator's license or card with a color photograph or digital image of the licensee included.

(6) An application form for a replacement or duplicate operator's license or state identification card shall include a voter registration portion pursuant to section 32-308 and the following specific question: Do you wish to register to vote as part of this application process?

(7) An applicant may obtain a replacement or duplicate operator's license or state identification card pursuant to subsection (1), (3), or (4) of this section by electronic means in a manner prescribed by the department. If the applicant has a digital image and digital signature preserved in the digital system, the replacement or duplicate shall be issued with the preserved digital image and digital signature.

**Source:** Laws 1929, c. 148, § 9, p. 517; C.S.1929, § 60-409; Laws 1937, c. 141, § 19, p. 517; Laws 1941, c. 176, § 2, p. 689; C.S.Supp.,1941, § 60-409; R.S.1943, § 60-415; Laws 1945, c. 141, § 8, p. 453; Laws 1947, c. 207, § 4, p. 678; Laws 1961, c. 315, § 10, p. 1005; Laws 1961, c. 316, § 10, p. 1015; Laws 1967, c. 234, § 7, p. 626; Laws 1969, c. 506, § 2, p. 2083; Laws 1971, LB 134, § 1; Laws 1971, LB 371, § 1; Laws 1972, LB 1296, § 2; Laws 1977, LB 90, § 6; Laws 1978, LB 606, § 1; Laws 1981, LB 46, § 3; Laws 1984, LB 811, § 6; Laws 1986, LB 575, § 2; Laws 1989, LB 284, § 9; R.S.1943, (1988), § 60-415; Laws 1989, LB 285, § 70; Laws 1993, LB 201, § 2; Laws 1993, LB 126, § 1; Laws 1994, LB 76, § 572; Laws 1998, LB 309, § 7; Laws 2001, LB 574, § 14; Laws 2005, LB 1, § 7.

**60-4,120.01 Provisional operator's permit; application; issuance; operation restrictions.**

(1)(a) Any person who is at least sixteen years of age but less than eighteen years of age may be issued a provisional operator's permit by the Department of Motor Vehicles. The provisional operator's permit shall expire on the applicant's eighteenth birthday.

(b) No provisional operator's permit shall be issued to any person unless such person:

(i) Has possessed a valid LPD-learner's permit, LPE-learner's permit, or SCP-school permit for at least a six-month period beginning on the date of issuance of such person's LPD-learner's permit, LPE-learner's permit, or SCP-school permit; and

(ii) Has not accumulated three or more points pursuant to section 60-4,182 during the six-month period immediately preceding the date of the application for the provisional operator's permit.

(c) The requirements for the provisional operator's permit prescribed in subdivisions (2)(a) and (b) of this section may be completed prior to the applicant's sixteenth birthday. A person may apply for a provisional operator's

permit and take the driving test and the written examination, if required, at any time within sixty days prior to his or her sixteenth birthday upon proof of age in the manner provided in section 60-484.

(2) In order to obtain a provisional operator's permit, the applicant shall present (a)(i) proof of successful completion of a department-approved driver safety course which includes behind-the-wheel driving specifically emphasizing (A) the effects of the consumption of alcohol on a person operating a motor vehicle, (B) occupant protection systems, (C) risk assessment, and (D) railroad crossing safety and (ii) proof of successful completion of a written examination and driving test administered by a driver safety course instructor or (b) a certificate in a form prescribed by the department, signed by a parent, guardian, or licensed driver at least twenty-one years of age, verifying that the applicant has completed fifty hours of lawful motor vehicle operation including at least ten hours of motor vehicle operation between sunset and sunrise, under conditions that reflect department-approved driver safety course curriculum, with a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state. If the applicant presents such a certificate, the applicant shall be required to successfully complete a driving test administered by the department. The written examination shall be waived if the applicant has been issued a Nebraska LPD-learner's permit or has been issued a Nebraska LPE-learner's permit and such permit is valid or has been expired for no more than one year. However, the department shall not waive the written examination if the provisional operator's permit being applied for contains a class or endorsement which is different from the class or endorsement of the LPD-learner's or LPE-learner's permit. Upon presentation by the applicant of a form prescribed by the department showing successful completion of the driver safety course, the written examination and driving test may be waived. Upon presentation of the certificate, the written examination but not the driving test may be waived. The examiner shall waive the written examination and the driving test if the applicant has been issued a school permit and such permit is valid or has expired no more than one year prior to application. The written examination shall not be waived if the provisional operator's permit being applied for contains a class or endorsement which is different from the class or endorsement of the school permit.

(3)(a) The holder of a provisional operator's permit shall only operate a motor vehicle on the highways of this state during the period beginning at 6 a.m. and ending at 12 midnight except when he or she is en route to or from his or her residence to his or her place of employment or a school activity. The holder of a provisional operator's permit may operate a motor vehicle on the highways of this state at any hour of the day or night if accompanied by a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state.

(b) The holder of a provisional operator's permit shall only operate a motor vehicle on the highways of this state during the first six months of holding the permit with no more than one passenger who is not an immediate family member and who is under nineteen years of age.

(c) The holder of a provisional operator's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state.

(d) Enforcement of subdivisions (a), (b), and (c) of this subsection shall be accomplished only as a secondary action when the holder of the provisional operator's permit has been cited or charged with a violation of some other law.

(4) The county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 for the issuance of each provisional operator's permit.

**Source:** Laws 1998, LB 320, § 7; Laws 1999, LB 704, § 20; Laws 2001, LB 387, § 6; Laws 2001, LB 574, § 15; Laws 2005, LB 1, § 8; Laws 2005, LB 675, § 2; Laws 2007, LB415, § 4; Laws 2008, LB911, § 15.

**60-4,120.02 Provisional operator's permit; violations; revocation.**

(1) Any person convicted of violating a provisional operator's permit issued pursuant to section 60-4,120.01 by operating a motor vehicle in violation of subsection (3) of such section shall be guilty of an infraction and may have his or her provisional operator's permit revoked by the court pursuant to section 60-496 for a time period specified by the court. Before such person applies for another provisional operator's permit, he or she shall pay a reinstatement fee as provided in section 60-499.01 after the period of revocation has expired.

(2) A copy of an abstract of the court's conviction, including an adjudication, shall be transmitted to the director pursuant to sections 60-497.01 to 60-497.04.

(3) For purposes of this section, conviction includes any adjudication of a juvenile.

**Source:** Laws 1998, LB 320, § 8; Laws 1999, LB 704, § 21; Laws 2001, LB 38, § 33.

**60-4,121 Military service; renewal of operator's license; effect.**

(1) The operator's license of any person serving on active duty, other than members of the National Guard or reserves activated for training purposes only, outside the State of Nebraska as a member of the United States Armed Forces, or the spouse of any such person or a dependent of such member of the armed forces, shall be valid during such person's period of active duty and for not more than sixty days immediately following such person's date of separation from service and shall be renewed after the expiration date without examination upon written application to the county treasurer who issued the license. No person shall be permitted to renew a license in such manner more than twice.

(2) The county treasurer also shall issue a renewal license, without examination, to any person who is serving in the armed forces of the United States, or the spouse of any such person or a dependent of such member of the armed forces, and who makes application for renewal within ninety days prior to the expiration date of his or her license while the member is still on active duty upon proof that such member is still on active duty. If such person is twenty years of age, he or she may be issued a renewal license in such manner within ten days prior to his or her twenty-first birthday.

(3) The county treasurer also shall issue a renewal license, without examination, to any person whose license expired while serving in the armed forces of the United States, or the spouse of any such person or a dependent of such member of the armed forces, and who makes application for renewal within sixty days after his or her (a) discharge or return to the State of Nebraska to

reside, whichever is later, or (b) return to the State of Nebraska while the member is still on active duty upon proof that such member is still on active duty.

(4) Each individual who is applying for renewal of his or her operator's license shall submit his or her previous license to the examiner or, when the previous license is unavailable, furnish proof of identification in accordance with section 60-484.

**Source:** Laws 1929, c. 148, § 8, p. 516; C.S.1929, § 60-408; Laws 1937, c. 141, § 18, p. 515; C.S.Supp.,1941, § 60-408; R.S.1943, § 60-411; Laws 1945, c. 141, § 7, p. 453; Laws 1947, c. 207, § 4, p. 678; Laws 1961, c. 315, § 8, p. 1004; Laws 1961, c. 316, § 8, p. 1014; Laws 1967, c. 389, § 2, p. 1213; Laws 1967, c. 234, § 5, p. 625; Laws 1971, LB 244, § 1; Laws 1982, LB 877, § 2; Laws 1984, LB 811, § 5; Laws 1985, LB 240, § 1; Laws 1989, LB 284, § 7; R.S.1943, (1988), § 60-411; Laws 1989, LB 285, § 71; Laws 1996, LB 974, § 2; Laws 1997, LB 22, § 1; Laws 1999, LB 704, § 22.

**60-4,122 Operator's license; state identification card; renewal procedure; law examination; exceptions.**

(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 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.

(6) A nonresident who applies for an initial operator's license in this state and who holds a valid operator's license from another state which is his or her state of residence may not be required to demonstrate his or her knowledge of the

motor vehicle laws of this state if he or she surrenders to the examiner his or her valid out-of-state operator's license.

(7) An applicant for an original operator's license may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state if he or she has been issued a Nebraska LPD-learner's permit that is valid or has been expired for no more than one year. The written examination shall not be waived if the original operator's license being applied for contains a class or endorsement which is different from the class or endorsement of the Nebraska LPD-learner's permit.

(8) A qualified licensee as determined by the department who is twenty-one years of age or older and less than sixty-five years of age and who has a digital image and digital signature preserved in the digital system may renew his or her Class O or Class M license once by electronic means in a manner prescribed by the department using the preserved digital image and digital signature without taking any examination required under section 60-4,114 if such renewal is prior to or within one year after the expiration of the license and if his or her driving record abstract maintained in the records of the department shows that such person's license is not suspended, revoked, or canceled. Every licensee must apply for renewal in person at least once every ten years and have a new digital image and digital signature taken.

(9) Any person who is twenty-one years of age or older and who has been issued a state identification card with a digital image and digital signature may electronically renew his or her state identification card once by electronic means in a manner prescribed by the department using the preserved digital image and digital signature. Every holder of a state identification card shall apply for renewal in person at least once every ten years and have a new digital image and digital signature taken.

**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.

**60-4,123 LPD-learner's permit; application; issuance; operation restrictions.**

(1) Any person who is at least fifteen years of age may apply for an LPD-learner's permit from the department. In order to obtain an LPD-learner's permit, the applicant shall successfully complete a written examination. A person may take the written examination beginning sixty days prior to his or her fifteenth birthday but shall not be issued a permit until he or she is fifteen years of age. The written examination may be waived for any person who has been issued an LPE-learner's permit, LPD-learner's permit, or SCP-school permit that has been expired for no more than one year.

(2) Upon successful completion of the written examination and the payment of a fee and surcharge as prescribed in section 60-4,115, the applicant shall be issued an LPD-learner's permit as provided in section 60-4,113. The permit shall be valid for twelve months.

(3)(a) The holder of an LPD-learner's permit shall only operate a motor vehicle on the highways of this state if he or she is accompanied at all times by a licensed operator who is at least twenty-one years of age and who has been

licensed by this state or another state and if he or she is actually occupying the seat beside the licensed operator or, in the case of a motorcycle or moped, if he or she is within visual contact of and under the supervision of, in the case of a motorcycle, a licensed motorcycle operator or, in the case of a moped, a licensed motor vehicle operator.

(b) The holder of an LPD-learner's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subdivision shall be accomplished only as a secondary action when the holder of the LPD-learner's permit has been cited or charged with a violation of some other law.

(4) The county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 for the issuance of each LPD-learner's permit.

**Source:** Laws 1989, LB 285, § 73; Laws 1991, LB 44, § 3; Laws 1998, LB 320, § 10; Laws 1999, LB 704, § 24; Laws 2001, LB 574, § 17; Laws 2005, LB 675, § 3; Laws 2007, LB415, § 5; Laws 2008, LB911, § 17.

#### **60-4,123.01 Fourteen-year-old person; operation permitted.**

Any person who has attained or will attain the age of fourteen years on or before October 15 of the current year may operate a motor vehicle upon the highways of this state if he or she is accompanied or, in the case of a motorcycle or moped, supervised at all times by a licensed operator who is a driver training instructor certified by the Commissioner of Education.

**Source:** Laws 1991, LB 44, § 4.

#### **60-4,124 School permit; LPE-learner's permit; issuance; operation restrictions; violations; penalty.**

(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 lives a distance of one and one-half miles or more from the school he or she attends and 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:

(a) To and from where he or she attends school and between schools of enrollment over the most direct and accessible route by the nearest highway from his or her place of residence to transport such person or any family member who resides with such person to attend duly scheduled courses of instruction and extracurricular or school-related activities at the school he or she attends; or

(b) Under the personal supervision of a licensed operator. Such licensed operator shall be at least twenty-one years of age and licensed by this state or another state and shall actually occupy the seat beside the permitholder or, in the case of a motorcycle or moped, if the permitholder is within visual contact of and under the supervision of, in the case of a motorcycle, a licensed motorcycle operator or, in the case of a moped, a licensed motor vehicle operator.

(3) The holder of a school permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subsection shall be accomplished only as a secondary action when the holder of the school permit has been cited or charged with a violation of some other law.

(4) A person who is younger than sixteen years of age but is over fourteen years of age may be issued an LPE-learner's permit, which permit shall be valid for a period of three months. An LPE-learner's permit shall not be issued until such person successfully completes a written examination prescribed by the department and demonstrates that he or she has sufficient powers of eyesight to safely operate a motor vehicle, moped, or motorcycle.

(5)(a) While holding the LPE-learner's permit, the person may operate a motor vehicle on the highways of this state if he or she has seated next to him or her a person who is a licensed operator or, in the case of a motorcycle or moped, if 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) 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.

**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.

**60-4,125 LPD-learner's permit; LPE-learner's permit; violations; impoundment or revocation of permit; effect on eligibility for operator's license.**

For any minor convicted or adjudicated of violating the terms of an LPD-learner's permit issued pursuant to section 60-4,123 or an LPE-learner's permit issued pursuant to section 60-4,124, the court shall, in addition to any other penalty or disposition, order the impoundment or revocation of such learner's permit and order that such minor shall not be eligible for another operator's license or school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

A copy of the court's abstract or adjudication shall be transmitted to the director who shall place in an impound status or revoke the LPD-learner's or LPE-learner's permit of such minor in accordance with the order of the court and not again issue another operator's license or school, farm, LPD-learner's, or LPE-learner's permit to such minor until such minor has attained the age of sixteen years.

**Source:** Laws 1963, c. 359, § 7, p. 1153; R.S.1943, (1988), § 60-409.05; Laws 1989, LB 285, § 75; Laws 1991, LB 420, § 13; Laws 1998, LB 320, § 12; Laws 2001, LB 38, § 34; Laws 2004, LB 353, § 1.

**60-4,126 Farm permit; issuance; violations; penalty.**

Any person who is younger than sixteen years of age but is over thirteen years of age and resides upon a farm in this state or is fourteen years of age or older and is employed for compensation upon a farm in this state may obtain a farm permit authorizing the operation of farm tractors, minitrucks, and other motorized implements of farm husbandry upon the highways of this state if the applicant for such farm permit furnishes satisfactory proof of age and satisfactorily demonstrates that he or she has knowledge of the operation of such equipment and of the rules of the road and laws respecting the operation of motor vehicles upon the highways of this state. Any person under sixteen years of age but not less than thirteen years of age may obtain a temporary permit to operate such equipment for a six-month period after presentation to the department of a request for the temporary permit signed by the person's parent or guardian and payment of the fee and surcharge prescribed in section 60-4,115. After the expiration of the six-month period, it shall be unlawful for such person to operate such equipment upon the highways of this state unless he or she has been issued a farm permit under this section. The fee for an original, renewal, or duplicate farm permit shall be the fee and surcharge prescribed in section 60-4,115. All farm permits shall be subject to revocation under the terms of section 60-496. Any person who violates the terms of a farm permit shall be guilty of an infraction and shall not be eligible for another

school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

**Source:** Laws 1989, LB 285, § 76; Laws 1993, LB 491, § 13; Laws 1998, LB 320, § 13; Laws 2001, LB 574, § 19; Laws 2008, LB911, § 19; Laws 2010, LB650, § 31.

**60-4,127 Motorcycle operation; Class M license required; issuance; examination.**

(1) No person shall operate a motorcycle on the alleys or highways of the State of Nebraska until such person has obtained a Class M license. No such license shall be issued until the applicant has (a) met the vision and physical requirements established under section 60-4,118 for operation of a motor vehicle and (b) successfully completed an examination, including the actual operation of a motorcycle, prescribed by the director, except that the required examination may be waived, including the actual operation of a motorcycle, if the applicant presents proof of successful completion of a motorcycle safety course under the Motorcycle Safety Education Act within the immediately preceding forty-eight months.

(2)(a) This subdivision applies until the implementation date designated by the director pursuant to section 60-462.02. Any applicant who qualifies for a Class M license shall be issued a license for such operation by the county treasurer as provided for the issuance of an operator's license. If the applicant is the holder of an operator's license, the county treasurer shall, upon receipt of the examiner's certificate, have endorsed on the license the authorization to operate a motorcycle. Fees for Class M licenses shall be as provided by section 60-4,115.

(b) This subdivision applies beginning on the implementation date designated by the director pursuant to section 60-462.02. Upon presentation of an issuance certificate, the county treasurer shall collect the fee and surcharge for a Class M license as prescribed by section 60-4,115 and issue a receipt with driving privileges which is valid for up to thirty days. The license shall be delivered as provided in section 60-4,113. If the applicant is the holder of an operator's license, the county treasurer shall, upon receipt of the examiner's certificate, have endorsed on the license the authorization to operate a motorcycle. Fees for Class M licenses shall be as provided by section 60-4,115.

**Source:** Laws 1967, c. 234, § 8, p. 626; Laws 1971, LB 962, § 1; Laws 1974, LB 328, § 2; Laws 1974, LB 821, § 13; Laws 1977, LB 90, § 2; Laws 1981, LB 22, § 15; Laws 1986, LB 1004, § 1; R.S. 1943, (1988), § 60-403.01; Laws 1989, LB 285, § 77; Laws 1990, LB 369, § 17; Laws 1993, LB 201, § 3; Laws 1993, LB 370, § 88; Laws 1999, LB 704, § 25; Laws 2001, LB 574, § 20; Laws 2008, LB911, § 20.

**Cross References**

Motorcycle Safety Education Act, see section 60-2120.

**60-4,128 Motorcycle operation without Class M license; penalty.**

Any person violating the provisions of section 60-4,127 shall be guilty of a traffic infraction and shall upon conviction thereof be fined not less than ten dollars nor more than one hundred dollars. In addition, a person operating a

motorcycle without a Class M license may be required to complete the basic motorcycle safety course as provided in the Motorcycle Safety Education Act.

**Source:** Laws 1971, LB 1041, § 1; Laws 1975, LB 328, § 4; R.S.1943, (1988), § 60-403.04; Laws 1989, LB 285, § 78; Laws 1990, LB 827, § 1.

**Cross References**

Motorcycle Safety Education Act, see section 60-2120.

**60-4,129 Employment driving permit; issuance; conditions; violations; penalty; revocation.**

(1) Any individual whose operator's license is revoked under section 60-498.02, 60-4,183, or 60-4,186 or suspended under section 43-3318 shall be eligible to operate any motor vehicle, except a commercial motor vehicle, in this state under an employment driving permit. An employment driving permit issued due to a revocation under section 60-498.02, 60-4,183, or 60-4,186 is valid for the period of revocation. An employment driving permit issued due to a suspension of an operator's license under section 43-3318 is valid for no more than three months and cannot be renewed. An employment driving permit shall not be issued to any person subject to an administrative license revocation who submitted to a chemical test pursuant to section 60-6,197 which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 if the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding twelve-year period at the time the order of revocation is issued.

(2) Any person whose operator's license has been suspended or revoked pursuant to any law of this state, except section 43-3318, 60-498.02, 60-4,183, or 60-4,186, shall not be eligible to receive an employment driving permit during the period of such suspension or revocation.

(3) An individual who is issued an employment driving permit may operate any motor vehicle, except a commercial motor vehicle, (a) from his or her residence to his or her place of employment and return and (b) during the normal course of employment if the use of a motor vehicle is necessary in the course of such employment. Such permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this section shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(4) The operation of a motor vehicle by the holder of an employment driving permit, except as provided in this section, shall be unlawful. Any person who violates this section shall be guilty of a Class IV misdemeanor.

(5) The director shall revoke the employment driving permit for an individual upon receipt of an abstract of conviction, other than a conviction which is based upon actions which resulted in the application for such employment driving permit, indicating that the individual committed an offense for which points are assessed pursuant to section 60-4,182. If the permit is revoked in this manner, the individual shall not be eligible to receive an employment driving permit for the remainder of the period of suspension or revocation of his or her operator's license.

**Source:** Laws 1975, LB 259, § 5; Laws 1977, LB 41, § 15; Laws 1982, LB 568, § 8; Laws 1986, LB 779, § 1; R.S.1943, (1988), § 39-669.34;

Laws 1989, LB 285, § 79; Laws 1992, LB 291, § 16; Laws 1993, LB 370, § 89; Laws 1997, LB 752, § 140; Laws 2003, LB 209, § 10; Laws 2010, LB805, § 6.

Absence of provision to issue occupational driving permits to implied consent violators does not violate the equal protection clause of the fourteenth amendment to the U.S. Constitution. Statute's long-range objective is to reduce carnage caused by intoxicated drivers by getting them off Nebraska roads. Porter v. Jensen, 223 Neb. 438, 390 N.W.2d 511 (1986).

**60-4,130 Employment driving permit; application; contents; driver improvement course; violations; penalty; loss of eligibility; appeal.**

(1) Application for an employment driving permit shall be made to the Department of Motor Vehicles on forms furnished for that purpose by the department. The application form shall contain such information as deemed necessary by the director to carry out this section and section 60-4,129. If the department has a digital image and digital signature of the applicant preserved in the digital system implemented under section 60-484.01, the employment driving permit, if issued, may contain such image and signature. The application form shall also include a voter registration portion pursuant to section 32-308 and the following specific question: Do you wish to register to vote as part of this application process? To be eligible for an employment driving permit, the applicant shall furnish, along with the application to the director, the following:

(a) An affidavit from the applicant's employer stating that such applicant is required to operate a motor vehicle from his or her residence to his or her place of employment and return;

(b) If such applicant requires the use of a motor vehicle during the normal course of employment, an affidavit from the applicant's employer setting forth the facts establishing such requirement;

(c) An affidavit stating that there exists no other reasonable alternative means of transportation to and from work available to the applicant; and

(d) If the applicant is self-employed, an affidavit to the department setting forth the provisions of his or her employment.

(2) Except as otherwise provided in this subsection, upon making application for such permit, the applicant shall certify that he or she will attend and complete, within sixty days, a driver improvement course presented by the department or show successful completion of the driver education and training course as provided in section 60-4,183. If such course is not completed, the employment driving permit shall be surrendered to the department. If any person fails to return to the department the permit as provided in this subsection, the department shall direct any peace officer or authorized representative of the department to secure possession of the permit and to return the permit to the department. An applicant whose operator's license has been suspended pursuant to section 43-3318 is not required to fulfill such driver improvement or education and training course requirements. All applicants shall file and maintain proof of financial responsibility as required by the Motor Vehicle Safety Responsibility Act.

(3) Any person who fails to surrender a permit, as required by this section, shall be guilty of a Class IV misdemeanor.

(4) The fee prescribed in section 60-4,115 shall be submitted to the department along with the application for an employment driving permit.

(5) When the holder of an employment driving permit is convicted, on or after the date of issuance of the employment driving permit, of any traffic violation or of operating a motor vehicle for a purpose other than specified by such permit, the person shall not be eligible to receive another employment driving permit during that particular period of revocation. This subsection does not apply to a holder of an employment driving permit if the reason for his or her license revocation or suspension only involved a suspension under section 43-3318 and not a revocation under any other section.

(6) Any person who feels himself or herself aggrieved because of the refusal of the director to issue the employment driving permit may appeal in the manner set forth in section 60-4,105.

**Source:** Laws 1975, LB 259, § 6; Laws 1977, LB 41, § 16; Laws 1982, LB 928, § 38; R.S.1943, (1988), § 39-669.35; Laws 1989, LB 285, § 80; Laws 1993, LB 370, § 90; Laws 1994, LB 76, § 573; Laws 1997, LB 752, § 141; Laws 1999, LB 704, § 26; Laws 2001, LB 574, § 21.

**Cross References**

Motor Vehicle Safety Responsibility Act, see section 60-569.

**60-4,130.01 Medical hardship driving permit; issuance; conditions; violations; penalty; revocation.**

(1) Any person whose license or privilege to operate a motor vehicle in this state is revoked under sections 60-4,183 and 60-4,186 shall be eligible to operate any motor vehicle, except a commercial motor vehicle, in this state under a medical hardship driving permit, valid for a period of ninety days. Upon expiration of the permit, a person may reapply for a medical hardship driving permit in the same manner as the original application.

(2) Any person whose license or privilege to operate a motor vehicle in this state has been suspended or revoked pursuant to any law of this state, except sections 60-4,183 and 60-4,186, shall not be eligible to receive a medical hardship driving permit during the period of such suspension or revocation.

(3) An individual who is issued a medical hardship driving permit may operate any motor vehicle, except a commercial motor vehicle, from his or her residence or place of employment to a hospital, clinic, doctor's office, or similar location and return. Such permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this section shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(4) The operation of a motor vehicle by the holder of a medical hardship driving permit, except as provided in this section, shall be unlawful. Any person who violates this section shall be guilty of a Class IV misdemeanor.

(5) The director shall revoke the medical hardship driving permit for an individual upon receipt of an abstract of conviction, other than a conviction which is based upon actions which resulted in the application for such medical hardship driving permit, indicating that the individual committed an offense for which points are assessed pursuant to section 60-4,182. If the permit is revoked in this manner, the individual shall not be eligible to receive a medical hardship driving permit for the remainder of the period of suspension or revocation of his or her operator's license or privilege to operate a motor vehicle.

**Source:** Laws 1993, LB 105, § 9.

**60-4,130.02 Medical hardship driving permit; application; contents; loss of eligibility; appeal.**

(1) Application for a medical hardship driving permit shall be made to the Department of Motor Vehicles on forms furnished for that purpose by the department. The application form shall contain such information as deemed necessary by the director to carry out this section and section 60-4,130.01. If the department has a digital image and digital signature of the applicant preserved in the digital system implemented under section 60-484.01, the medical hardship driving permit, if issued, may contain such image and signature. The application form shall also include a voter registration portion pursuant to section 32-308 and the following specific question: Do you wish to register to vote as part of this application process? To be eligible for a medical hardship driving permit, the applicant shall furnish, along with the application to the director, the following:

(a) An affidavit from the applicant's physician stating that it is necessary for such applicant to receive medical treatment at a location other than the applicant's residence and that the treatment will not impair the applicant's ability to operate a motor vehicle; and

(b) An affidavit stating that there exists no other reasonable alternative means of transportation to and from the site of medical treatment available to the applicant.

(2) The applicant shall also be required to file and maintain proof of financial responsibility as required by the Motor Vehicle Safety Responsibility Act.

(3) The fee prescribed in section 60-4,115 shall be submitted to the department along with the application for a medical hardship driving permit.

(4) When the holder of a medical hardship driving permit is convicted, on or after the date of issuance of the permit, of any traffic violation or of operating a motor vehicle for a purpose other than specified by such permit, the person shall not be eligible to receive another medical hardship driving permit during that particular period of revocation.

(5) Any person who feels himself or herself aggrieved because of the refusal of the director to issue the medical hardship driving permit may appeal in the manner set forth in section 60-4,105.

**Source:** Laws 1993, LB 105, § 10; Laws 1994, LB 76, § 574; Laws 1999, LB 704, § 27; Laws 2001, LB 574, § 22.

**Cross References**

Motor Vehicle Safety Responsibility Act, see section 60-569.

**60-4,130.03 Operator less than twenty-one years of age; driver improvement course; suspension; reinstatement.**

(1) Any person less than twenty-one years of age who holds an operator's license or a provisional operator's permit and who has accumulated, within any twelve-month period, a total of six or more points on his or her driving record pursuant to section 60-4,182 shall be notified by the Department of Motor Vehicles of that fact and ordered to attend and successfully complete a driver improvement course consisting of at least eight hours of department-approved instruction. Notice shall be sent by regular United States mail to the last-known address as shown in the records of the department. If such person fails to complete the driver improvement course within three months after the date of

notification, he or she shall have his or her operator's license suspended by the department.

(2) The director shall issue an order summarily suspending an operator's license until the licensee turns twenty-one years of age. Such order shall be sent by certified or registered 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.

**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 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. The Nebraska Safety Center shall offer a department-approved driver safety course at least once each year in any county where no approved course is offered.

**Source:** Laws 1998, LB 320, § 15.

**60-4,130.05 Driver safety courses; rules and regulations; fee.**

The Department of Motor Vehicles shall adopt and promulgate rules and regulations for the approval and administration of driver safety courses. No driver safety course shall be approved until a certificate is obtained from the department. The certificate shall be valid for two years after the date of issuance. Each original and renewal certificate application for a driver safety course shall be accompanied by a one-hundred-dollar fee. The fee shall be collected by the department and remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 1998, LB 320, § 16.

(h) PROVISIONS APPLICABLE TO OPERATION  
OF COMMERCIAL MOTOR VEHICLES

**60-4,131 Sections; applicability; terms, defined.**

(1) Sections 60-462.01 and 60-4,132 to 60-4,172 shall apply to the operation of any commercial motor vehicle.

(2) For purposes of such sections:

(a) Disqualification means either:

(i) The suspension, revocation, cancellation, or any other withdrawal by a state of a person's privilege to drive a commercial motor vehicle; or

(ii) A determination by the Federal Motor Carrier Safety Administration, under the rules of practice for motor carrier safety contained in 49 C.F.R. 386,

that a person is no longer qualified to operate a commercial motor vehicle under 49 C.F.R. 391; or

(iii) The loss of qualification which automatically follows conviction of an offense listed in 49 C.F.R. 383.51;

(b) Employee means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent, or occasional drivers; and leased drivers and independent, owner-operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer;

(c) Employer means any person, including the United States, a state, the District of Columbia, or a political subdivision of a state, that owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle;

(d) Endorsement means an authorization to an individual's commercial driver's license required to permit the individual to operate certain types of commercial motor vehicles;

(e) Representative vehicle means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate;

(f) State means a state of the United States and the District of Columbia;

(g) State of domicile means that state where a person has his or her true, fixed, and permanent home and principal residence and to which he or she has the intention of returning whenever he or she is absent;

(h) Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicle includes, but is not limited to, a cargo tank and a portable tank, as defined in 49 C.F.R. 171. However, this definition does not include a portable tank that has a rated capacity under one thousand gallons;

(i) United States means the fifty states and the District of Columbia; and

(j) Vehicle group means a class or type of vehicle with certain operating characteristics.

**Source:** Laws 1989, LB 285, § 81; Laws 1990, LB 980, § 11; Laws 1993, LB 420, § 5; Laws 1996, LB 323, § 2; Laws 2003, LB 562, § 7; Laws 2005, LB 76, § 7.

**60-4,131.01 Individuals operating commercial motor vehicles for military purposes; applicability of sections.**

Sections 60-462.01 and 60-4,132 to 60-4,172 shall not apply to individuals who operate commercial motor vehicles for military purposes, including and limited to:

(1) Active duty military personnel;

(2) Members of the military reserves, other than military technicians;

(3) Active duty United States Coast Guard personnel; and

(4) Members of the National Guard on active duty, including:

(a) Personnel on full-time National Guard duty;

(b) Personnel on part-time National Guard training; and

(c) National Guard military technicians required to wear military uniforms.

Such individuals must have a valid military driver's license unless such individual is operating the vehicle under written orders from a commanding officer in an emergency declared by the federal government or by the State of Nebraska.

**Source:** Laws 2006, LB 853, § 13.

**60-4,132 Purposes of sections.**

The purposes of sections 60-462.01 and 60-4,137 to 60-4,172 are to implement the requirements mandated by the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31100 et seq., the federal Motor Carrier Safety Improvement Act of 1999, Public Law 106-159, section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, and federal regulations and to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by: (1) Permitting drivers to hold only one operator's license; (2) disqualifying drivers for specified offenses and serious traffic violations; and (3) strengthening licensing and testing standards.

**Source:** Laws 1989, LB 285, § 82; Laws 1993, LB 7, § 2; Laws 1993, LB 420, § 6; Laws 2002, LB 499, § 1; Laws 2003, LB 562, § 8; Laws 2005, LB 76, § 8.

**60-4,133 Repealed. Laws 1993, LB 7, § 5.**

**60-4,134 Repealed. Laws 1993, LB 7, § 5.**

**60-4,135 Repealed. Laws 1993, LB 7, § 5.**

**60-4,136 Repealed. Laws 1990, LB 980, § 37.**

**60-4,137 Operation of commercial motor vehicle; commercial driver's license or LPC-learner's permit required.**

Any resident of this state operating a commercial motor vehicle on the highways of this state shall possess a commercial driver's license or LPC-learner's permit issued pursuant to sections 60-462.01 and 60-4,138 to 60-4,172.

**Source:** Laws 1989, LB 285, § 87; Laws 1993, LB 7, § 3; Laws 1993, LB 420, § 7; Laws 2001, LB 108, § 1; Laws 2003, LB 562, § 9; Laws 2005, LB 76, § 9.

**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 of Motor Vehicles, 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) I — Operation of a commercial motor vehicle only in intrastate commerce due to an exemption from 49 C.F.R. part 391 pursuant to subsection (4) of section 75-363;

(b) K — Operation of a commercial motor vehicle only in intrastate commerce;

(c) L — Operation of only a commercial motor vehicle which is not equipped with air brakes;

(d) M — Operation of a commercial motor vehicle which is not a Class A bus;

(e) N — Operation of a commercial motor vehicle which is not a Class A or Class B bus; and

(f) O — Operation of a commercial motor vehicle which is not a tractor-trailer combination.

**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.

**60-4,139 Commercial motor vehicle; nonresident; operating privilege.**

Any nonresident may operate a commercial motor vehicle upon the highways of this state if (1) such nonresident has in his or her immediate possession a valid commercial driver's license or LPC-learner's permit issued by his or her state of residence or by a jurisdiction with standards that are in accord with 49 C.F.R. part 383 or an LPC-learner's permit issued by this state, (2) the license or permit is not suspended, revoked, or canceled, and (3) such nonresident is not disqualified from operating a commercial motor vehicle.

**Source:** Laws 1989, LB 285, § 89; Laws 2001, LB 108, § 2; Laws 2006, LB 853, § 10.

**60-4,139.01 School bus endorsement; requirements.**

Beginning September 30, 2005, 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.

**60-4,140 Multiple licenses; violation; penalty.**

No person who operates a commercial motor vehicle upon the highways of this state shall at any time have more than one operator's license issued by any state. Any person who violates this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 285, § 90.

**60-4,141 Operation outside classification of license; restrictions; violation; penalty.**

(1) Except as provided in subsections (2) and (3) of this section, no person shall operate any class of commercial motor vehicle upon the highways of this state unless such person possesses a valid commercial driver's license authorizing the operation of the class of commercial motor vehicle being operated, except that (a) any person possessing a valid commercial driver's license authorizing the operation of a Class A commercial motor vehicle may lawfully operate any Class B or C commercial motor vehicle and (b) any person possessing a valid commercial driver's license authorizing the operation of a Class B commercial motor vehicle may lawfully operate a Class C commercial motor vehicle. No person shall operate upon the highways of this state any commercial motor vehicle which requires a specific endorsement unless such person possesses a valid commercial driver's license with such endorsement. No person possessing a restricted commercial driver's license shall operate upon the highways of this state any commercial motor vehicle to which such restriction is applicable.

(2) Any person holding an LPC-learner's permit may operate a commercial motor vehicle for learning purposes upon the highways of this state if accompanied by a person who is twenty-one years of age or older, who holds a commercial driver's license valid for the class of commercial motor vehicle being operated, and who occupies the seat beside the person for the purpose of giving instruction in the operation of the commercial motor vehicle. Any person

holding an LPC-learner's permit may operate a commercial motor vehicle upon the highways of this state for purposes of taking a driving skills examination if accompanied by an examiner who is designated by the director under section 60-4,149 or employed by a third-party tester certified pursuant to section 60-4,158 and who occupies the seat beside the person for the purpose of giving the examination. A person holding an LPC-learner's permit shall not operate a commercial motor vehicle transporting hazardous materials.

(3) The provisions of subsection (1) of this section shall not apply to any nonresident until the state of residence of such nonresident begins the issuance of commercial drivers' licenses in conformance with the requirements of the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31100 et seq., and the Motor Carrier Safety Improvement Act of 1999, 49 U.S.C. 31301 et seq., and 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 such nonresident is required by his or her state of residence to possess a commercial driver's license to operate a commercial motor vehicle. Any nonresident who is in this state for a period of thirty consecutive days or more shall apply for a Nebraska-issued commercial driver's license and shall surrender to the Department of Motor Vehicles any operator's license issued to such nonresident by any other state.

(4) Any person who operates a commercial motor vehicle upon the highways of this state in violation of this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 285, § 91; Laws 1990, LB 980, § 15; Laws 1993, LB 7, § 4; Laws 1999, LB 704, § 28; Laws 2005, LB 76, § 10.

**60-4,141.01 Operation of commercial motor vehicle; restrictions; prohibited acts; violation; penalty.**

(1) No person shall operate a commercial motor vehicle upon the highways of this state while his or her commercial driver's license or privilege to operate a commercial motor vehicle is suspended, revoked, or canceled, while subject to a disqualification or an out-of-service order, or while there is an out-of-service order in effect for the commercial motor vehicle being operated or for the motor carrier operation.

(2) No person shall operate a commercial motor vehicle transporting hazardous materials upon the highways of this state while his or her commercial driver's license or privilege to operate a commercial motor vehicle is suspended, revoked, or canceled, while subject to a disqualification or an out-of-service order, or while there is an out-of-service order in effect for the commercial motor vehicle being operated or for the motor carrier operation.

(3) No person shall operate a commercial motor vehicle transporting sixteen or more passengers including the driver upon the highways of this state while his or her commercial driver's license or privilege to operate a commercial motor vehicle is suspended, revoked, or canceled, while subject to a disqualification or an out-of-service order, or while there is an out-of-service order in effect for the commercial motor vehicle being operated or for the motor carrier operation.

(4) No person shall operate a commercial motor vehicle upon the highways of this state while he or she is disqualified under section 60-4,168.

(5) Any person operating a commercial motor vehicle in violation of subsection (1), (2), (3), or (4) of this section shall (a) for a first such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any commercial motor vehicle for any purpose for a period of one year from the date ordered by the court and also order the commercial driver's license of such person to be revoked for a like period and (b) for each subsequent such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any commercial motor vehicle for any purpose for a period of two years from the date ordered by the court and also order the commercial driver's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

(6) For purposes of this section, out-of-service order has the same meaning as in section 75-362.

**Source:** Laws 1990, LB 980, § 16; Laws 2001, LB 38, § 36; Laws 2003, LB 562, § 12; Laws 2009, LB204, § 1.

**60-4,142 LPC-learner's permit; issuance.**

Any resident may obtain, on a form to be prescribed by the director, an LPC-learner's permit from the county treasurer by making application to an examiner of the Department of Motor Vehicles. An applicant shall present proof to the examiner that he or she holds a valid Class O license or commercial driver's license or shall successfully complete the requirements for the Class O license before an LPC-learner's permit is issued. An applicant shall also successfully complete the commercial driver's license general knowledge examination under section 60-4,155. Upon application, the examination may be waived if the applicant presents a Nebraska commercial driver's license which is valid or has been expired for less than one year, presents a valid commercial driver's license from another state, or is renewing an LPC-learner's permit. The LPC-learner's permit shall be valid for a period of six months and shall be renewed only once within any two-year period. The county treasurer shall charge the fee prescribed in section 60-4,115 for the issuance or renewal of an LPC-learner's permit.

**Source:** Laws 1989, LB 285, § 92; Laws 1990, LB 980, § 17; Laws 1998, LB 320, § 17; Laws 2001, LB 108, § 3; Laws 2001, LB 574, § 23; Laws 2003, LB 562, § 13; Laws 2006, LB 853, § 11.

**60-4,143 Commercial driver's license; LPC-learner's permit; issuance; restriction; surrender of other licenses.**

(1) No commercial driver's license or LPC-learner's permit shall, under any circumstances, be issued to any person who has not attained the age of eighteen years.

(2) A commercial driver's license or LPC-learner's permit shall not be issued to any person during the period the person is subject to a disqualification in this or any other state or while the person's operator's license is suspended, revoked, or canceled in this or any other state.

(3) The Department of Motor Vehicles shall not issue any commercial driver's license to any person unless the person applying for a commercial driver's

license first surrenders to the department all operators' licenses issued to such person by this or any other state. Any operator's license issued by another state which is surrendered to the department shall be returned to that state by the director for cancellation.

Source: Laws 1989, LB 285, § 93; Laws 2005, LB 76, § 11.

**60-4,144 Commercial drivers' licenses; applications; examiner's certificate; contents; application; demonstration of knowledge and skills; information and documentation required.**

(1)(a) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. Application for any original or renewal commercial driver's license or application for any change of class of commercial motor vehicle, endorsement, or restriction may be made in a manner prescribed by the department. Such application may be made to an examiner in any county. The examiner shall personally conduct the examination of the applicant and deliver to each successful applicant an examiner's certificate containing the statements made pursuant to subdivision (b) of this subsection.

(b) The application or examiner's certificate shall include the voter registration portion pursuant to section 32-308, the advisement language required by subsection (5) of section 60-6,197, and the following:

(i) The full name, the current mailing address, and the residential address of the applicant, except that if the applicant is a program participant under the Address Confidentiality Act, he or she need not supply his or her residential address;

(ii) A physical description of the applicant, including sex, height, weight, and eye and hair colors;

(iii) The applicant's date of birth;

(iv) The applicant's social security number;

(v) The applicant's signature;

(vi) Certification that the commercial motor vehicle in which the applicant takes any driving skills examination is representative of the class of commercial motor vehicle that the applicant operates or expects to operate;

(vii) The certification required pursuant to section 60-4,145 or 60-4,146;

(viii) Beginning September 30, 2005, the names of all states where the applicant has been licensed to operate any type of motor vehicle in the ten years prior to the date of application;

(ix) The following specific questions:

(A) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(I) lost voluntary control or consciousness ... yes ... no

(II) experienced vertigo or multiple episodes of dizziness or fainting ... yes ... no

(III) experienced disorientation ... yes ... no

(IV) experienced seizures ... yes ... no

(V) experienced impairment of memory, memory loss ... yes ... no

Please explain: .....

(B) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of or impairment of foot, leg, hand, or arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain: .....

(C) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive: .....

(x) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(xi) Do you wish to be an organ and tissue donor?

(xii) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(xiii) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(c) Application shall be made under oath or affirmation of the applicant.

(2) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. An applicant for any original or renewal commercial driver's license or an applicant for a change of class of commercial motor vehicle, endorsement, or restriction shall demonstrate his or her knowledge and skills for operating a commercial motor vehicle as prescribed in the Motor Vehicle Operator's License Act. An applicant for a commercial driver's license shall provide the information and documentation required by this section and section 60-484. Such information and documentation shall include:

(a) Certification that the commercial motor vehicle in which the applicant takes any driving skills examination is representative of the class of commercial motor vehicle that the applicant operates or expects to operate;

(b) The certification required pursuant to section 60-4,145 or 60-4,146; and

(c) The names of all states where the applicant has been licensed to operate any type of motor vehicle in the ten years prior to the date of application.

Source: Laws 1989, LB 285, § 94; Laws 1992, LB 1178, § 4; Laws 1994, LB 76, § 575; Laws 1997, LB 635, § 21; Laws 1999, LB 147, § 3; Laws 1999, LB 704, § 29; Laws 2000, LB 1317, § 8; Laws 2001, LB 34, § 5; Laws 2003, LB 228, § 13; Laws 2003, LB 562, § 14; Laws 2004, LB 208, § 7; Laws 2004, LB 559, § 4; Laws 2005, LB 76, § 12; Laws 2008, LB911, § 21.

Cross References

Address Confidentiality Act, see section 42-1201.

60-4,145 Application; operation in interstate or foreign commerce; certification required.

Upon making any application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle in interstate or foreign commerce and who is subject to 49 C.F.R. part 391 adopted pursuant to section 75-363 shall certify that the applicant meets the qualification require-

ments of 49 C.F.R. part 391. A commercial driver's license examiner may require any applicant making certification pursuant to this section to demonstrate with or without the aid of corrective devices sufficient powers of eyesight to enable him or her to operate a commercial motor vehicle in conformance with the minimum vision requirements of 49 C.F.R. part 391 adopted pursuant to section 75-363. If from the examination given it appears that any applicant's powers of eyesight are such that he or she cannot meet the minimum vision requirements, the examiner shall allow the applicant to present an ophthalmologist's or optometrist's certificate to the effect that the applicant has sufficient powers of eyesight for such purpose before issuing a commercial driver's license to the applicant. If the examination given by the commercial driver's license examiner or the ophthalmologist's or optometrist's certificate indicates that the applicant must wear a corrective device to meet the minimum vision requirements established by this section, the applicant shall have the use of the commercial driver's license issued to him or her restricted to wearing a corrective device while operating a motor vehicle. An applicant who has been issued a waiver or exemption by the Federal Motor Carrier Safety Administration from the vision requirements set forth in 49 C.F.R. 391.41(b)(10) may be issued an interstate commercial driver's license without meeting the vision requirements set forth in 49 C.F.R. 391.41(b)(10).

**Source:** Laws 1989, LB 285, § 95; Laws 1990, LB 980, § 18; Laws 1999, LB 704, § 30; Laws 2006, LB 1007, § 7.

**60-4,146 Application; operation in intrastate commerce; certification; restrictions.**

(1) Upon making application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle solely in intrastate commerce and who is not subject to 49 C.F.R. part 391 adopted pursuant to section 75-363 shall certify that he or she is not subject to 49 C.F.R. part 391. Any applicant making certification pursuant to this section shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board.

(2) An applicant who certifies that he or she is exempt from the physical qualifications and examination requirements of 49 C.F.R. part 391 pursuant to subsection (4) of section 75-363 shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board. A successful applicant shall be issued a commercial driver's license which restricts the holder to operating a commercial motor vehicle solely in intrastate commerce and which also indicates that the holder is exempt from the physical qualifications and examination requirements prescribed by 49 C.F.R. part 391. Two years after the initial issuance of such license and upon renewal, and every two years following renewal, the holder of the commercial driver's license shall present to the Department of Motor Vehicles upon request, on a form to be prescribed by the department, a statement from a physician detailing that based upon his or her examination of the applicant the medical or physical condition in existence prior to July 30, 1996, which would otherwise render the individual not qualified under federal standards, has not significantly worsened or that another nonqualifying medical or physical condition has not developed.

(3) An applicant who certifies that he or she is not subject to 49 C.F.R. part 391 under subsection (1) of this section or who certifies that he or she is exempt from 49 C.F.R. part 391 under subsection (2) of this section shall answer the following questions on the application:

(a) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(i) lost voluntary control or consciousness ... yes ... no

(ii) experienced vertigo or multiple episodes of dizziness or fainting ... yes ... no

(iii) experienced disorientation ... yes ... no

(iv) experienced seizures ... yes ... no

(v) experienced impairment of memory, memory loss ... yes ... no

Please explain: .....

(b) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain: .....

(c) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive: .....

**Source:** Laws 1989, LB 285, § 96; Laws 1990, LB 980, § 19; Laws 1994, LB 211, § 11; Laws 1996, LB 938, § 2; Laws 1998, LB 320, § 18; Laws 1999, LB 704, § 31; Laws 2006, LB 1007, § 8.

**60-4,146.01 Restricted commercial driver's license; seasonal permit; application or examiner's certificate; operation permitted; term; violation; penalty.**

(1) Any resident of this state who is a seasonal commercial motor vehicle operator for a farm-related or ranch-related service industry may apply for a restricted commercial driver's license. If the applicant is an individual, the application or examiner's certificate shall include the applicant's social security number. A restricted commercial driver's license shall authorize the holder to operate any Class B Heavy Straight Vehicle commercial motor vehicle or any Class B Heavy Straight Vehicle or Class C Small Vehicle commercial motor vehicle required to be placarded pursuant to section 75-364 when the hazardous material being transported is (a) diesel fuel in quantities of one thousand gallons or less, (b) liquid fertilizers in vehicles or implements of husbandry with total capacities of three thousand gallons or less, or (c) solid fertilizers that are not transported or mixed with any organic substance within one hundred fifty miles of the employer's place of business or the farm or ranch being served.

(2) Any applicant for a restricted commercial driver's license or seasonal permit shall be eighteen years of age or older, shall have possessed a valid operator's license during the twelve-month period immediately preceding application, and shall demonstrate, in a manner to be prescribed by the director, that:

(a) If the applicant has possessed a valid operator's license for two or more years, that in the two-year period immediately preceding application the applicant:

(i) Has not possessed more than one operator's license at one time;

(ii) Has not been subject to any order of suspension, revocation, or cancellation of any type;

(iii) Has no convictions involving any type or classification of motor vehicle of the disqualification offenses enumerated in sections 60-4,168 and 60-4,168.01; and

(iv) Has no convictions for traffic law violations that are accident-connected and no record of at-fault accidents; and

(b) If the applicant has possessed a valid operator's license for more than one but less than two years, the applicant shall demonstrate that he or she meets the requirements prescribed in subdivision (a) of this subsection for the entire period of his or her driving record history.

(3) The commercial motor vehicle operating privilege as conferred by the restricted commercial driver's license shall be valid for five years if annually revalidated by the seasonal permit which shall be valid for no more than one hundred eighty consecutive days in any twelve-month period. To revalidate the restricted commercial driver's license, the applicant shall meet the requirements of subsection (2) of this section and shall designate a time period he or she desires the commercial motor vehicle operating privilege to be valid. The time period designated by the applicant shall appear and be clearly indicated on the seasonal permit. A seasonal permit shall not be issued to any person more than once in any twelve-month period. The holder of a restricted commercial driver's license shall operate commercial motor vehicles in the course or scope of his or her employment within one hundred fifty miles of the employer's place of business or the farm or ranch currently being served.

(4) Any person who violates any provision of this section shall, upon conviction, be guilty of a Class III misdemeanor. In addition to any penalty imposed by the court, the director shall also revoke such person's restricted commercial driver's license and shall disqualify such person from operating any commercial motor vehicle in Nebraska for a period of five years.

(5) The Department of Motor Vehicles shall adopt and promulgate rules and regulations to carry out the requirements of this section.

(6) For purposes of this section:

(a) Agricultural chemical business means any business that transports agricultural chemicals predominately to or from a farm or ranch;

(b) Farm-related or ranch-related service industry means any custom harvester, retail agricultural outlet or supplier, agricultural chemical business, or livestock feeder which operates commercial motor vehicles for the purpose of transporting agricultural products, livestock, farm machinery and equipment, or farm supplies to or from a farm or ranch;

(c) Retail agricultural outlet or supplier means any retail outlet or supplier that transports either agricultural products, farm machinery, farm supplies, or both, predominately to or from a farm or ranch; and

(d) Seasonal commercial motor vehicle operator means any person who, exclusively on a seasonal basis, operates a commercial motor vehicle for a farm-related or ranch-related service industry.

**Source:** Laws 1993, LB 420, § 13; Laws 1996, LB 323, § 3; Laws 1997, LB 752, § 142; Laws 1998, LB 309, § 8; Laws 1999, LB 704, § 32.

**60-4,147 Repealed. Laws 1990, LB 980, § 37.****60-4,147.01 Driver's record; disclosure of convictions; requirements.**

The Department of Motor Vehicles, a prosecutor, or a court must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a commercial driver's license driver's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the state where the driver is licensed or another state.

**Source:** Laws 2005, LB 76, § 16.

**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 rules and regulations adopted and promulgated pursuant thereto as of January 1, 2010, 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.

**60-4,147.03 Hazardous materials endorsement; application process.**

Beginning on an implementation date designated by the director, an applicant for a new, renewal, or transferred hazardous materials endorsement shall complete an application process including threat assessment, background check, fingerprints, and payment of fees as prescribed by 49 C.F.R. 1522, 1570, and 1572. Upon receipt of a determination of threat assessment from the Transportation Security Administration of the United States Department of Homeland Security or its agent, the department shall retain the application for not less than one year.

**Source:** Laws 2005, LB 76, § 18.

**60-4,147.04 Hazardous materials endorsement; security threat assessment; department; powers.**

Before a hazardous materials endorsement is issued, renewed, or transferred, the Department of Motor Vehicles must receive a determination of no security threat from the Transportation Security Administration of the United States Department of Homeland Security or its agent. The Department of Motor Vehicles shall cancel any existing commercial driver's license with a hazardous materials endorsement authorizing a driver to operate a vehicle transporting hazardous materials if it has received a determination that the holder of such endorsement does not meet the standards for security threat assessment as provided in 49 C.F.R. 1572 established by the Transportation Security Adminis-

tration or its agent. The department may refuse to process an application for a new, renewal, or transferred commercial driver's license with a hazardous materials endorsement if:

- (1) The applicant fails to submit to fingerprinting;
- (2) The applicant fails to submit to required information and documentations;
- (3) The applicant fails to pay the required fees;
- (4) The applicant fails to pass any element of the hazardous materials portion of the commercial driver's license examination;
- (5) The department receives a final determination of threat assessment from the Transportation Security Administration or its agent; or
- (6) The department has not received from the Transportation Security Administration or its agent an advisement regarding the applicant's security threat status.

**Source:** Laws 2005, LB 76, § 19.

**60-4,147.05 Hazardous materials endorsement; expiration; when.**

(1) A commercial driver's license with a hazardous materials endorsement expires five years after the date of issuance of a determination of no security threat.

(2) When adding a hazardous materials endorsement to an existing Nebraska commercial driver's license before the expiration date of the existing license, the expiration date of the new commercial driver's license with the hazardous materials endorsement added shall be five years from the date of the determination of threat assessment. The license shall be issued upon payment of the appropriate prorated fee prescribed in section 60-4,115 for any additional time period added. If the date of the threat assessment plus five years is earlier than the expiration date of the commercial driver's license before the hazardous materials endorsement was added, the fee for a change of class, endorsement, or restriction shall apply.

(3) The Department of Motor Vehicles shall mail out a renewal notice for each such license at least sixty days before the expiration of the license. An applicant for renewal may initiate the renewal process after receiving such notice, but the renewal process shall be initiated at least thirty days before the expiration date in order to allow time to process the security threat assessment. The department may extend the expiration date of the endorsement for ninety days if the Transportation Security Administration of the United States Department of Homeland Security or its agent has not provided a determination of threat assessment before the expiration date. Any additional extension must be approved in advance by the designee of the Transportation Security Administration.

**Source:** Laws 2005, LB 76, § 20.

**60-4,147.06 Hazardous material endorsement; transfer from another state; procedure.**

An applicant who transfers from another state shall surrender his or her commercial driver's license with a hazardous material endorsement before the issuance of a commercial driver's license by the State of Nebraska. The renewal period established in the preceding state shall be the expiration date for the

Nebraska license if a determination of threat assessment has been completed by the other state prior to issuance of the license. The Department of Motor Vehicles shall issue prorated licenses with appropriate prorated fees prescribed in section 60-4,115 to applicants transferring from another state. Applicants transferring from another state who have completed the determination of threat assessment shall not be required to undergo a determination of threat assessment until the determination of threat assessment established in the preceding state expires.

**Source:** Laws 2005, LB 76, § 21.

**60-4,148 Commercial drivers' licenses; issuance.**

(1) All commercial drivers' licenses shall be issued by the department as provided in section 60-4,149. Successful applicants shall pay the fee and surcharge prescribed in section 60-4,115.

(2) Any person making application to add or remove a class of commercial motor vehicle, any endorsement, or any restriction to or from a previously issued and outstanding commercial driver's license shall pay the fee and surcharge prescribed in section 60-4,115. The fee for an original or renewal seasonal permit to revalidate the restricted commercial motor vehicle operating privilege to a previously issued and outstanding restricted commercial driver's license shall be the fee and surcharge prescribed in section 60-4,115.

**Source:** Laws 1989, LB 285, § 98; Laws 1990, LB 980, § 20; Laws 1991, LB 854, § 2; Laws 1993, LB 420, § 10; Laws 1997, LB 752, § 143; Laws 1998, LB 309, § 9; Laws 1999, LB 704, § 33; Laws 2001, LB 574, § 24; Laws 2008, LB911, § 22.

**60-4,149 Commercial drivers' licenses; examination; issuance; delivery.**

(1) The examination for commercial drivers' licenses by the department shall occur in and for each county of the State of Nebraska. Each county shall furnish office space for the administration of the examinations, except that two or more counties may, with the permission of the director, establish a separate facility to jointly conduct the examinations for such licenses.

(2) Except as provided for by section 60-4,157, all commercial driver's license examinations shall be conducted by department personnel designated by the director. Each successful applicant shall be issued a certificate entitling the applicant to secure a commercial driver's license. If department personnel refuse to issue such certificate for cause, he or she shall state such cause in writing and deliver the same to the applicant. Department personnel shall not be required to hold a commercial driver's license to administer a driving skills examination and occupy the seat beside an applicant for a commercial driver's license.

(3)(a) This subdivision applies until the implementation date designated by the director pursuant to section 60-462.02. The successful applicant shall, within thirty days, present his or her certificate to the county treasurer who shall immediately issue the commercial driver's license and collect the fee. The county treasurer shall report the issuance of commercial drivers' licenses and LPC-learners' permits to the department within five days after issuance.

(b) This subdivision applies beginning on the implementation date designated by the director pursuant to section 60-462.02. The successful applicant shall,

within thirty days, present his or her issuance certificate to the county treasurer who shall collect the fee and surcharge as provided in section 60-4,115 and issue a receipt with driving privileges which is valid for up to thirty days. The commercial driver's license shall be delivered to the applicant as provided in section 60-4,113.

**Source:** Laws 1989, LB 285, § 99; Laws 1990, LB 980, § 21; Laws 1999, LB 704, § 34; Laws 2008, LB911, § 23.

**60-4,149.01 Commercial drivers' licenses; law examination; exceptions; waiver.**

(1) A commercial driver's license examiner shall not require the commercial driver's license knowledge examination, except the hazardous material portion of the examination and any knowledge examinations not previously taken for that class of commercial motor vehicle or endorsement, if the applicant renews his or her commercial driver's license prior to its expiration or within one year after its expiration and if the applicant's driving record abstract maintained in the department's computerized records shows that his or her commercial driver's license is not suspended, revoked, canceled, or disqualified.

(2) A nonresident who holds a valid commercial driver's license from another state shall not be required to take the commercial driver's license knowledge examination, except the hazardous material portion of the examination and any knowledge examinations not previously taken for that class of commercial motor vehicle or endorsement, if the nonresident surrenders his or her valid out-of-state commercial driver's license to the commercial driver's license examiner.

(3) The commercial motor vehicle general knowledge examination shall be waived for the commercial driver's license applicant if the applicant holds a Nebraska-issued LPC-learner's permit that is valid or has been expired less than one year that is not canceled, suspended, revoked, or disqualified.

**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.

**60-4,150 Commercial drivers' licenses; duplicate and replacement licenses; delivery.**

(1) Any person holding a commercial driver's license who loses his or her license, who requires issuance of a replacement license because of a change of name or address, or whose license is mutilated or unreadable may obtain a duplicate or replacement commercial driver's license by filing an application and by furnishing proof of identification in accordance with section 60-484.

(2) The application for a replacement license because of a change of name or address shall be made within sixty days after the change of name or address.

(3)(a) This subdivision applies until the implementation date designated by the director pursuant to section 60-462.02. Upon the examiner being satisfied that a duplicate or replacement commercial driver's license should be issued, the applicant shall receive such license upon payment of the fee prescribed in section 60-4,115 to the county treasurer.

(b) This subdivision applies beginning on the implementation date designated by the director pursuant to section 60-462.02. A duplicate or replacement commercial driver's license shall be delivered to the applicant as provided in

section 60-4,113 after the county treasurer collects the fee and surcharge prescribed in section 60-4,115 and issues the applicant a receipt with driving privileges which is valid for up to thirty days.

(4) Duplicate and replacement commercial drivers' licenses shall be issued in the manner provided for the issuance of original and renewal commercial drivers' licenses as provided for by section 60-4,149. Upon issuance of any duplicate or replacement commercial driver's license, the commercial driver's license for which the duplicate or replacement license is issued shall be void.

**Source:** Laws 1989, LB 285, § 100; Laws 1990, LB 980, § 22; Laws 1993, LB 126, § 2; Laws 1998, LB 309, § 10; Laws 2001, LB 574, § 25; Laws 2005, LB 1, § 9; Laws 2008, LB911, § 24; Laws 2010, LB805, § 8.

**60-4,151 Commercial driver's license; restricted commercial driver's license; seasonal permit; form.**

(1)(a) The commercial driver's license shall be conspicuously marked Nebraska Commercial Driver's License and shall be, to the maximum extent practicable, tamper and forgery proof.

(b) This subdivision applies until the implementation date designated by the director pursuant to section 60-462.02. The commercial driver's license shall include the following information:

- (i) The name and residential address of the holder;
- (ii) The holder's color photograph or digital image;
- (iii) A physical description of the holder, including sex, height, weight, and eye and hair colors;
- (iv) The holder's date of birth;
- (v) The holder's signature;
- (vi) The class of commercial motor vehicle or vehicles which the holder is authorized to operate, including any endorsements or restrictions;
- (vii) The dates between which the commercial driver's license is valid; and
- (viii) The organ and tissue donor information specified in section 60-494.

(c) This subdivision applies beginning on the implementation date designated by the director pursuant to section 60-462.02. The form of the commercial driver's license shall also comply with section 60-4,117.

(2) The restricted commercial driver's license shall be conspicuously marked Nebraska Restricted Commercial Driver's License and shall be, to the maximum extent practicable, tamper and forgery proof. The restricted commercial driver's license shall contain such additional information as deemed necessary by the director.

(3) The seasonal permit shall contain such information as deemed necessary by the director but shall include the time period during which the commercial motor vehicle operating privilege is effective. The seasonal permit shall be valid only when held in conjunction with a restricted commercial driver's license.

**Source:** Laws 1989, LB 285, § 101; Laws 1992, LB 1178, § 5; Laws 1993, LB 420, § 11; Laws 2001, LB 34, § 6; Laws 2001, LB 574, § 26; Laws 2008, LB911, § 25.

**60-4,152 Commercial driver's license issued to minor; form.**

Any commercial driver's license issued by the Department of Motor Vehicles to a minor as defined in section 53-103.23, as such definition may be amended from time to time by the Legislature, shall be of a distinct designation, of a type prescribed by the director, from the commercial driver's license of a person who is not a minor.

**Source:** Laws 1989, LB 285, § 102; Laws 1993, LB 201, § 4; Laws 2010, LB861, § 81.

**60-4,153 Issuance of license; department; duties.**

Prior to the issuance of any original or renewal commercial driver's license or the reissuance of any commercial driver's license with a change of any classification, endorsement, or restriction, the Department of Motor Vehicles shall, within twenty-four hours prior to issuance if the applicant does not currently possess a valid commercial driver's license issued by this state and within ten days prior to the issuance or reissuance for all other applicants:

(1) Check the driving record of the applicant as maintained by the department or by any other state which has issued an operator's license to the applicant;

(2) Contact the Commercial Driver License Information System to determine whether the applicant possesses any valid commercial driver's license issued by any other state, whether such license or the applicant's privilege to operate a commercial motor vehicle has been suspended, revoked, or canceled, or whether the applicant has been disqualified from operating a commercial motor vehicle; and

(3) Contact the National Driver Register to determine if the applicant (a) has been disqualified from operating any motor vehicle, (b) has had an operator's license suspended, revoked, or canceled for cause in the three-year period ending on the date of application, or (c) has been convicted of operation of a motor vehicle while under the influence of or while impaired by alcohol or a controlled substance, a traffic violation arising in connection with a fatal traffic accident, reckless driving, racing on the highways, failure to render aid or provide identification when involved in an accident which resulted in a fatality or personal injury, or perjury or the knowledgeable making of a false affidavit or statement to officials in connection with activities governed by a law, rule, or regulation related to the operation of a motor vehicle.

**Source:** Laws 1989, LB 285, § 103; Laws 1999, LB 704, § 36.

**60-4,154 Issuance of license; director notify Commercial Driver License Information System.**

Prior to the issuance of any original or renewal commercial driver's license or the reissuance of any commercial driver's license with a change of any classification, endorsement, or restriction, the director shall notify the Commercial Driver License Information System of the issuance and shall provide the applicant's name, social security number, and any other required information to the operator of the system.

**Source:** Laws 1989, LB 285, § 104.

**60-4,155 Department; rules and regulations.**

The Department of Motor Vehicles shall adopt and promulgate rules and regulations establishing standards and requirements for the testing of applicants for commercial drivers' licenses, endorsements, and restrictions. The standards and requirements developed by the department for written knowledge and driving skills examinations for commercial drivers' licenses shall substantially comply with the requirements of the Commercial Driver's License Standards, 49 C.F.R. part 383, subparts G and H.

**Source:** Laws 1989, LB 285, § 105.

**60-4,156 Driving skills examination; waiver; when.**

A commercial driver's license examiner may waive the driving skills examination when an applicant provides, on a form prescribed by the director, certification that during the two-year period immediately prior to the date of application he or she:

- (1) Has not possessed more than one operator's license at any one time;
- (2) Has not had any operator's license suspended, revoked, or canceled;
- (3) Has not been convicted in any type of motor vehicle for any of the disqualification offenses provided for in sections 60-4,168 and 60-4,168.01;
- (4) Has not had more than one conviction for any type of motor vehicle for a serious traffic violation;
- (5) Has not been convicted of any violation of state law or local ordinance related to motor vehicle traffic control arising in connection with any traffic accident and has no record of an accident when the applicant was at fault; and
- (6) Provides suitable evidence that he or she has previously taken a driving skills examination given by a state with a classified licensing and testing system and that the examination included operation of a representative vehicle for the applicant's commercial driver's license classification or that the applicant has operated, for at least two years immediately preceding application, a vehicle representative of the commercial motor vehicle the applicant operates or expects to operate.

**Source:** Laws 1989, LB 285, § 106; Laws 1990, LB 980, § 23; Laws 1996, LB 323, § 4; Laws 2003, LB 562, § 15.

**60-4,157 Driving skills examination; waiver based on third-party tester.**

A commercial driver's license examiner may waive the driving skills examination when an applicant presents evidence, on a form to be prescribed by the director, that he or she has successfully passed a driving skills examination administered by a third-party tester.

For purposes of this section and section 60-4,158, third-party tester shall mean another state's licensing authority, any agency, department, board, or commission of this state, any employer, any public or private driver training facility, or any political subdivision of this state authorized by the director to conduct the driving skills examination for the issuance of commercial drivers' licenses.

**Source:** Laws 1989, LB 285, § 107.

**60-4,158 Third-party testers; rules and regulations; fees; violation; penalty.**

(1) The director shall adopt and promulgate rules and regulations governing the certification of third-party testers by the Department of Motor Vehicles. Such rules and regulations shall substantially comply with the requirements of 49 C.F.R. 383.75. An examiner employed by a certified third-party tester is not required to hold a commercial driver's license to administer a driving skills examination and occupy the seat beside an applicant for a commercial driver's license.

(2) A certification to conduct third-party testing shall be valid for two years, and the department shall charge a fee of one hundred dollars to issue or renew the certification of any third-party tester. The department shall remit the fees collected to the State Treasurer for credit to the General Fund.

(3) Any third-party tester who violates any of the rules and regulations adopted and promulgated pursuant to this section shall be subject to having his or her certification revoked by the department.

**Source:** Laws 1989, LB 285, § 108; Laws 1999, LB 704, § 37.

**60-4,159 Licensee; convictions; disqualifications; notification required; violation; penalty.**

(1) Any person possessing a commercial driver's license issued by the Department of Motor Vehicles shall, within ten days of the date of conviction, notify the department of all convictions for violations of state law or local ordinance related to motor vehicle traffic control, except parking violations, when such convictions occur in another state.

(2) Any person possessing a commercial driver's license issued by the department who is convicted of violating any state law or local ordinance related to motor vehicle traffic control in this or any other state, other than parking violations, shall notify his or her employer in writing of the conviction within thirty days of the date of conviction.

(3) Any person possessing a commercial driver's license issued by the department whose commercial driver's license is suspended, revoked, or canceled by any state, who loses the privilege to drive a commercial motor vehicle in any state for any period, or who is disqualified from driving a commercial motor vehicle for any period shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of that fact.

(4) Any person who fails to provide the notifications required in subsection (1), (2), or (3) of this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 285, § 109; Laws 2005, LB 76, § 14.

**60-4,160 Refusal or denial of application; notice; appeal.**

Written notice shall be delivered to any applicant whose application for a commercial driver's license is refused or denied for cause. The applicant shall have a right to an immediate appeal to the director upon receipt of such notice. The director shall hear the appeal and render a prompt finding not later than ten days after receipt of the appeal.

**Source:** Laws 1989, LB 285, § 110.

**60-4,161 Employment as driver; application; contents; violation; penalty.**

(1) Any person who applies for employment as a driver of a commercial motor vehicle shall provide every prospective employer, at the time of application, with the following information for the ten-year period preceding the date of application:

(a) A list of the names and addresses of the applicant's previous employers for whom the applicant was a driver of a commercial motor vehicle;

(b) The dates the applicant was employed by each employer; and

(c) The reason for leaving that employment.

(2) The applicant shall certify that all information furnished is true and complete. An employer may require an applicant to provide additional information. Any person who fails to provide the information required by this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 285, § 111.

**60-4,162 Employment as driver; employer; duties; violation; penalty.**

(1) Each employer shall require prospective applicants for employment as a driver of a commercial motor vehicle to provide the information required by section 60-4,161.

(2) An employer shall not knowingly allow, permit, or authorize a person to operate a commercial motor vehicle in the United States during any period in which:

(a) The person's commercial driver's license is suspended, revoked, or canceled by any state;

(b) The person has lost the privilege to drive a commercial motor vehicle in any state;

(c) The person has been disqualified from driving a commercial motor vehicle; or

(d) The person has more than one operator's license.

(3) No employer may knowingly allow, permit, or authorize a person to operate a commercial motor vehicle in the United States in violation of a federal, state, or local law or regulation pertaining to highway-rail grade crossings.

(4) Any employer who violates this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 285, § 112; Laws 2002, LB 499, § 2.

**60-4,163 Alcoholic liquor; prohibited operation; effect.**

No person shall operate or be in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body. Any person who operates or is in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body or who refuses to submit to a test or tests to determine the alcoholic content of his or her blood or breath shall be placed out of service for twenty-four hours, shall be subject to disqualification as provided in sections 60-4,167 and 60-4,168, and shall be subject to prosecution for any violation of sections 60-6,196 and 60-6,197.

Any order to place a person out of service for twenty-four hours issued by a law enforcement officer shall be made pursuant to 49 C.F.R. 392.5(c) adopted pursuant to section 75-363.

**Source:** Laws 1989, LB 285, § 113; Laws 1993, LB 191, § 1; Laws 1993, LB 370, § 91; Laws 2001, LB 773, § 12; Laws 2006, LB 1007, § 9.

**60-4,164 Alcoholic liquor; implied consent to submit to chemical tests; refusal or failure; penalty; officer; report.**

(1) Any person who operates or is in the actual physical control of a commercial motor vehicle upon a highway in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the amount of alcoholic content in his or her blood or breath.

(2) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village who, after stopping or detaining the operator of any commercial motor vehicle, has reasonable grounds to believe that the operator was driving or in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body may require such operator to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the alcoholic content of such blood or breath.

(3) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person who operates or has in his or her actual physical control a commercial motor vehicle upon a highway in this state to submit to a preliminary breath test of his or her breath for alcoholic content if the officer has reasonable grounds to believe that such person has any alcoholic liquor in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any such person who refuses to submit to a preliminary breath test shall be placed under arrest and shall be guilty of a Class V misdemeanor. Any person arrested for refusing to submit to a preliminary breath test or any person who submits to a preliminary breath test the results of which indicate the presence of any alcoholic liquor in such person's body may, upon the direction of a law enforcement officer, be required to submit to a chemical test or tests of his or her blood or breath for a determination of the alcoholic content.

(4) Any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test or tests of his or her blood or breath which discloses the presence of any alcoholic liquor in his or her body shall be placed out of service for twenty-four hours by the law enforcement officer.

(5) Any person operating or in the actual physical control of a commercial motor vehicle who refuses to submit to a chemical test or tests of his or her blood or breath or any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test or tests of his or her blood or breath which discloses an alcoholic concentration of: (a) Four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or (b) four-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath shall be placed

out of service for twenty-four hours by the law enforcement officer, and the officer shall forward to the director a sworn report. The report shall state that the person was operating or in the actual physical control of a commercial motor vehicle, was requested to submit to the required chemical test or tests, and refused to submit to the required chemical test or tests or submitted to the required chemical test or tests and possessed an alcohol concentration at or in excess of that specified by this subsection.

(6) Any person involved in a commercial motor vehicle accident in this state may be required to submit to a chemical test or tests of his or her blood or breath by any law enforcement officer if the officer has reasonable grounds to believe that such person was driving or was in actual physical control of a commercial motor vehicle on a highway in this state while under the influence of alcoholic liquor at the time of the accident. A person involved in a commercial motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test or tests of his or her blood or breath by reason of leaving this state. If the person refuses a test or tests under this section and leaves the state for any reason following an accident, he or she shall remain subject to this section upon return.

**Source:** Laws 1989, LB 285, § 114; Laws 1992, LB 872, § 6; Laws 1993, LB 191, § 2; Laws 1996, LB 323, § 6.

**60-4,164.01 Alcoholic liquor; blood test; withdrawing requirements; damages; liability.**

(1) Any physician, registered nurse, other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to section 60-4,164. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such section except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-4,164 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services and such forms shall be made available to the persons listed in subsection (1) of this section.

**Source:** Laws 1997, LB 210, § 4; Laws 2000, LB 819, § 75; Laws 2000, LB 1115, § 6; Laws 2007, LB296, § 231.

## Cross References

Health Care Facility Licensure Act, see section 71-401.

**60-4,165 Alcoholic liquor; rights of person tested.**

The law enforcement officer who requires a chemical test or tests pursuant to section 60-4,164 may direct whether the test or tests will be of blood or breath. The person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests are deemed appropriate in addition to and following the test or tests administered at the direction of the law enforcement officer. If the officer refuses to permit such additional test or tests to be taken, the original test or tests shall not be competent evidence. Upon the request of the person tested, the results of the test or tests taken at the direction of the law enforcement officer shall be made available to him or her.

**Source:** Laws 1989, LB 285, § 115; Laws 1993, LB 191, § 3; Laws 1996, LB 323, § 7.

**60-4,166 Alcoholic liquor; chemical test; unconscious person; effect on consent.**

Any person who is unconscious or who is in a condition rendering him or her incapable of refusal to submit to a chemical test or tests pursuant to section 60-4,164 shall be deemed not to have withdrawn the consent provided for in such section, and a chemical test or tests may be given.

**Source:** Laws 1989, LB 285, § 116; Laws 1993, LB 191, § 4.

**60-4,167 Alcoholic liquor; officer's report; notice of disqualification; hearing before director; procedure.**

Upon receipt of a law enforcement officer's sworn report provided for in section 60-4,164, the director shall serve the notice of disqualification to the person who is the subject of the report by registered or certified mail to the person's last-known address appearing on the records of the director. If the address on the director's records differs from the address on the arresting officer's report, the notice of disqualification shall be sent to both addresses. The notice of disqualification shall contain a statement explaining the operation of the disqualification procedure and the rights of the person. The director shall also provide to the person a self-addressed envelope and a petition form which the person may use to request a hearing before the director to contest the disqualification. The petition form shall clearly state on its face that the petition must be completed and delivered to the department or postmarked within ten days after receipt or the person's right to a hearing to contest the disqualification will be foreclosed. The director shall prescribe and approve the form for the petition, the self-addressed envelope, and the notice of disqualification. If not contested, the disqualification shall automatically take effect thirty days after the date of mailing of the notice of disqualification by the director. Any chemical test or tests made under section 60-4,164, if made in conformity with the requirements of section 60-6,201 shall be competent evidence of the alcoholic content of such person's blood or breath. The commercial driver's license of the person who is the subject of the report shall be automatically disqualified upon the expiration of thirty days after the date of the mailing of the notice of disqualification by the director. The director shall conduct the

hearing in the county in which the violation occurred or in any county agreed to by the parties. Upon receipt of a petition, the director shall notify the petitioner of the date and location for the hearing by certified or registered mail postmarked at least seven days prior to the hearing date.

After granting the petitioner an opportunity to be heard on such issue, if it is not shown to the director that the petitioner's refusal to submit to such chemical test or tests was reasonable or unless it is shown to the director that the petitioner was not operating or in the actual physical control of a commercial motor vehicle with an alcoholic concentration in his or her blood or breath equal to or in excess of that specified in subsection (5) of section 60-4,164, the director shall enter an order pursuant to section 60-4,169 revoking the petitioner's commercial driver's license and privilege to operate a commercial motor vehicle in this state and disqualifying the person from operating a commercial motor vehicle for the period specified by section 60-4,168.

**Source:** Laws 1989, LB 285, § 117; Laws 1993, LB 191, § 5; Laws 1993, LB 370, § 92; Laws 1996, LB 323, § 8.

#### **60-4,167.01 Alcoholic liquor; disqualification decision; director; duties.**

(1) The director shall reduce the decision disqualifying a commercial driver from operating a commercial motor vehicle pursuant to a hearing under section 60-4,167 to writing and the director shall notify the person in writing of the disqualification within seven days following a hearing. The decision shall set forth the period of disqualification and be served by mailing it to such person by certified or registered mail to the address provided to the director at the hearing or, if the person does not appear at the hearing, to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses.

(2) If the director does not disqualify the commercial driver from operating a commercial motor vehicle, the director shall notify the person in writing of the decision within seven days following a hearing. The notice shall be mailed by certified or registered mail as provided in subsection (1) of this section. No reinstatement fee shall be charged.

**Source:** Laws 1996, LB 323, § 9.

#### **60-4,167.02 Alcoholic liquor; disqualification; appeal.**

Any person who feels himself or herself aggrieved because of such disqualification pursuant to a hearing under section 60-4,167 may appeal to the district court of the county where the alleged violation occurred in accordance with the Administrative Procedure Act. The appeal shall not suspend the disqualification unless a stay is allowed by the court pending a final determination of the review. If a stay is allowed and the final judgment of the court finds against the person appealing, the period of disqualification shall commence at the time of the final judgment of the court for the full period of the time of disqualification.

**Source:** Laws 1996, LB 323, § 10.

#### **Cross References**

Administrative Procedure Act, see section 84-920.

#### **60-4,168 Disqualification; when.**

(1) Except as provided in subsections (2) and (3) of this section, a person shall be disqualified from driving 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) Driving 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, driving any motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance;

(b) Driving 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 driven by the person or, beginning September 30, 2005, leaving the scene of an accident involving any motor vehicle driven 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, driving a commercial motor vehicle after his or her commercial driver's license has been suspended, revoked, or canceled or the driver is disqualified from driving 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 driving a commercial motor vehicle for three years.

(3) A person shall be disqualified from driving a commercial motor vehicle for life if, after April 1, 1992, he or she:

(a) Is convicted of or administratively determined to have committed a second or subsequent violation of any of the offenses described in subsection (1) of this section or any combination of those offenses arising from two or more separate incidents; or

(b) Beginning September 30, 2005, used a commercial motor vehicle in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance.

(4)(a) A person is disqualified from driving 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 driving 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) For purposes of this section, controlled substance has the same meaning as in section 28-401.

(7) 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.

(8) 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, driving a commercial motor vehicle without a commercial driver's license;

(g) Beginning September 30, 2005, driving a commercial motor vehicle without a commercial driver's license in the operator's possession; and

(h) Beginning September 30, 2005, driving 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.

**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.

Prosecuting an individual for driving under the influence after the individual's commercial driver's license has been already disqualified does not violate double jeopardy. *State v. Arterburn*, 276 Neb. 47, 751 N.W.2d 157 (2008).

The Legislature intended this section to be a civil sanction, and the statute is not so punitive in its purpose or effect as to negate the Legislature's intent. *State v. Arterburn*, 276 Neb. 47, 751 N.W.2d 157 (2008).

#### **60-4,168.01 Out-of-service order; violation; disqualification; when.**

(1) Except as provided in subsection (2) of this section, a person who is convicted of violating an out-of-service order while operating a commercial motor vehicle which is transporting nonhazardous materials shall be subject to disqualification as follows:

(a) A person shall be disqualified from operating a commercial motor vehicle for a period of at least one hundred eighty days but no more than one year upon a court conviction for violating an out-of-service order;

(b) A person shall be disqualified from operating a commercial motor vehicle for a period of at least two years but no more than five years upon a second court conviction for violating an out-of-service order, which arises out of a separate incident, during any ten-year period; and

(c) A person shall be disqualified from operating a commercial motor vehicle for a period of at least three years but no more than five years upon a third or subsequent court conviction for violating an out-of-service order, which arises out of a separate incident, during any ten-year period.

(2) A person who is convicted of violating an out-of-service order while operating a commercial motor vehicle which is transporting hazardous materials required to be placarded pursuant to section 75-364 or while operating a commercial motor vehicle designed or used to transport sixteen or more passengers, including the driver, shall be subject to disqualification as follows:

(a) A person shall be disqualified from operating a commercial motor vehicle for a period of at least one hundred eighty days but no more than two years upon conviction for violating an out-of-service order; and

(b) A person shall be disqualified from operating a commercial motor vehicle for a period of at least three years but no more than five years upon a second or subsequent conviction for violating an out-of-service order, which arises out of a separate incident, during any ten-year period.

(3) For purposes of this section, out-of-service order has the same meaning as in section 75-362.

**Source:** Laws 1996, LB 323, § 5; Laws 2003, LB 562, § 17; Laws 2009, LB204, § 2.

**60-4,168.02 Federal disqualification; effect.**

Beginning September 30, 2005, any federal disqualification of a Nebraska licensed operator imposed in accordance with 49 C.F.R. 383.52 transmitted by the Federal Motor Carrier Safety Administration to the director shall become part of the operator's record maintained by the Department of Motor Vehicles.

**Source:** Laws 2003, LB 562, § 18.

**60-4,169 Revocation; when.**

Whenever it comes to the attention of the director that any person when operating a motor vehicle has, based upon the records of the director, been convicted of or administratively determined to have committed an offense for which disqualification is required pursuant to section 60-4,146.01, 60-4,168, or 60-4,168.01, the director shall summarily revoke (1) the commercial driver's license and privilege of such person to operate a commercial motor vehicle in this state or (2) the privilege, if such person is a nonresident, of operating a commercial motor vehicle in this state. Any revocation ordered by the director pursuant to this section shall commence on the date of the signing of the order of revocation or the date of the release of such person from the jail or a Department of Correctional Services adult correctional facility, whichever is later, unless the order of the court requires the jail time and the revocation to run concurrently.

**Source:** Laws 1989, LB 285, § 119; Laws 1993, LB 31, § 19; Laws 1993, LB 420, § 12; Laws 1996, LB 323, § 12; Laws 2001, LB 38, § 37; Laws 2010, LB805, § 9.

**60-4,170 Revocation; notice; failure to surrender license; violation; penalty; appeal.**

Within ten days after the revocation provided for by section 60-4,169, the director shall notify in writing the person whose commercial driver's license or privilege to operate a commercial motor vehicle has been revoked that such license or privilege has been revoked. Such notice shall: (1) Contain a list of the disqualifying convictions or administrative determinations upon which the director relies as his or her authority for the revocation, with the dates on which such disqualifying violations occurred and the dates of such convictions or administrative determinations and the trial courts or administrative agencies in which such convictions or administrative determinations were rendered; (2) state the term of revocation; (3) include a demand that the commercial driver's license be returned to the director immediately; and (4) be served by mailing the notice to such person by registered or certified mail to the address of such person. If any person fails to return a commercial driver's license following a demand by the director, the director shall immediately direct any peace officer or authorized representative of the director to secure possession of such license and return the license to the director. Any person refusing or failing to surrender a commercial driver's license as required by this section shall, upon conviction, be guilty of a Class III misdemeanor.

Any person who feels himself or herself aggrieved because of a revocation pursuant to section 60-4,169 may appeal from such revocation in the manner set forth in section 60-4,105. Such appeal shall not suspend the order of revocation unless a stay of such revocation shall be allowed by the court pending a final determination of the review. The license of any person claiming

to be aggrieved shall not be restored to such person, in the event of a final judgment of a court against such person, until the full time of revocation, as fixed by the director, has elapsed.

**Source:** Laws 1989, LB 285, § 120; Laws 1999, LB 704, § 38.

**60-4,171 Issuance of Class O or M operator's license; reinstatement of commercial driver's license; when.**

(1) Following any period of revocation ordered by a court, a resident who has had a commercial driver's license revoked pursuant to section 60-4,169 may apply for a Class O or M operator's license.

(2) Any person who has had his or her commercial driver's license revoked pursuant to section 60-4,169 may, at the end of such revocation period, apply to have his or her eligibility for a commercial driver's license reinstated. The applicant shall (a) apply to the Department of Motor Vehicles and provide his or her social security number, (b) take the commercial driver's license knowledge and driving skills examinations prescribed pursuant to section 60-4,155, (c) comply with section 60-4,145 regarding physical requirements, (d) be subject to a check of his or her driving record, (e) pay the fees specified in section 60-4,115 and a reinstatement fee as provided in section 60-499.01, and (f) surrender any operator's license issued pursuant to subsection (1) of this section.

**Source:** Laws 1989, LB 285, § 121; Laws 1993, LB 420, § 14; Laws 1993, LB 491, § 14; Laws 1997, LB 752, § 144; Laws 1999, LB 704, § 39; Laws 2001, LB 38, § 38; Laws 2001, LB 574, § 27.

**60-4,172 Nonresident licensee; conviction within state; director; duties.**

(1) Within ten days after receiving an abstract of conviction of any nonresident holder of a commercial driver's license for any violation of state law or local ordinance related to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle operated in this state, the director shall notify the driver licensing authority which licensed the nonresident and the Commercial Driver License Information System of such conviction.

(2)(a) Beginning September 30, 2005, within ten days after disqualifying a nonresident holder of an out-of-state commercial driver's license or canceling, revoking, or suspending a nonresident's out-of-state commercial driver's license, for a period of at least sixty days, the Department of Motor Vehicles shall notify the driver licensing authority which licensed the nonresident and the Commercial Driver License Information System of such action.

(b) The notification shall include both the disqualification and the violation that resulted in the disqualification, cancellation, revocation, or suspension. The notification and the information it provides shall be recorded on the driver's record.

(3) Beginning September 30, 2005, within ten days after receiving an abstract of conviction of any nonresident holder of a commercial driver's license for any violation of state law or local ordinance related to motor vehicle traffic control, other than parking violations, committed in any type of motor vehicle operated in this state, the director shall notify the driver licensing authority which

licensed the nonresident and the Commercial Driver License Information System of such conviction.

(4) Beginning September 30, 2005, within ten days after receiving an abstract of conviction of any nonresident holder of a driver's license for any violation of state law or local ordinance related to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle operated in this state, the director shall notify the driver licensing authority which licensed the nonresident.

**Source:** Laws 1989, LB 285, § 122; Laws 2003, LB 562, § 19.

(i) COMMERCIAL DRIVER TRAINING SCHOOLS

**60-4,173 Terms, defined.**

For purposes of sections 60-4,173 to 60-4,179:

(1) Driver training school or school means a business enterprise conducted by an individual, association, partnership, limited liability company, or corporation or a public or private educational facility which educates or trains persons to operate or drive motor vehicles or which furnishes educational materials to prepare an applicant for an examination by the state for an operator's license, provisional operator's permit, or LPD-learner's or LPE-learner's permit and which charges consideration or tuition for such service or materials; and

(2) Instructor means any person who operates a driver training school or who teaches, conducts classes, gives demonstrations, or supervises practical training of persons learning to operate or drive motor vehicles in connection with operation of a driver training school.

**Source:** Laws 1967, c. 380, § 1, p. 1191; R.S.1943, (1988), § 60-409.06; Laws 1989, LB 285, § 123; Laws 1993, LB 121, § 384; Laws 1998, LB 320, § 19; Laws 2008, LB279, § 1.

**60-4,174 Director; duties; rules and regulations; Commissioner of Education; assist.**

(1) 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.

(2) Rules and regulations which have been adopted and promulgated pursuant to this section prior to July 18, 2008, shall remain in effect and be applicable to all driver training schools and instructors until such time as new rules and regulations are adopted and promulgated.

**Source:** Laws 1967, c. 380, § 2, p. 1192; R.S.1943, (1988), § 60-409.07; Laws 1989, LB 285, § 124; Laws 2008, LB279, § 2.

**60-4,175 School; license; requirements.**

No driver training school shall be established nor any existing school be continued unless such school applies for and obtains from the director a license in the manner and form prescribed by the director. Rules and regulations adopted and promulgated by the director shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, bond, or other security in such sum and with such provisions as the director deems necessary to protect adequately the interests of the public, and such other matters as the director may prescribe.

**Source:** Laws 1967, c. 380, § 3, p. 1192; R.S.1943, (1988), § 60-409.08; Laws 1989, LB 285, § 125; Laws 2008, LB279, § 3.

**60-4,176 Instructor; license; requirements.**

(1) No person shall act as an instructor unless such person applies for and obtains from the director a license in the manner and form prescribed by the director. If the applicant is an individual, the application form shall include the applicant's social security number.

(2) Rules and regulations adopted and promulgated by the director shall state the requirements for an instructor's license, including requirements concerning moral character, physical condition, knowledge of the courses of instruction, knowledge of the motor vehicle laws and safety principles, previous personal and employment records, and such other matters as the director may prescribe for the protection of the public.

**Source:** Laws 1967, c. 380, § 4, p. 1193; R.S.1943, (1988), § 60-409.09; Laws 1989, LB 285, § 126; Laws 1997, LB 752, § 145.

**60-4,177 Licenses; renewal; expiration; fees.**

All licenses issued under sections 60-4,175 and 60-4,176 shall expire on the last day of June in the year following their issuance and may be renewed upon application to the director as prescribed by the rules and regulations. Each application for a new or renewal school license shall be accompanied by a fee of fifty dollars, and each application for a new or renewal instructor's license shall be accompanied by a fee of ten dollars. The license fees shall be placed in the state treasury and by the State Treasurer credited to the General Fund. No license fee shall be refunded in the event that the license is rejected, suspended, or revoked.

**Source:** Laws 1967, c. 380, § 5, p. 1193; Laws 1982, LB 928, § 47; R.S.1943, (1988), § 60-409.10; Laws 1989, LB 285, § 127.

**60-4,178 Licenses; cancel, suspend, or revoke; procedure; appeal.**

The director may cancel, suspend, revoke, or refuse to issue or renew a school or instructor's license in any case when he or she finds the licensee or applicant has not complied with or has violated any of the provisions of sections 60-4,173 to 60-4,179 or any rule or regulation adopted and promulgated by the director under such sections. A suspended or revoked license shall be returned to the director by the licensee, and its holder shall not be eligible to apply for a license under such sections until twelve months have elapsed since the date of such suspension or revocation. Any action taken by the director to

cancel, suspend, revoke, or refuse to issue or renew a license shall comply with the Administrative Procedure Act.

**Source:** Laws 1967, c. 380, § 6, p. 1193; Laws 1988, LB 352, § 104; R.S.1943, (1988), § 60-409.11; Laws 1989, LB 285, § 128; Laws 1999, LB 704, § 40.

**Cross References**

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

**60-4,179 Violations; penalty.**

Any person, firm, or corporation violating any provision of sections 60-4,175 to 60-4,178 shall be guilty of a Class III misdemeanor.

**Source:** Laws 1967, c. 380, § 8, p. 1194; Laws 1977, LB 39, § 77; R.S.1943, (1988), § 60-409.13; Laws 1989, LB 285, § 129.

(j) STATE IDENTIFICATION CARDS

**60-4,180 State identification card; issuance authorized; prior cards; invalid.**

Any person who is a resident of this state may obtain a state identification card with a color photograph or digital image of the person included. State identification cards shall be issued in the manner provided in section 60-4,181. Any identification card issued under prior law prior to January 1, 1990, shall be invalid after such date.

**Source:** Laws 1989, LB 284, § 3; Laws 1993, LB 201, § 5; Laws 2001, LB 574, § 28.

**Cross References**

**Application**, see section 60-484.

**Duplicate or replacement card**, see section 60-4,120.

**Expiration**, see section 60-490.

**Photograph affixed to card**, see section 60-4,119.

**Prohibited acts**, see section 60-491.

**Renewal procedure**, see section 60-4,122.

**Violations**, penalties, see section 60-491.

**60-4,181 State identification cards; issuance; requirements; form; delivery; cancellation.**

(1)(a) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. A state identification card shall be issued by the county treasurer after the person requesting the card (i) files an application or examiner's certificate with an examining officer, (ii) furnishes two forms of proof of identification described in section 60-484, and (iii) pays the fee prescribed in section 60-4,115 to the county treasurer. The state identification card shall contain the organ and tissue donor information specified in section 60-494.

(b) The application or examiner's certificate shall include the name, age, post office address, place of residence unless the applicant is a program participant under the Address Confidentiality Act, date of birth, sex, social security number, and physical description of the applicant, the voter registration portion pursuant to section 32-308, and the following:

- (i) Do you wish to register to vote as part of this application process?
- (ii) Do you wish to be an organ and tissue donor?

(iii) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(iv) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(c) Each state identification card shall contain the following encoded, machine-readable information: The holder's full legal name; date of birth; gender; document issue date; document expiration date; principal residence address; unique identification number; revision date; inventory control number; and state of issuance.

(2) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. Each applicant for a state identification card shall provide the information and documentation required by section 60-484. The form of the state identification card shall comply with section 60-4,117. Upon presentation of an applicant's issuance certificate, the county treasurer shall collect the fee and surcharge as prescribed in section 60-4,115 and issue a receipt to the applicant which is valid up to thirty days. The state identification card shall be delivered to the applicant as provided in section 60-4,113.

(3) The director may summarily cancel any state identification card, and any judge or magistrate may order a state identification card canceled in a judgment of conviction, if the application or examiner's certificate for the card contains any false or fraudulent statements which were deliberately and knowingly made as to any matter material to the issuance of the card or if the application or examiner's certificate or issuance certificate does not contain required or correct information. Any state identification card so obtained shall be void from the date of issuance. Any judgment of conviction ordering cancellation of a state identification card shall be transmitted to the director who shall cancel the card.

**Source:** Laws 1989, LB 284, § 6; Laws 1989, LB 285, § 130; Laws 1992, LB 1178, § 6; Laws 1993, LB 491, § 15; Laws 1994, LB 76, § 576; Laws 1995, LB 467, § 14; Laws 1996, LB 1073, § 2; Laws 1997, LB 21, § 1; Laws 1997, LB 635, § 22; Laws 1998, LB 309, § 11; Laws 1999, LB 147, § 4; Laws 1999, LB 704, § 41; Laws 2000, LB 1317, § 9; Laws 2001, LB 34, § 7; Laws 2001, LB 574, § 29; Laws 2003, LB 228, § 14; Laws 2004, LB 559, § 5; Laws 2008, LB911, § 26.

**Cross References**

Address Confidentiality Act, see section 42-1201.

**(k) POINT SYSTEM**

**60-4,182 Point system; offenses enumerated.**

In order to prevent and eliminate successive traffic violations, there is hereby provided a point system dealing with traffic violations as disclosed by the files of the director. The following point system shall be adopted:

(1) Conviction of motor vehicle homicide - 12 points;

(2) Third offense drunken driving in violation of any city or village ordinance or of section 60-6,196, as disclosed by the records of the director, regardless of whether the trial court found the same to be a third offense - 12 points;

(3) Failure to stop and render aid as required under section 60-697 in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another - 6 points;

(4) Failure to stop and report as required under section 60-696 or any city or village ordinance in the event of a motor vehicle accident resulting in property damage - 6 points;

(5) Driving a motor vehicle while under the influence of alcoholic liquor or any drug or when such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or per two hundred ten liters of his or her breath in violation of any city or village ordinance or of section 60-6,196 - 6 points;

(6) Willful reckless driving in violation of any city or village ordinance or of section 60-6,214 or 60-6,217 - 6 points;

(7) Careless driving in violation of any city or village ordinance or of section 60-6,212 - 4 points;

(8) Negligent driving in violation of any city or village ordinance - 3 points;

(9) Reckless driving in violation of any city or village ordinance or of section 60-6,213 - 5 points;

(10) Speeding in violation of any city or village ordinance or any of sections 60-6,185 to 60-6,190 and 60-6,313:

(a) Not more than five miles per hour over the speed limit - 1 point;

(b) More than five miles per hour but not more than ten miles per hour over the speed limit - 2 points;

(c) More than ten miles per hour but not more than thirty-five miles per hour over the speed limit - 3 points, except that one point shall be assessed upon conviction of exceeding by not more than ten miles per hour, two points shall be assessed upon conviction of exceeding by more than ten miles per hour but not more than fifteen miles per hour, and three points shall be assessed upon conviction of exceeding by more than fifteen miles per hour but not more than thirty-five miles per hour the speed limits provided for in subdivision (1)(e), (f), (g), or (h) of section 60-6,186; and

(d) More than thirty-five miles per hour over the speed limit - 4 points;

(11) Failure to yield to a pedestrian not resulting in bodily injury to a pedestrian - 2 points;

(12) Failure to yield to a pedestrian resulting in bodily injury to a pedestrian - 4 points;

(13) Using a handheld wireless communication device in violation of section 60-6,179.01 - 3 points; and

(14) All other traffic violations involving the operation of motor vehicles by the operator for which reports to the Department of Motor Vehicles are required under sections 60-497.01 and 60-497.02 - 1 point.

Subdivision (14) of this section does not include violations involving an occupant protection system pursuant to section 60-6,270, parking violations, violations for operating a motor vehicle without a valid operator's license in the operator's possession, muffler violations, overwidth, overheight, or overlength violations, motorcycle or moped protective helmet violations, or overloading of trucks.

All such points shall be assessed against the driving record of the operator as of the date of the violation for which conviction was had. Points may be reduced by the department under section 60-4,188.

In all cases, the forfeiture of bail not vacated shall be regarded as equivalent to the conviction of the offense with which the operator was charged.

The point system shall not apply to persons convicted of traffic violations committed while operating a bicycle or an electric personal assistive mobility device as defined in section 60-618.02.

**Source:** Laws 1953, c. 219, § 1, p. 768; Laws 1955, c. 156, § 1, p. 457; Laws 1957, c. 168, § 1, p. 587; Laws 1957, c. 366, § 26, p. 1261; Laws 1959, c. 174, § 1, p. 625; Laws 1959, c. 169, § 2, p. 617; Laws 1961, c. 185, § 3, p. 571; Laws 1967, c. 235, § 2, p. 630; R.R.S.1943, § 39-7,128; Laws 1974, LB 590, § 1; Laws 1974, LB 873, § 4; Laws 1975, LB 381, § 4; Laws 1975, LB 328, § 1; Laws 1976, LB 265, § 1; Laws 1983, LB 204, § 1; Laws 1985, LB 496, § 2; Laws 1987, LB 430, § 3; Laws 1987, LB 224, § 3; Laws 1988, LB 428, § 6; Laws 1992, LB 958, § 2; R.S.Supp.,1992, § 39-669.26; Laws 1993, LB 370, § 80; Laws 1993, LB 575, § 17; Laws 1996, LB 901, § 2; Laws 2001, LB 166, § 3; Laws 2001, LB 773, § 14; Laws 2002, LB 1105, § 446; Laws 2006, LB 925, § 3; Laws 2007, LB35, § 1; Laws 2008, LB621, § 1; Laws 2010, LB945, § 1.

#### Cross References

**Assessment of points when person is placed on probation,** see section 60-497.01.

Pursuant to subsection (13) of this section, points are assessed against a driver's record as of the date of the violation rather than the date the Director of Motor Vehicles becomes aware of the violation. *Delgado v. Abramson*, 254 Neb. 606, 578 N.W.2d 833 (1998).

#### **60-4,183 Point system; revocation of license, when; driver education and training 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's education and training course consisting of at least eight 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.

1. Constitutional  
2. Revocation  
3. Miscellaneous

1. Constitutional

This section has been held constitutional and convictions unappealed from and not void cannot be challenged in proceedings hereunder. Bohlen v. Kissack, 189 Neb. 262, 202 N.W.2d 171 (1972).

2. Revocation

When his records disclose any person has accumulated twelve or more points within two years, Director of Motor Vehicles must revoke his license and privileges to operate a motor vehicle in this state. Westenburg v. Weedlun, 187 Neb. 679, 193 N.W.2d 566 (1972).

The accumulation of twelve or more points within a two-year period makes mandatory the suspension of the operator's license. Lutjemeyer v. Dennis, 186 Neb. 46, 180 N.W.2d 679 (1970).

Accumulation of twelve or more points within two-year period requires suspension of license. Martindale v. State, 181 Neb. 64, 147 N.W.2d 6 (1966).

Revocation of driver's license is for a period of one year. State v. Garst, 175 Neb. 731, 123 N.W.2d 638 (1963).

Where required number of points are accumulated, suspension of license is required. Strasser v. Ress, 165 Neb. 858, 87 N.W.2d 619 (1958).

Period of revocation of license runs from the date of latest conviction. Stewart v. Ress, 165 Neb. 211, 85 N.W.2d 260 (1957).

Plea of guilty to charge of speeding was equivalent of a conviction. Stewart v. Ress, 164 Neb. 876, 83 N.W.2d 901 (1957).

Where total of twelve or more points are accumulated in any two-year period, revocation of license is mandatory. Durfee v. Ress, 163 Neb. 768, 81 N.W.2d 148 (1957).

3. Miscellaneous

Revocation of an individual's license to operate a motor vehicle as the result of accumulation of 12 or more points within a period of 2 years is not an act of a state official done pursuant to, or in enforcing, the provisions of the Driver License

Compact. Gillespie v. State, 230 Neb. 587, 432 N.W.2d 801 (1988).

An accumulation of points comes to the attention of the Director of Motor Vehicles at the time of receipt of the final abstract of conviction by the Department of Motor Vehicles. The action required of the director is ministerial and directory in nature. Thus, the requirement of a summary revocation relates only to the prompt accomplishment of the statute's purpose and does not require a strict and literal compliance as to every detail thereof. Berlowitz v. Dept. of Motor Vehicles, 210 Neb. 843, 317 N.W.2d 93 (1982).

Whenever a guilty plea is treated as a judgment of conviction to support an order revoking a motor vehicle operator's license, and it is challenged in district court, it must appear from the record that there was a judicial acceptance of that plea. Miller v. Peterson, 208 Neb. 658, 305 N.W.2d 364 (1981).

On appeal to district court from order of Director of Motor Vehicles under section 39-669.16 (transferred to section 60-498.02) revoking operator's license, the burden is on licensee to establish ground for reversal. Mackey v. Director of Motor Vehicles, 194 Neb. 707, 235 N.W.2d 394 (1975).

The Director of Motor Vehicles is required to interpret abstracts of conviction in accordance with laws regulating use of motor vehicles. Jarmin v. Kissack, 190 Neb. 365, 208 N.W.2d 675 (1973).

The amount by which the speed limit was exceeded is a part of the information to be shown on the abstract for conviction report. Melanson v. State, 188 Neb. 446, 197 N.W.2d 401 (1972).

The director acts ministerially in revoking a driver's license under this and related section. State v. Lessert, 188 Neb. 243, 196 N.W.2d 166 (1972).

Due process does not require notice and hearing before revocation for point violations hereunder. Stauffer v. Weedlun, 188 Neb. 105, 195 N.W.2d 218 (1972).

In assessing points hereunder, Director of Motor Vehicles must consider provisions of statute which was violated. Westenburg v. Weedlun, 187 Neb. 679, 193 N.W.2d 566 (1972).

Validity of prior judgments of conviction cannot be collaterally attacked on appeal from order of revocation of license. Bradford v. Ress, 167 Neb. 338, 93 N.W.2d 17 (1958).

**60-4,184 Revocation of license; notice; failure to return license; procedure; penalty; appeal; effect.**

Within ten days after the revocation provided for by section 60-4,183, the director shall notify in writing the person whose operator's license has been revoked that such license has been revoked. Such notice shall:

(1) Contain a list of the convictions for violations upon which the director relies as his or her authority for the revocation, with the dates of such violations upon which convictions were had and the dates of such convictions, the trial

courts in which such judgments of conviction were rendered, and the points charged for each conviction;

(2) State the term of such revocation;

(3) Include a demand that the license be returned to the director immediately; and

(4) Be served by mailing it to such person by either registered or certified mail to the last-known residence of such person or, if such address is unknown, to the last-known business address of such person.

If any person fails to return his or her license to the director as demanded, the director shall immediately direct any peace officer or authorized representative of the director to secure possession of such license and return the license to the director. A refusal to surrender an operator's license on demand shall be unlawful, and any person failing to surrender his or her license as required by this section shall be guilty of a Class III misdemeanor.

Any person who feels aggrieved because of such revocation may appeal from such revocation in the manner set forth in section 60-4,105. Such appeal shall not suspend the order of revocation of such license unless a stay of such order is allowed by a judge of such court pending a final determination of the review. The license of any person claiming to be aggrieved shall not be restored to such person, in the event the final judgment of a court finds against such person, until the full time of revocation, as fixed by the Department of Motor Vehicles, has elapsed.

**Source:** Laws 1953, c. 219, § 3, p. 770; Laws 1955, c. 157, § 1, p. 460; Laws 1957, c. 242, § 32, p. 845; Laws 1957, c. 366, § 28, p. 1263; Laws 1959, c. 174, § 3, p. 627; R.R.S.1943, § 39-7,130; Laws 1975, LB 263, § 2; Laws 1989, LB 285, § 4; R.S.Supp.,1992, § 39-669.28; Laws 1993, LB 370, § 82; Laws 1999, LB 704, § 42.

**60-4,185 License; revocation; when points disregarded.**

When the operator's license of a person is revoked for a period of at least six months pursuant to an order of conviction or as provided by sections 60-4,182 to 60-4,186, points accumulated by reason of the conviction containing such order of revocation, or the conviction bringing the total number of points charged to such person to twelve or more, and all prior points accumulated, shall be disregarded so far as any subsequent revocation is concerned.

**Source:** Laws 1953, c. 219, § 5, p. 771; R.R.S.1943, § 39-7,132; Laws 1975, LB 263, § 3; R.S.1943, (1988), § 39-669.29; Laws 1993, LB 370, § 83; Laws 2001, LB 38, § 39.

In construing sections 39-669.26 to 39-669.30 (transferred to sections 60-4,182 to 60-4,186) together, the points which are to be disregarded for purposes of subsequent revocation under this

section are those points for which a conviction had been had prior to the first revocation. *Conkel v. Higgins*, 1 Neb. App. 676, 511 N.W.2d 147 (1993).

**60-4,186 Operation after revocation; violation; penalty; employment driving permit or medical hardship driving permit excepted; proof of financial responsibility.**

It shall be unlawful to operate a motor vehicle on the public highways after revocation of an operator's license under sections 60-4,182 to 60-4,186, except that a motor vehicle other than 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 in section 60-4,130.01. Any person who violates the provisions of this section shall be guilty of a Class III misdemeanor.

Any operator's license revoked under sections 60-4,182 to 60-4,186 shall remain revoked for six months, and at the expiration of the six-month period, such person shall give and maintain for three years proof of financial responsibility as required by section 60-524. Any person whose operator's license has been revoked pursuant to sections 60-4,182 to 60-4,186 a second time within five years shall have his or her operator's license revoked for three years, and at the expiration of the three-year period, such person shall give and maintain for three years proof of financial responsibility as required by section 60-524.

**Source:** Laws 1953, c. 219, § 6, p. 771; Laws 1955, c. 158, § 1, p. 461; Laws 1959, c. 174, § 4, p. 628; Laws 1973, LB 213, § 1; R.S.Supp.,1973, § 39-7,133; Laws 1975, LB 259, § 3; Laws 1977, LB 41, § 14; Laws 1989, LB 285, § 5; R.S.Supp.,1992, § 39-669.30; Laws 1993, LB 105, § 3; Laws 1993, LB 370, § 84.

The gravamen of or the misconduct prohibited by section 60-418 (transferred to section 60-4,107) and this section is operation of a motor vehicle after judicial or administrative deprivation of the operator's privilege or license to operate a motor vehicle on the public highways of the State of Nebraska. Although the terms suspension and revocation were used interchangeably in this case, such misuse did not arise to the stature of sufficient prejudice to warrant reversal of judgment. *State v. Jost*, 219 Neb. 162, 361 N.W.2d 526 (1985).

At expiration of period of revocation or suspension of license, operator of motor vehicle must give and maintain proof of

financial responsibility. *State v. Smith*, 181 Neb. 846, 152 N.W.2d 16 (1967).

This section sets forth the penalty under the point system act. *State v. Ruggiere*, 180 Neb. 869, 146 N.W.2d 373 (1966).

Revocation of license for points accumulated before amendment of statute was not ex post facto application of statute. *Durfee v. Ress*, 163 Neb. 768, 81 N.W.2d 148 (1957).

#### **60-4,187 Pardon by mayor or chairperson of board of trustees; effect.**

Upon receipt of notice of a pardon granted by any mayor of any city or any chairperson of the board of trustees of any village, the director shall not restore points assessed against an individual as provided by section 60-4,182 or reinstate any permit to operate a motor vehicle revoked pursuant to section 60-4,183.

**Source:** Laws 1975, LB 200, § 1; R.S.1943, (1988), § 39-669.33; Laws 1993, LB 370, § 85.

#### **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 course shall be sent to the department, upon successful completion thereof, by the conducting organization. An approved course shall consist of at least eight 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.

**ARTICLE 5**

**MOTOR VEHICLE SAFETY RESPONSIBILITY**

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(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) 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;
- (3) License means any license issued to any person under the laws of this state pertaining to operation of a motor vehicle within this state;
- (4) 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 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;

(5) Motor vehicle means any self-propelled vehicle which is designed for use upon a highway, including trailers designed for use with such vehicles, and minitrucks. 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, and (j) off-road designed vehicles, including, but not limited to, golf carts, 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;

(6) Nonresident means every person who is not a resident of this state;

(7) 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;

(8) Operator means every person who is in actual physical control of a motor vehicle;

(9) 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;

(10) Person means every natural person, firm, partnership, limited liability company, association, or corporation;

(11) 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;

(12) Registration means registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles;

(13) State means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada; and

(14) 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.

The definition of "financial responsibility," used in subsection (10) of this section, applies to only policies used as proof of financial responsibility specifically required for compliance with the Motor Vehicle Safety Responsibility Act. *Allied Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 243 Neb. 779, 502 N.W.2d 484 (1993).

In a proceeding in the district court to review an order of the Department of Motor Vehicles under this act, the burden is on the plaintiff to show that the order was invalid. *Way v. Department of Motor Vehicles*, 217 Neb. 641, 351 N.W.2d 46 (1984).

The security deposit required by this act will be construed in light of its purpose, which is to insure that any judgment against an uninsured motorist will be paid. *Way v. Department of Motor Vehicles*, 217 Neb. 641, 351 N.W.2d 46 (1984).

Department may suspend license for failure to comply with act. *Hadden v. Aitken*, 156 Neb. 215, 55 N.W.2d 620 (1952).

Operator of grain truck and trailer was guilty of manslaughter. *Vaca v. State*, 150 Neb. 516, 34 N.W.2d 873 (1948).

### (b) ADMINISTRATION

#### 60-502 Sections; administration.

The department shall administer and enforce the provisions of sections 60-501 to 60-569 and may make rules and regulations necessary for its administration.

**Source:** Laws 1949, c. 178, § 2, p. 484.

#### Cross References

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

#### 60-503 Appeal; procedure.

(1) Any person aggrieved by an order or act of the department under the Motor Vehicle Safety Responsibility Act may, within thirty days after notice thereof, file a petition in the district court of the county where the aggrieved person resides, but in the event the aggrieved person is a nonresident, then such petition shall be filed in the district court of Lancaster County for a review thereof. The filing of such petition shall suspend the order or act pending a final determination of the review. The license or registration of any person claiming to be aggrieved shall not be restored to such person in the event the final judgment of a court finds against such person until the full time of revocation as fixed by the department shall have elapsed. The court shall summarily hear the petition as a case in equity without a jury and may make any appropriate order or decree.

(2) The appeal procedures described in the Administrative Procedure Act shall not apply to this section.

**Source:** Laws 1949, c. 178, § 3, p. 484; Laws 1972, LB 1303, § 1; Laws 1988, LB 352, § 106; Laws 1989, LB 352, § 2.

#### Cross References

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

On appeal, the burden of proof is on the licensee to establish the invalidity of an order revoking the licensee's motor vehicle operator's license. On appeal, the district court is required to consider the entire record made before the Director of Motor Vehicles and the record is, therefore, admissible in the district court. *Wroblewski v. Pearson*, 210 Neb. 82, 313 N.W.2d 231 (1981).

In a hearing under this section, the court may consider as evidence the documents considered by the agency under the terms of section 60-507(3). In a hearing under this section, one whose license was revoked by the director has the burden of showing that the revocation was unreasonable. *Hehn v. State*, 206 Neb. 34, 290 N.W.2d 813 (1980).

Summary review, in district court, of a department order involves only question of potential judgment, and is not a determination of ultimate liability. *Berg v. Pearson*, 199 Neb. 390, 259 N.W.2d 275 (1977).

On facts in this case, dismissal of petition contesting order of suspension of driver's license was proper. *Schetzler v. Sullivan*, 193 Neb. 841, 229 N.W.2d 550 (1975).

Statutory remedy of appeal is provided to person aggrieved by order of department. *Montgomery v. Blazek*, 161 Neb. 349, 73 N.W.2d 402 (1955).

Action involved was not an appeal under this section. *Hadden v. Aitken*, 156 Neb. 215, 55 N.W.2d 620 (1952).

**60-504 Operating record; furnished by department; contents; not admissible in evidence.**

The department shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of sections 60-501 to 60-569, which abstract shall also fully designate the motor vehicles, if any, registered in the name of such person, and, if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the department shall so certify. Such abstracts shall not be admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident.

**Source:** Laws 1949, c. 178, § 4, p. 485.

**60-505 Repealed. Laws 1993, LB 575, § 55.****60-505.01 Repealed. Laws 1961, c. 319, § 8.****60-505.02 Reinstatement of license or registration; filing of proof of financial responsibility; payment of fees.**

(1) Whenever a license is revoked and the filing of proof of financial responsibility is, by the Motor Vehicle Safety Responsibility Act, made a prerequisite to reinstatement of eligibility for a new license, no license shall be issued unless the licensee, in addition to complying with the other provisions of the act, pays to the Department of Motor Vehicles a reinstatement fee of one hundred twenty-five dollars. The fees paid pursuant to this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

(2) Whenever a license is suspended and the filing of proof of financial responsibility is, by the act, made a prerequisite to reinstatement of such license or to the issuance of a new license, no such license shall be reinstated or new license issued unless the licensee, in addition to complying with the other provisions of the act, pays to the department a fee of fifty dollars. The fees paid pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(3) When a registration is suspended and the filing of proof of financial responsibility is, by the act, made a prerequisite to reinstatement of the registration, no such registration shall be reinstated or new registration issued unless the registrant, in addition to complying with the act and the Motor Vehicle Registration Act, pays to the department a fee of fifty dollars. The fees paid pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 1959, c. 298, § 4, p. 1110; Laws 1980, LB 672, § 1; Laws 1993, LB 491, § 16; Laws 2001, LB 38, § 40; Laws 2005, LB 274, § 236.

## Cross References

Motor Vehicle Registration Act, see section 60-301.

**60-505.03 Repealed. Laws 1993, LB 575, § 55.**

**60-505.04 Repealed. Laws 1993, LB 575, § 55.**

**60-506 Repealed. Laws 1993, LB 575, § 55.**

**60-506.01 Report of accident; forwarding one part to insurance carrier; failure to receive denial of statements; effect.**

The Department of Motor Vehicles shall, within ten days after receipt of Part II of a report of an accident pursuant to section 60-699, forward such part by United States mail to the insurance company, if any, named in such report as furnishing liability insurance. Unless express denial of the truth of the statements shown on such Part II is received from the named insurance company by the department within the time limited by section 60-507, it shall be presumed for purposes of the Motor Vehicle Safety Responsibility Act that such statements are true, and such presumption shall be accepted, when applicable, as satisfying the requirements of sections 60-508 and 60-509.

**Source:** Laws 1961, c. 319, § 6, p. 1021; Laws 1993, LB 575, § 44.

In absence of showing that Department of Motor Vehicles therein, there was no basis for presumption of coverage. Belek mailed Part II of accident report to insurance company named v. Travelers Ind. Co., 187 Neb. 470, 191 N.W.2d 819 (1971).

#### (c) SECURITY FOLLOWING ACCIDENT

**60-507 Accident; damage in excess of one thousand dollars; suspend license; suspend privilege of operation by nonresident; notice; exception; proof of financial responsibility; failure to furnish information; effect.**

(1) Within ninety days after the receipt by the Department of Roads of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person, including such operator, to an apparent extent in excess of one thousand dollars, the Department of Motor Vehicles shall suspend (a) the license of each operator of a motor vehicle in any manner involved in such accident and (b) the privilege, if such operator is a nonresident, of operating a motor vehicle within this state, unless such operator deposits security in a sum which shall be sufficient, in the judgment of the Department of Motor Vehicles, to satisfy any judgment or judgments for damages resulting from such accident which may be recovered against such operator and unless such operator gives proof of financial responsibility.

Notice of such suspension shall be sent by the Department of Motor Vehicles by first-class mail to such operator not less than twenty days prior to the effective date of such suspension at his or her last-known mailing address as shown by the records of the department and shall state the amount required as security and the requirement of proof of financial responsibility. In the event a person involved in a motor vehicle accident within this state fails to make a report to the Department of Motor Vehicles indicating the extent of his or her injuries or the damage to his or her property within thirty days after the accident, and the department does not have sufficient information on which to base an evaluation of such injury or damage, the department, after reasonable notice to such person, may not require any deposit of security for the benefit or protection of such person. If the operator fails to respond to the notice on or before twenty days after the date of the notice, the director shall summarily suspend the operator's license or privilege and issue an order of suspension.

(2) The order of suspension provided for in subsection (1) of this section shall not be entered by the Department of Motor Vehicles if the department determines that in its judgment there is no reasonable possibility of a judgment being rendered against such operator.

(3) In determining whether there is a reasonable possibility of judgment being rendered against such operator, the department shall consider all reports and information filed in connection with the accident.

(4) The order of suspension provided for in subsection (1) of this section shall advise the operator that he or she has a right to appeal the order of suspension in accordance with the provisions set forth in section 60-503.

(5) The order of suspension provided for in subsection (1) of this section shall be sent by registered or certified mail to the person's last-known mailing address as shown by the records of the department.

**Source:** Laws 1949, c. 178, § 7, p. 486; Laws 1953, c. 215, § 3, p. 763; Laws 1957, c. 366, § 45, p. 1278; Laws 1959, c. 298, § 5, p. 1111; Laws 1961, c. 319, § 7, p. 1022; Laws 1967, c. 392, § 1, p. 1218; Laws 1972, LB 1303, § 2; Laws 1973, LB 417, § 4; Laws 1985, LB 94, § 6; Laws 1997, LB 10, § 2; Laws 2003, LB 185, § 1.

This section clearly details the proof of financial responsibility requirements that a vehicle operator or owner must meet in the event of an accident. *Russell v. State*, 247 Neb. 885, 531 N.W.2d 212 (1995).

The plain language of subsection (1) of this section requires only that notice be sent by the Department of Motor Vehicles by certified mail to such motor vehicle operator. It does not require that a return receipt be requested. *Wollenburg v. Conrad*, 246 Neb. 666, 522 N.W.2d 408 (1994).

Defendant cannot rely on notice provisions of this section as a defense if he has made an intelligent and voluntary guilty plea. *State v. Jones*, 214 Neb. 145, 332 N.W.2d 702 (1983).

An order entered by the Director of Motor Vehicles suspending a motor vehicle operator's license should not be set aside unless there is no reasonable possibility of a judgment being rendered against the operator in question. *Wroblewski v. Pearson*, 210 Neb. 82, 313 N.W.2d 231 (1981).

On facts in this case, dismissal of petition contesting order of suspension of driver's license was proper. *Schutzer v. Sullivan*, 193 Neb. 841, 229 N.W.2d 550 (1975).

Department is required to suspend license when statutory conditions exist. *Montgomery v. Blazek*, 161 Neb. 349, 73 N.W.2d 402 (1955).

Department may suspend license for failure to deposit security. *Hadden v. Aitken*, 156 Neb. 215, 55 N.W.2d 620 (1952).

### **60-508 Ability to respond in damages; automobile liability policy; no suspension; exemptions.**

Sections 60-507 and 60-511 shall not apply:

(1) To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

(2) To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

(3) To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the department, covered by any other form of liability insurance policy or bond;

(4) To any person qualifying as a self-insurer under sections 60-562 to 60-564 or to any operator of a motor vehicle owned by such self-insurer;

(5) To any person employed by the government of the United States when such person is acting within the scope or office of his employment; or

(6) If such operator is released from liability by a court of justice.

**Source:** Laws 1949, c. 178, § 8, p. 486; Laws 1959, c. 298, § 6, p. 1111; Laws 1965, c. 388, § 1, p. 1244.

This section clearly details the proof of financial responsibility requirements that a vehicle operator or owner must meet in the event of an accident. *Russell v. State*, 247 Neb. 885, 531 N.W.2d 212 (1995).

Uninsured motorist coverage is dependent upon legal liability of the uninsured motorist to the insured. *Crossley v. Pacific Employers Ins. Co.*, 198 Neb. 26, 251 N.W.2d 383 (1977).

The uninsured motorist statute does not prohibit a limitation of liability to the minimum limits required by statute in each policy even though the policy may insure more than one automobile. *Pettid v. Edwards*, 195 Neb. 713, 240 N.W.2d 344 (1976).

A motor vehicle covered by insurance in limits specified in this section does not become an uninsured vehicle, when be-

cause of multiple claims the insurance is not sufficient to satisfy liability of the insured to each claimant to the limits specified herein for individual claims. *Emery v. State Farm Mut. Auto. Ins. Co.*, 195 Neb. 619, 239 N.W.2d 798 (1976).

In absence of showing Department of Motor Vehicles mailed Part II of accident report to insurance company named therein, there is no presumption provisions of this section were met. *Belek v. Travelers Ind. Co.*, 187 Neb. 470, 191 N.W.2d 819 (1971).

Exceptions are made when owner or operator can show proof of financial responsibility. *Montgomery v. Blazek*, 161 Neb. 349, 73 N.W.2d 402 (1955).

Exceptions are made where suspension of license is not required. *Hadden v. Aitken*, 156 Neb. 215, 55 N.W.2d 620 (1952).

### **60-509 Automobile liability policy; corporate surety bond; effective when; limits; notice of accident; duty of insurance company or surety company.**

No such policy or bond shall be effective under section 60-508 unless issued by an insurance company or surety company authorized to do business in this state, except that if such motor vehicle was not registered in this state or was a motor vehicle which was registered elsewhere than in this state at the effective date of a policy or bond or the most recent renewal thereof, such policy or bond shall not be effective under section 60-508 unless the insurance company or surety company, if not authorized to do business in this state, shall execute an acknowledgment that the company shall be amenable to process issued by a court of this state in any action upon such policy or bond arising out of such accident. Every such policy or bond is subject, if the accident has resulted in bodily injury, sickness, disease, or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident and, if the accident has resulted in injury to or destruction of property, to a limit of not less than twenty-five thousand dollars because of injury to or destruction of property of others in any one accident. Upon receipt of a notice of such accident, the insurance company or surety company which issued such policy or bond shall furnish, for filing with the department, a written notice that such policy or bond was in effect at the time of such accident.

**Source:** Laws 1949, c. 178, § 9, p. 487; Laws 1959, c. 298, § 7, p. 1112; Laws 1959, c. 299, § 2, p. 1125; Laws 1973, LB 365, § 2; Laws 1983, LB 447, § 78; Laws 1983, LB 253, § 2; Laws 1986, LB 573, § 13.

This section defines the minimum limitation of an insurer's liability under an uninsured motorist policy. *Broderson v. Tradlers Ins. Co.*, 246 Neb. 688, 523 N.W.2d 24 (1994).

This section neither requires nor prohibits the aggregation or stacking of multiple uninsured motorist coverages. *Charley v. Farmers Mut. Ins. Co.*, 219 Neb. 765, 366 N.W.2d 417 (1985).

Uninsured motorist coverage is dependent upon legal liability of the uninsured motorist to the insured. *Crossley v. Pacific Employers Ins. Co.*, 198 Neb. 26, 251 N.W.2d 383 (1977).

The uninsured motorist statute does not prohibit a limitation of liability to the minimum limits required by statute in each policy even though the policy may insure more than one auto-

mobile. *Pettid v. Edwards*, 195 Neb. 713, 240 N.W.2d 344 (1976).

A motor vehicle covered by insurance in limits specified in this section does not become an uninsured vehicle, when because of multiple claims the insurance is not sufficient to satisfy liability of the insured to each claimant to the limits specified herein for individual claims. *Emery v. State Farm Mut. Auto. Ins. Co.*, 195 Neb. 619, 239 N.W.2d 798 (1976).

In absence of showing Department of Motor Vehicles mailed Part II of accident report to insurance company named therein, there is no presumption provisions of this section were met. *Belek v. Travelers Ind. Co.*, 187 Neb. 470, 191 N.W.2d 819 (1971).

**60-509.01 Repealed. Laws 1994, LB 1074, § 19.**

**60-509.02 Repealed. Laws 1994, LB 1074, § 19.**

**60-509.03 Repealed. Laws 1994, LB 1074, § 19.****60-509.04 Repealed. Laws 1989, LB 25, § 3.****60-510 Requirements for security; exceptions.**

The requirements as to security, proof, and suspension in sections 60-507 and 60-511 shall not apply:

(1) To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such operator or owner;

(2) To the operator or the owner of a motor vehicle legally parked at the time of the accident;

(3) To the owner of a motor vehicle when such motor vehicle was being operated without the owner's permission or consent at the time of the accident; or

(4) If, prior to the date that the department would otherwise suspend license and registration or nonresident's operating privilege under sections 60-507 and 60-511, there shall be filed with the department evidence satisfactory to it that the person, who would otherwise have to file security and proof, has (a) been released from liability, (b) been finally adjudicated not to be liable, (c) executed a warrant for confession of judgment, payable when and in such installments as the parties have agreed to, or (d) executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident.

**Source:** Laws 1949, c. 178, § 10, p. 487; Laws 1959, c. 298, § 8, p. 1113.

Written releases are required to comply with statute. Montgomery v. Blazek, 161 Neb. 349, 73 N.W.2d 402 (1955).

**60-511 Suspension; duration; renewal; settlement by insurance carrier; effect.**

The license and registration and nonresident's operating privilege suspended as provided in sections 60-507 and 60-511, shall remain so suspended, and not be renewed nor shall any such license or registration be issued to such person until:

(1) Such person shall deposit and file or there shall be deposited and filed on his behalf the security and proof required under sections 60-507 and 60-511;

(2) A supersedeas bond is filed and approved to insure payment of any judgment recovered against such person in a court of competent jurisdiction arising out of the accident on account of which such license and registration was suspended and such person files proof of financial responsibility;

(3) Three years shall have elapsed following the date of such accident and evidence satisfactory to the department has been filed with it that during such period no action for damages arising out of such accident has been instituted and such person files proof of financial responsibility;

(4) Evidence satisfactory to the department has been filed with it of a release from liability, and proof of financial responsibility or a final adjudication of nonliability, or a warrant for confession of judgment, or a duly acknowledged written agreement, in accordance with subdivision (4) of section 60-510 and proof of financial responsibility; *Provided*, in the event there shall be any default

in the payment of any installment under any confession of judgment then, upon notice of such default, the department shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until the entire amount provided for in said confession of judgment has been paid and proof of financial responsibility has been filed; *and provided further*, that in the event there shall be any default in the payment of any installment under any duly acknowledged written agreement then, upon notice of such default, the department shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until (a) such person deposits and shall maintain security as required under section 60-507 in such amount as the department may then determine, and files proof of financial responsibility or (b) one year shall have elapsed following the date when such security was required and during such period no action upon such agreement has been instituted in a court in this state and such person gives proof of financial responsibility; or

(5) In the event any insurance carrier of any motor vehicle operator makes settlement with the operator of another motor vehicle involved in the accident, such settlement shall, for the purpose of sections 60-501 to 60-569, be construed as a release to the operators of all motor vehicles involved in the accident, and be sufficient to satisfy subdivision (4) of this section.

**Source:** Laws 1949, c. 178, § 11, p. 488; Laws 1959, c. 298, § 9, p. 1113.

**60-512 Compliance with law; person with no license or registration; nonresident; resident with accident occurring in other state.**

(1) In case the operator or the owner of a motor vehicle involved in an accident within this state has no license or registration, he shall not be allowed a license or registration until he has complied with the requirements of sections 60-501 to 60-569 to the same extent that would be necessary if, at the time of the accident, he had held a license and registration.

(2) When a nonresident's operating privilege is suspended pursuant to section 60-507 or 60-511, the department shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses and registration certificates in the state in which such nonresident resides, if the law of such other state provides for action in relation thereto similar to that provided for in subsection (3) of this section.

(3) Upon receipt of certification that the operating privilege of a resident of this state has been suspended or revoked in any such other state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, or for failure to deposit both security and proof of financial responsibility, under circumstances which would require the department to suspend a nonresident's operating privilege had the accident occurred in this state, the department shall suspend the license of such resident and all of his registrations. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such other state relating to the deposit of such security, and until such resident files proof of financial responsibility if required by such law.

**Source:** Laws 1949, c. 178, § 12, p. 489; Laws 1959, c. 298, § 10, p. 1115.

**60-513 Security; form; amount; increase or reduction.**

The security required by the Motor Vehicle Safety Responsibility Act shall be in such form and in such amount as the department may require but in no case less than one thousand dollars nor in excess of the limits specified in section 60-509. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the department or State Treasurer, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons, except that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident. The department may increase or reduce the amount of security ordered in any case at any time after the date of the accident if, in the judgment of the director, the amount ordered is inadequate or excessive. In case the security originally ordered has been deposited, the excess deposited over the reduced amount ordered shall be returned to the depositor or his or her personal representative immediately, notwithstanding the provisions of section 60-514. If any additional security ordered is not deposited within ten days, the Department of Motor Vehicles shall proceed under the provisions of section 60-507.

**Source:** Laws 1949, c. 178, § 13, p. 489; Laws 1959, c. 298, § 11, p. 1116; Laws 1961, c. 320, § 1, p. 1023; Laws 2003, LB 185, § 2.

**60-514 Security; State Treasurer; custody; disposition; return.**

The security deposited, in compliance with the requirements of sections 60-501 to 60-569, shall be placed by the department in the custody of the State Treasurer and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than two years after the date of such accident, or within two years after the date of deposit of any security under subdivision (4) of section 60-511, and such deposit or any balance thereof shall be returned to the depositor or his personal representative when evidence satisfactory to the department has been filed with it that there has been a release from liability, or a final adjudication of nonliability, or a supersedeas bond to insure payment of judgment has been filed and approved as provided by subdivision (2) of section 60-511, or a warrant for confession of judgment, or a duly acknowledged agreement, in accordance with subdivision (4) of section 60-510, or whenever, after the expiration of two years from the date of the accident, or within two years after the date of deposit of any security under subdivision (4) of section 60-511, the department shall be given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid.

**Source:** Laws 1949, c. 178, § 14, p. 490; Laws 1959, c. 298, § 12, p. 1116.

**60-515 Evidence; action for damages; what not admitted.**

Neither the action taken by the department pursuant to the Motor Vehicle Safety Responsibility Act, the findings, if any, of the department upon which such action is based, nor the security filed as provided in the act shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages.

**Source:** Laws 1949, c. 178, § 15, p. 491; Laws 1993, LB 575, § 45.

## (d) PROOF OF FINANCIAL RESPONSIBILITY

**60-516 Failure to satisfy judgment; nonresidents.**

Whenever any person fails within sixty days to satisfy any judgment, it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state to transmit to the department, immediately after the expiration of sixty days, a copy of such judgment. If the defendant named in any copy of a judgment transmitted to the department is a nonresident, the department shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident.

**Source:** Laws 1949, c. 178, § 16, p. 491; Laws 1991, LB 420, § 14.

**60-517 License and registration; suspension for nonpayment of judgment.**

Upon the receipt of a copy of a judgment, the department shall forthwith suspend, except as provided in sections 60-521 to 60-523, the license and registration and the nonresident's operating privilege of any person against whom such judgment was rendered.

**Source:** Laws 1949, c. 178, § 17, p. 491; Laws 1991, LB 420, § 15.

**60-518 License and registration; suspension for nonpayment of judgment; exception.**

If the judgment creditor consents in writing, in such form as the department may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the department, in its discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in sections 60-521 to 60-523, provided the judgment debtor furnishes proof of financial responsibility.

**Source:** Laws 1949, c. 178, § 18, p. 491.

**60-519 License and registration; suspension for nonpayment of judgment; judgment satisfied; proof of financial responsibility.**

Such license, registration and nonresident's operating privilege shall, except as provided in sections 60-521 to 60-523, remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied or discharged, and until the said person gives proof of financial responsibility.

**Source:** Laws 1949, c. 178, § 19, p. 491; Laws 1972, LB 1303, § 3.

**60-520 Judgments; payments sufficient to satisfy requirements.**

Judgments in excess of the amounts specified in subdivision (11) of section 60-501 shall, for the purpose of the Motor Vehicle Safety Responsibility Act only, be deemed satisfied when payments in the amounts so specified have been credited thereon. Payments made in settlement of any claims because of bodily

injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the respective amounts so specified.

**Source:** Laws 1949, c. 178, § 20, p. 492; Laws 2010, LB650, § 33.

**60-521 Judgments; installment payments.**

A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

**Source:** Laws 1949, c. 178, § 21, p. 492.

**60-522 Judgments; installment payments; financial responsibility; license or registration; restore.**

The department shall not suspend a license, registration or a nonresident's operating privilege, and shall restore any license, registration or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

**Source:** Laws 1949, c. 178, § 22, p. 492.

**60-523 Judgments; installment payments; default; suspend license or registration.**

In the event the judgment debtor fails to pay an installment as specified by such order, the department, upon notice of such default, shall forthwith suspend the license, registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in sections 60-501 to 60-569.

**Source:** Laws 1949, c. 178, § 23, p. 492.

**60-524 Convictions; suspension of license or registration of operator or owner; when; reinstatement; proof of financial responsibility.**

(1) Whenever the department, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction, the department shall also suspend all registrations in the name of such person, except that it shall not suspend such registrations, unless otherwise required by law, if such person has previously given or shall immediately give and shall maintain for three years proof of financial responsibility.

(2) Whenever the department, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction, and such person was not the owner of the motor vehicle used at the time of the violation resulting in the conviction, the department shall also suspend the license and all registrations in the name of the owner of the motor vehicle so used, if such vehicle was operated with such owner's permission or consent at the time of the violation, unless such owner has previously given or shall immediately give and maintain for three years proof of financial responsibility. This subsection shall not apply to such owner if he or she had in effect at the time of the violation an automobile liability policy or bond with respect to such

motor vehicle; or if there was then in effect an automobile liability policy or bond with respect to the operation of the motor vehicle; or if the liability of such operator or owner was then, in the judgment of the department, covered by any other form of liability insurance policy or bond; or if the owner or operator was then qualified as a self-insurer under sections 60-562 to 60-564.

(3) Whenever the department, pursuant to any law of this state, suspends or revokes the license of any person after having received a record of conviction of the licensee, such person shall not be eligible for reinstatement of his or her driving privilege until he or she shall give and thereafter maintain proof of financial responsibility.

**Source:** Laws 1949, c. 178, § 24, p. 493; Laws 1959, c. 298, § 13, p. 1117; Laws 1975, LB 264, § 1; Laws 1999, LB 704, § 43.

**60-524.01 Repealed. Laws 1961, c. 319, § 8.**

**60-524.02 Repealed. Laws 1961, c. 319, § 8.**

**60-525 Convictions; suspension of license and registration; renewal; financial responsibility.**

Where proof of financial responsibility is required by section 60-524 such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state and not then unless and until he shall give and shall maintain for three years proof of financial responsibility.

**Source:** Laws 1949, c. 178, § 25, p. 493; Laws 1959, c. 298, § 15, p. 1119; Laws 1963, c. 363, § 1, p. 1158.

A license to operate a motor vehicle when suspended or revoked retains that status until a new license is procured. State v. Smith, 181 Neb. 846, 152 N.W.2d 16 (1967).

**60-526 License and registration; conviction without a license; subsequent issuance of license or registration; proof of financial responsibility.**

If a person is not licensed, but by final order or judgment is convicted of any offense requiring the suspension or revocation of license, or for operating a motor vehicle upon the highways without being licensed to do so, or for operating an unregistered motor vehicle upon the highways, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until he shall give and thereafter maintain proof of financial responsibility.

**Source:** Laws 1949, c. 178, § 26, p. 493; Laws 1959, c. 298, § 16, p. 1120.

**60-526.01 Repealed. Laws 1963, c. 364, § 1.**

**60-527 Nonresident's operating privilege; suspension or revocation; conviction or forfeiture of bail; proof of financial responsibility for removal.**

Whenever the department suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given

or shall immediately give and shall maintain for three years proof of financial responsibility.

**Source:** Laws 1949, c. 178, § 27, p. 494.

**60-528 Proof of financial responsibility; proof; enumerated; copy provided.**

Proof of financial responsibility shall be furnished for each motor vehicle registered by any person required to give such proof by filing:

- (1) A certificate of insurance as provided in section 60-529 or 60-531;
- (2) A bond as provided in sections 60-547 and 60-548;
- (3) A certificate of deposit of money or securities as provided in section 60-549; or
- (4) A certificate of self-insurance as provided in sections 60-562 to 60-564.

The department shall issue to any person providing the proof of financial responsibility a copy of any filing described in subdivision (2), (3), or (4) of this section with the department's seal affixed to the copy.

**Source:** Laws 1949, c. 178, § 28, p. 494; Laws 1985, LB 404, § 2; Laws 1993, LB 112, § 39; Laws 1995, LB 37, § 10.

An endorsement which is not misleading, ambiguous, or conflicting, which amends an omnibus clause in an uncertified automobile liability insurance policy by limiting the application of the omnibus clause to use of the automobile by a person over

the age of twenty-five years, except for the insured or any resident of his household, is not proscribed by statute, nor is it against public policy. *Equity Mut. Ins. Co. v. Allstate Ins. Co.*, 190 Neb. 515, 209 N.W.2d 592 (1973).

**60-529 Proof of financial responsibility; certificate of insurance; contents.**

Proof of financial responsibility may be furnished by (1) filing with the department the written certificate of any insurance carrier, duly authorized to do business in this state, or (2) electronic transmission of a certificate by an insurance carrier, duly authorized to do business in this state, certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility, also known as an SR-22 certificate. Such certificate shall give the effective date of the certificate and designate, by explicit description or by appropriate reference, all motor vehicles covered thereby unless the policy is issued to a person who is not the owner of a motor vehicle. A certificate of insurance for fleet vehicles may include, as an appropriate reference, a designation that the insurance coverage is applicable to all vehicles owned by the named insured, or wording of similar effect, in lieu of an explicit description.

**Source:** Laws 1949, c. 178, § 29, p. 494; Laws 1999, LB 704, § 44; Laws 2004, LB 911, § 1.

An endorsement which is not misleading, ambiguous, or conflicting, which amends an omnibus clause in an uncertified automobile liability insurance policy by limiting the application of the omnibus clause to use of the automobile by a person over

the age of twenty-five years, except for the insured or any resident of his household, is not proscribed by statute, nor is it against public policy. *Equity Mut. Ins. Co. v. Allstate Ins. Co.*, 190 Neb. 515, 209 N.W.2d 592 (1973).

**60-530 Proof of financial responsibility; certificate of insurance; designation of motor vehicle.**

No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such motor vehicle is so designated in such a certificate.

**Source:** Laws 1949, c. 178, § 30, p. 494.

An endorsement which is not misleading, ambiguous, or conflicting, which amends an omnibus clause in an uncertified automobile liability insurance policy by limiting the application of the omnibus clause to use of the automobile by a person over

the age of twenty-five years, except for the insured or any resident of his household, is not proscribed by statute, nor is it against public policy. *Equity Mut. Ins. Co. v. Allstate Ins. Co.*, 190 Neb. 515, 209 N.W.2d 592 (1973).

**60-531 Proof of financial responsibility; nonresident; certificate of insurance; requirements.**

The nonresident owner of a motor vehicle not registered in this state may give proof of financial responsibility by filing with the department a written certificate or certificates of an insurance carrier authorized to transact business in this state or any other state in which the motor vehicle or motor vehicles described in such certificate are registered or, if such nonresident does not own a motor vehicle, in the state in which the insured resides. The department shall accept the same upon condition that the insurance carrier complies with the following provisions with respect to the policies so certified: (1) The insurance carrier shall execute an acknowledgment that the carrier shall be amenable to process issued by a court of this state in any action upon such policy; and (2) the insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.

**Source:** Laws 1949, c. 178, § 31, p. 494; Laws 1983, LB 447, § 79; Laws 1997, LB 10, § 3.

An endorsement which is not misleading, ambiguous, or conflicting, which amends an omnibus clause in an uncertified automobile liability insurance policy by limiting the application of the omnibus clause to use of the automobile by a person over

the age of twenty-five years, except for the insured or any resident of his household, is not proscribed by statute, nor is it against public policy. *Equity Mut. Ins. Co. v. Allstate Ins. Co.*, 190 Neb. 515, 209 N.W.2d 592 (1973).

**60-532 Insurance carrier not authorized to transact business in state; defaults; effect.**

If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the department shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

**Source:** Laws 1949, c. 178, § 32, p. 495.

**60-533 Motor vehicle liability policy, defined.**

A motor vehicle liability policy, as said term is used in sections 60-501 to 60-569, shall mean an owner's or an operator's policy of liability insurance, certified as provided in sections 60-529 to 60-531 as proof of financial responsibility, and issued, except as otherwise provided in section 60-531 by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

**Source:** Laws 1949, c. 178, § 33, p. 495.

**60-534 Policy; contents; limits.**

Such motor vehicle liability policy shall (1) designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted and (2) insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance,

nance, or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle as follows: Twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.

**Source:** Laws 1949, c. 178, § 34, p. 495; Laws 1959, c. 299, § 3, p. 1126; Laws 1965, c. 389, § 1, p. 1245; Laws 1973, LB 365, § 3; Laws 1983, LB 253, § 3; Laws 1999, LB 704, § 45.

Under this section, the omnibus clause applies to only owners and operators of motor vehicles who must certify their motor vehicle liability policy pursuant to sections 60-528 to 60-531 in order to reinstate an operator's license or registration which has been suspended or revoked for failure to pay a judgment. *Universal Underwriters Ins. Co. v. Farm Bureau Ins. Co.*, 243 Neb. 194, 498 N.W.2d 333 (1993).

Act concerning a third-party claim requires an owner's SR22 policy to cover risk pertaining to automobile that has replaced automobile designated in policy. *Smith v. Canal Ins. Co.*, 184 Neb. 866, 173 N.W.2d 36 (1969).

Amendment in 1965 to section 60-561 made this section applicable only to automobile liability policies which have been certified as proof of financial responsibility. *State Farm Mut. Ins. Co. v. Pierce*, 182 Neb. 805, 157 N.W.2d 399 (1968).

Statutory omnibus clause is provided by this section. *Iowa Mut. Ins. Co. v. Meckna*, 180 Neb. 516, 144 N.W.2d 73 (1966).

This section is controlling over inconsistent provision of insurance policy. *Protective Fire and Cas. Co. v. Cornelius*, 176 Neb. 75, 125 N.W.2d 179 (1963).

A third party operating a named insured's vehicle becomes an additional insured party when given express or implied permission to operate the vehicle from an initial permittee. Implied permission by a named insured depends upon what actually was said and done prior to the accident. Because the essence of the implied permission doctrine is the course of conduct and relationship between the insured and another driver, the facts that two drivers were friends and periodically borrowed each other's cars without objection justified a finding of implied permission. *State Farm Mut. Ins. Cos. v. AMCO Ins. Co.*, 9 Neb. App. 872, 621 N.W.2d 553 (2001).

Purpose of omnibus clause is to fix the liability of additional insureds. *Universal Underwriters Ins. Co. v. Wagner*, 367 F.2d 866 (8th Cir. 1966).

Question of permission by named insured to use of automobile by another is to be resolved as a matter of fact. *Bekaert v. State Farm Mutual Auto Ins. Co.*, 230 F.2d 127 (8th Cir. 1956).

### **60-535 Policy; coverage for nonowned vehicle.**

Such motor vehicle liability policy shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth in section 60-534 with respect to a motor vehicle liability policy.

**Source:** Laws 1949, c. 178, § 35, p. 496; Laws 1965, c. 389, § 2, p. 1246.

This section applies only to policies which have been filed with the Nebraska Department of Motor Vehicles and certified as proof of future financial responsibility pursuant to the requirements of the Motor Vehicle Safety Responsibility Act. *Alied Mut. Ins. Co. v. Musil*, 242 Neb. 64, 493 N.W.2d 171 (1992).

This section controls over a conflicting exclusionary clause in operator's policy of liability insurance. *Rudder v. American Standard Ins. Co. of Wisconsin*, 187 Neb. 778, 194 N.W.2d 175 (1972).

### **60-536 Policy; requirements.**

Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in sections 60-501 to 60-569 as respects bodily injury and death or property damage, or both, and is subject to all the provisions of sections 60-501 to 60-569.

**Source:** Laws 1949, c. 178, § 36, p. 496.

### **60-537 Policy; provisions excluded.**

Such motor vehicle liability policy shall not insure any liability under any workers' compensation law nor any liability on account of bodily injury to or

death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

**Source:** Laws 1949, c. 178, § 37, p. 496; Laws 1986, LB 811, § 140.

**60-538 Policy; mandatory provisions.**

Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein: (1) The liability of the insurance carrier with respect to the insurance required by sections 60-501 to 60-569 shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy; (2) the satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage; (3) the insurance carrier shall have the right to settle any claim covered by the policy and, if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subsection (2) of section 60-534; and (4) the policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of sections 60-501 to 60-569 shall constitute the entire contract between the parties.

**Source:** Laws 1949, c. 178, § 38, p. 496.

Operation of newly acquired automobile without notifying the insurer does not constitute defense against third-party claim. Smith v. Canal Ins. Co., 184 Neb. 866, 173 N.W.2d 36 (1969).

The first accident is not within the purview of this act. Reserve Ins. Co. v. Aguilera, 181 Neb. 605, 150 N.W.2d 114 (1967).

Coverage of policy not certified was not limited by lower limits of statute. Universal Underwriters Ins. Co. v. Wagner, 367 F.2d 866 (8th Cir. 1966).

**60-539 Policy; additional coverage; not covered in term.**

Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of sections 60-501 to 60-569. With respect to a policy which grants such excess or additional coverage the term motor vehicle liability policy shall apply only to that part of the coverage which is required by sections 60-533 to 60-543.

**Source:** Laws 1949, c. 178, § 39, p. 497.

**60-540 Policy; permissible provisions.**

Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of sections 60-501 to 60-569.

**Source:** Laws 1949, c. 178, § 40, p. 497.

**60-541 Policy; prorating of insurance.**

Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

**Source:** Laws 1949, c. 178, § 41, p. 497.

**60-542 Policy; one or more insurance carriers.**

The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

**Source:** Laws 1949, c. 178, § 42, p. 498.

**60-543 Policy; binder issued pending issuance of policy.**

Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

**Source:** Laws 1949, c. 178, § 43, p. 498.

**60-544 Policy; notice of cancellation or termination of certified policy.**

When an insurance carrier has certified a motor vehicle liability policy under sections 60-529 to 60-531, the insurance so certified shall not be canceled or terminated until at least ten days after a notice of cancellation or termination of the insurance so certified is mailed to the insured. If the insurance is not reinstated by the insured within ten days, the insurance carrier shall provide notice to the department by filing a notice of the cancellation or termination in the office of the department. A motor vehicle liability policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

**Source:** Laws 1949, c. 178, § 44, p. 498; Laws 1999, LB 704, § 46.

**60-545 Sections; applicability to policies issued under other laws.**

Sections 60-501 to 60-569 shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are endorsed to conform to the requirements of sections 60-501 to 60-569, may be certified as proof of financial responsibility under sections 60-501 to 60-569.

**Source:** Laws 1949, c. 178, § 45, p. 498.

**60-546 Sections; applicability to policies on employee use of nonowned vehicles.**

Sections 60-501 to 60-569 shall not be held to apply to or affect policies solely insuring the insured named in the policy against liability resulting from the maintenance or use, by persons in the employ of the insured or on his behalf, of motor vehicles not owned by the insured.

**Source:** Laws 1949, c. 178, § 46, p. 498.

**60-547 Bond; proof of financial responsibility.**

Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state, or a bond with at least two individual sureties who each own real estate within this state,

which real estate shall be scheduled in the bond approved by a judge of a court of record. The bond shall be conditioned for the payment of the amounts specified in subdivision (11) of section 60-501. It shall be filed with the department and shall not be cancelable except after ten days' written notice to the department. Such bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such bond was filed, upon the filing of notice to that effect by the department in the office of the register of deeds of the county where such real estate shall be located.

**Source:** Laws 1949, c. 178, § 47, p. 498; Laws 2010, LB650, § 34.

**60-548 Bond; action on in name of state; when.**

If such a judgment, rendered against the principal on such bond, shall not be satisfied within sixty days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the state against the company or persons executing such bond, including an action in equity to foreclose any lien that may exist upon the real estate of a person who has executed such bond.

**Source:** Laws 1949, c. 178, § 48, p. 499.

**60-549 Deposits with State Treasurer; amount required; proof of financial responsibility.**

Proof of financial responsibility may be evidenced by the certificate of the State Treasurer that the person named in the certificate has deposited with him or her seventy-five thousand dollars per vehicle in cash or securities such as may legally be purchased by savings banks or for trust funds of a market value of seventy-five thousand dollars. The State Treasurer shall not accept any such deposit and issue a certificate therefor and the department shall not accept such certificate unless it is accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

**Source:** Laws 1949, c. 178, § 49, p. 499; Laws 1959, c. 299, § 4, p. 1126; Laws 1975, LB 264, § 2; Laws 1988, LB 1051, § 1.

**60-550 Cash deposits with State Treasurer; execution; not subject to attachment.**

Such deposit shall be held by the State Treasurer to satisfy, in accordance with the provisions of sections 60-501 to 60-569, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

**Source:** Laws 1949, c. 178, § 50, p. 499.

**60-550.01 Cash deposits with State Treasurer; judgment creditor; payment.**

Upon receipt by the Department of Motor Vehicles of a certified copy of a final judgment secured against a depositor, such judgment having been granted for damages arising out of the accident which caused the depositing of security, as provided in sections 60-501 to 60-569, the department shall, by voucher addressed to the Director of Administrative Services, cause the payment of the deposited security to the judgment creditor in accordance with the terms of the judgment and, if it then appears there is no further liability to any persons arising out of such accident, the department shall, upon its voucher to the Director of Administrative Services, cause the balance remaining, if any, to be returned to the depositor or his personal representative.

**Source:** Laws 1953, c. 220, § 1, p. 774; Laws 1957, c. 366, § 46, p. 1279.

**60-551 Owner may give proof for others.**

Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the department shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided. The department shall designate the restrictions imposed by this section on the back of such person's license.

**Source:** Laws 1949, c. 178, § 51, p. 500.

**60-552 Substitution of proof of financial responsibility.**

The department shall consent to the cancellation of any bond or certificate of insurance or the department shall direct and the State Treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to sections 60-501 to 60-569.

**Source:** Laws 1949, c. 178, § 52, p. 500.

**60-553 Additional proof required; suspend license and registration until furnished.**

Whenever any proof of financial responsibility, filed under the provisions of sections 60-501 to 60-569, no longer fulfills the purposes for which required, the department shall, for the purpose of sections 60-501 to 60-569, require other proof as required by sections 60-501 to 60-569 and shall suspend the license and registration or the nonresident's operating privilege pending the filing of such other proof.

**Source:** Laws 1949, c. 178, § 53, p. 500.

**60-554 Duration of proof; when proof may be canceled or returned; waiver of requirement of filing.**

The department shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the department shall direct and the State Treasurer shall return to the person entitled thereto any money or securities, deposited pursuant to sections 60-501 to 60-569 as proof of financial responsibility, or the department shall waive the requirement of filing proof, in any of the following events:

(1) At any time after three years from the date such proof was required when, during the three-year period preceding the request, the department has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration or nonresident's operating privilege of the person by or for whom such proof was furnished;

(2) In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(3) In the event the person who has given proof surrenders his license and registration to the department; *Provided*, that the department shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages, upon a liability covered by such proof, is then pending or a judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has, within two years immediately preceding such request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the department.

Whenever any person, whose proof has been canceled or returned under subdivision (3) of this section applies for a license or registration within a period of three years from the date such proof was originally required, any such application shall be refused unless the applicant shall reestablish such proof for the remainder of such three-year period.

**Source:** Laws 1949, c. 178, § 54, p. 500; Laws 1959, c. 298, § 18, p. 1120.

#### (e) VIOLATIONS

##### **60-555 Transfer of registration to defeat purpose of sections; prohibited.**

If an owner's registration has been suspended hereunder, such registration shall not be transferred nor the motor vehicle in respect of which such registration was issued registered in any other name after the date of the accident until the department is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of sections 60-501 to 60-569. Nothing in this section shall be held to apply to or affect the registration of any motor vehicle sold by a person who, pursuant to the terms or conditions of any written instrument giving a right of repossession, has exercised such right and has repossessed such motor vehicle from a person whose registration has been suspended under the provisions of sections 60-501 to 60-569.

**Source:** Laws 1949, c. 178, § 55, p. 501.

##### **60-556 Surrender of license and registration; failure; department to obtain possession; peace or law enforcement officer; duties.**

(1) Any person (a) whose license or registration shall have been suspended as herein provided, (b) whose policy of insurance or bond, when required under sections 60-501 to 60-569, shall have been canceled or terminated, or (c) who shall neglect to furnish other proof upon the request of the department shall immediately return his or her license and registration to the department. If any

person shall fail to return to the department the license or registration as provided herein, the department shall forthwith direct any peace officer or authorized representative of the department to secure possession thereof and to return the same to the department.

(2) It shall be the duty of the peace officer or law enforcement officer who is directed to secure possession of the license and registration under subsection (1) of this section to make every reasonable effort to secure the license and registration and return such to the department or to show good cause, as that is determined by the department, why such license or registration is unable to be returned.

**Source:** Laws 1949, c. 178, § 56, p. 502; Laws 1953, c. 207, § 10, p. 727; Laws 1980, LB 672, § 2; Laws 1981, LB 174, § 3.

**60-557 License, registration, or nonresident's operating privilege; operating motor vehicle while suspended or revoked; effect.**

Any person whose license, registration, or nonresident's operating privilege has been suspended or revoked under the Motor Vehicle Safety Responsibility Act and who, during such suspension or revocation, drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under the act, shall be subject to section 60-4,108.

**Source:** Laws 1949, c. 178, § 57, p. 502; Laws 1959, c. 293, § 6, p. 1100; Laws 1989, LB 25, § 1; Laws 1989, LB 285, § 131; Laws 2001, LB 38, § 41.

This section sets forth the penalty for violation of Safety Responsibility Act. State v. Ruggiere, 180 Neb. 869, 146 N.W.2d 373 (1966).

**60-558 Failure to return license or registration; penalty.**

Any person willfully failing to return the license or registration, as required in section 60-556, shall be guilty of a Class III misdemeanor.

**Source:** Laws 1949, c. 178, § 58, p. 502; Laws 1977, LB 39, § 85.

**60-559 Notice; forgery; penalty.**

Any person who shall forge or, without authority, sign any notice, provided for under sections 60-507 to 60-509, that a policy or bond is in effect, or any evidence of proof of financial responsibility, or who files or offers for filing any such notice or evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be guilty of a Class I misdemeanor.

**Source:** Laws 1949, c. 178, § 59, p. 502; Laws 1977, LB 39, § 86.

**60-560 Violations; penalty.**

Any person who shall violate any provision of sections 60-501 to 60-569 for which no penalty is otherwise provided shall be guilty of a Class III misdemeanor.

**Source:** Laws 1949, c. 178, § 60, p. 503; Laws 1977, LB 39, § 87.

## (f) GENERAL PROVISIONS

**60-561 Act; applicability.**

The Motor Vehicle Safety Responsibility Act shall not apply with respect to any motor vehicle owned by the United States, the State of Nebraska, any political subdivision of this state, or any municipality therein. Except for section 60-551, such act shall not apply with respect to any motor vehicle which is subject to the requirements of section 75-307, nor shall sections 60-516 to 60-544 apply to any automobile liability policy which has not been certified as provided in sections 60-528 to 60-531 as proof of financial responsibility.

**Source:** Laws 1949, c. 178, § 61, p. 503; Laws 1965, c. 389, § 3, p. 1246; Laws 1987, LB 149, § 1; Laws 1993, LB 575, § 46.

Amendment in 1965 to this section limited application of Motor Vehicle Safety Responsibility Act to policies certified as proof of financial responsibility. State Farm Mut. Ins. Co. v. Pierce, 182 Neb. 805, 157 N.W.2d 399 (1968).  
Amendment of this section in 1965 operated prospectively only. Universal Underwriters Ins. Co. v. Wagner, 367 F.2d 866 (8th Cir. 1966).

**60-562 Self-insurer; qualifications.**

Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department, as provided in section 60-563.

**Source:** Laws 1949, c. 178, § 62, p. 503.

**60-563 Self-insurer; certificate; issuance.**

The department may, in its discretion, upon the application of such a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

**Source:** Laws 1949, c. 178, § 63, p. 503.

**60-564 Self-insurer; certificate; cancellation; hearing; grounds.**

Upon not less than five days' notice and a hearing pursuant to such notice, the department may cancel a certificate of self-insurance upon reasonable grounds. Failure to pay any judgment within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

**Source:** Laws 1949, c. 178, § 64, p. 503.

**60-565 Sections; supplemental to other laws.**

Sections 60-501 to 60-569 shall in no respect be considered as a repeal of the state motor vehicle law, but shall be construed as supplemental thereto.

**Source:** Laws 1949, c. 178, § 65, p. 503.

**60-566 Repealed. Laws 1961, c. 284, § 1.****60-567 Actions; cumulative.**

Nothing in sections 60-501 to 60-569 shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

**Source:** Laws 1949, c. 178, § 67, p. 504.

**60-568 Sections, how construed.**

Sections 60-501 to 60-569 shall be so interpreted and construed as to effectuate their general purpose to make uniform the laws of those states which enact them.

**Source:** Laws 1949, c. 178, § 68, p. 504.

**60-569 Act, how cited.**

Sections 60-501 to 60-569 may be cited as the Motor Vehicle Safety Responsibility Act.

**Source:** Laws 1949, c. 178, § 69, p. 504.

**60-570 Repealed. Laws 1995, LB 37, § 16.**

## (g) UNDERINSURED MOTORIST INSURANCE COVERAGE

**60-571 Transferred to section 44-6401.**

**60-572 Transferred to section 44-6402.**

**60-573 Transferred to section 44-6404.**

**60-574 Transferred to section 44-6406.**

**60-575 Transferred to section 44-6407.**

**60-576 Transferred to section 44-6403.**

**60-577 Transferred to section 44-6408.**

**60-578 Transferred to section 44-6409.**

**60-579 Transferred to section 44-6410.**

**60-580 Transferred to section 44-6411.**

**60-581 Transferred to section 44-6412.**

**60-582 Transferred to section 44-6413.**

**ARTICLE 6****NEBRASKA RULES OF THE ROAD**

## Cross References

**Motor carriers:**

Motor vehicle fuel carriers, regulations, see Chapter 66, article 5.  
Regulations, see Chapter 75, article 3.

**Motor vehicles:**

Department of Motor Vehicles, general provisions, see Chapter 60, article 15.  
Financial responsibility requirements, see section 60-501 et seq.  
Operators' licenses, see section 60-462 et seq.  
Permit to move mobile homes, see section 77-3708.  
Taxation, see sections 60-3,184 to 60-3,190.

**Nebraska State Patrol**, see section 81-2001 et seq.

**Railroad crossings**, regulation of, see section 74-1334.

**Shooting from highways prohibited**, when, see section 37-513.

**Shotguns**, loaded, carrying in vehicle prohibited, see section 37-522.

**Signs along highways**, see sections 39-102, 39-201.01 to 39-226, 39-1320, and 69-1701 et seq.

## MOTOR VEHICLES

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## NEBRASKA RULES OF THE ROAD

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60-6,322. Repealed. Laws 2005, LB 274, § 286.

60-6,323. Repealed. Laws 2005, LB 274, § 286.

60-6,324. Repealed. Laws 2005, LB 274, § 286.

60-6,325. Repealed. Laws 2005, LB 274, § 286.

60-6,326. Repealed. Laws 2005, LB 274, § 286.

60-6,327. Repealed. Laws 2005, LB 274, § 286.

60-6,328. Repealed. Laws 2005, LB 274, § 286.

60-6,329. Repealed. Laws 2005, LB 274, § 286.

60-6,330. Repealed. Laws 2005, LB 274, § 286.

60-6,331. Repealed. Laws 2005, LB 274, § 286.

60-6,332. Repealed. Laws 2005, LB 274, § 286.

60-6,333. Repealed. Laws 2005, LB 274, § 286.

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	(a) GENERAL PROVISIONS

**60-601 Rules, how cited.**

Sections 60-601 to 60-6,379 shall be known and may be cited as the Nebraska Rules of the Road.

**Source:** Laws 1973, LB 45, § 122; Laws 1989, LB 285, § 9; Laws 1992, LB 291, § 14; Laws 1992, LB 872, § 5; R.S.Supp., 1992, § 39-6,122; Laws 1993, LB 370, § 97; Laws 1993, LB 564, § 14; Laws 1996, LB 901, § 3; Laws 1996, LB 1104, § 2; Laws 1997, LB 91, § 1; Laws 1998, LB 309, § 12; Laws 1999, LB 585, § 3; Laws 2001, LB 38, § 42; Laws 2002, LB 1105, § 448; Laws 2002,

LB 1303, § 10; Laws 2004, LB 208, § 8; Laws 2006, LB 853, § 14; Laws 2006, LB 925, § 4; Laws 2008, LB736, § 6; Laws 2008, LB756, § 18; Laws 2009, LB92, § 1; Laws 2010, LB650, § 35; Laws 2010, LB945, § 2.

Sections 39-601 to 39-6,122 do not apply to the users of a hospital drive that does not fit the statutory definition of a "highway" found in section 39-602. However, common law rules applicable to users of public ways do apply. *Bassinger v. Agnew*, 206 Neb. 1, 290 N.W.2d 793 (1980) (pursuant to Laws

1993, LB 370, sections 97 to 470, language from sections 39-601 to 39-6,122 was placed in sections 60-601 to 60-6,374. Pursuant to Laws 1993, LB 370, section 120, "highway" is now defined in section 60-624).

### **60-602 Declaration of legislative purpose.**

The purposes and policies of the Nebraska Rules of the Road are:

- (1) To make more uniform highway traffic laws between states;
- (2) To educate drivers so that they can develop instinctive habits resulting in safer emergency reactions;
- (3) To educate drivers and pedestrians of all ages to more readily understand each other's responsibilities and privileges when all obey the same rules;
- (4) To promote economic savings by relieving congestion and confusion in traffic;
- (5) To increase the efficiency of streets and highways by the application of uniform traffic control devices;
- (6) To reduce the huge annual loss of life and property which occurs on Nebraska's highways; and
- (7) To assist traffic law enforcement by encouraging voluntary compliance with law through uniform rules.

**Source:** Laws 1973, LB 45, § 1; R.S.1943, (1988), § 39-601; Laws 1993, LB 370, § 98.

### **60-603 Rules; not retroactive.**

The Nebraska Rules of the Road as enacted by Laws 1993, LB 370, shall not have a retroactive effect and shall not apply to any traffic accident, to any cause of action arising out of a traffic accident or judgment arising therefrom, or to any violation of the motor vehicle laws of this state occurring prior to January 1, 1994. All violations, offenses, prosecutions, and criminal appeals under prior law are saved and preserved. All civil causes of action based upon or under prior law arising out of traffic accidents prior to such date and judgments thereon or appeals therefrom are saved and preserved.

**Source:** Laws 1973, LB 45, § 120; R.S.1943, (1988), § 39-6,120; Laws 1993, LB 370, § 99.

### **60-604 Construction of rules.**

The Nebraska Rules of the Road shall be so interpreted and construed as to effectuate their general purpose to make uniform the laws relating to motor vehicles.

**Source:** Laws 1973, LB 45, § 121; R.S.1943, (1988), § 39-6,121; Laws 1993, LB 370, § 100.

Sections 39-601 to 39-6,122 do not apply to the users of a hospital drive that does not fit the statutory definition of a "highway" found in section 39-602. However, common law rules applicable to users of public ways do apply. *Bassinger v.*

*Agnew*, 206 Neb. 1, 290 N.W.2d 793 (1980) (pursuant to Laws 1993, LB 370, sections 97 to 470, language from sections 39-601 to 39-6,122 was placed in sections 60-601 to 60-6,374. Pursuant

to Laws 1993, LB 370, section 120, "highway" is now defined in section 60-624).

**60-605 Definitions, where found.**

For purposes of the Nebraska Rules of the Road, the definitions found in sections 60-606 to 60-676 shall be used.

**Source:** Laws 1993, LB 370, § 101; Laws 1996, LB 901, § 4; Laws 1997, LB 91, § 2; Laws 2001, LB 38, § 43; Laws 2006, LB 853, § 15; Laws 2006, LB 925, § 5; Laws 2008, LB756, § 19; Laws 2010, LB650, § 36.

**60-606 Acceleration or deceleration lane, defined.**

Acceleration or deceleration lane shall mean a supplementary lane of a highway lane for traffic, which adjoins the traveled lanes of a highway and connects an approach or exit road with such highway.

**Source:** Laws 1993, LB 370, § 102.

**60-607 Alley, defined.**

Alley shall mean a highway intended to provide access to the rear or side of lots or buildings and not intended for the purpose of through vehicular traffic.

**Source:** Laws 1993, LB 370, § 103.

**60-608 Approach or exit road, defined.**

Approach or exit road shall mean any highway or ramp designed and used solely for the purpose of providing ingress or egress to or from an interchange or rest area of a highway. An approach road shall begin at the point where it intersects with any highway not a part of the highway for which such approach road provides access and shall terminate at the point where it merges with an acceleration lane of a highway. An exit road shall begin at the point where it intersects with a deceleration lane of a highway and shall terminate at the point where it intersects any highway not a part of a highway from which the exit road provides egress.

**Source:** Laws 1993, LB 370, § 104.

**60-609 Arterial highway, defined.**

Arterial highway shall mean a highway primarily for through traffic, usually on a continuous route.

**Source:** Laws 1993, LB 370, § 105.

**60-610 Authorized emergency vehicle, defined.**

Authorized emergency vehicle shall mean such fire department vehicles, police vehicles, rescue vehicles, and ambulances as are publicly owned, such other publicly or privately owned vehicles as are designated by the Director of Motor Vehicles, and such publicly owned military vehicles of the National Guard as are designated by the Adjutant General pursuant to section 55-133.

**Source:** Laws 1993, LB 370, § 106; Laws 2008, LB196, § 2.

**60-611 Bicycle, defined.**

Bicycle shall mean every device propelled solely by human power, upon which any person may ride, and having two tandem wheels either of which is more than fourteen inches in diameter.

**Source:** Laws 1993, LB 370, § 107.

**60-612 Bus, defined.**

Bus shall mean every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

**Source:** Laws 1993, LB 370, § 108.

**60-613 Business district, defined.**

Business district shall mean the territory contiguous to and including a highway when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including, but not limited to, hotels, banks, office buildings, railroad stations, or public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of a highway.

**Source:** Laws 1993, LB 370, § 109.

**60-614 Cabin trailer, defined.**

Cabin trailer shall mean a trailer or 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 shall not mean a trailer or semitrailer which is permanently attached to real estate. There shall be three classes of cabin trailers:

(1) Camping trailer which shall include 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 shall include cabin trailers more than one hundred two inches in width or more than forty feet in length; and

(3) Travel trailer which shall include 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.

**Source:** Laws 1993, LB 370, § 110; Laws 1993, LB 575, § 4; Laws 2001, LB 376, § 2.

A manufactured home is a class of cabin trailer for purposes of this section. Green Tree Fin. Servicing v. Sutton, 264 Neb. 533, 650 N.W.2d 228 (2002).

**60-614.01 Continuous alcohol monitoring device, defined.**

Continuous alcohol monitoring device means a portable device capable of automatically and periodically testing and recording alcohol consumption levels and automatically and periodically transmitting such information and tamper attempts regarding such device, regardless of the location of the person being monitored.

**Source:** Laws 2006, LB 925, § 6.

**60-615 Controlled-access highway, defined.**

Controlled-access highway shall mean every highway or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or egress from except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway.

**Source:** Laws 1993, LB 370, § 111.

**60-616 Crosswalk, defined.**

Crosswalk shall mean:

- (1) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of such roadway measured from the curbs or, in the absence of curbs, from the edge of the roadway; or
- (2) Any portion of a roadway at an intersection or elsewhere distinctly designated by competent authority and marked for pedestrian crossing by lines, signs, or other devices.

**Source:** Laws 1993, LB 370, § 112.

Crosswalk defined and considered as worded in former section. *Therkildsen v. Gottsch*, 194 Neb. 729, 235 N.W.2d 622 (1975).

**60-617 Daytime, defined.**

Daytime shall mean that period of time between sunrise and sunset.

**Source:** Laws 1993, LB 370, § 113.

**60-618 Divided highway, defined.**

Divided highway shall mean a highway with separated roadways for traffic in opposite directions.

**Source:** Laws 1993, LB 370, § 114.

**60-618.01 Expressway, defined.**

Expressway shall mean a divided arterial highway designed primarily for through traffic with full or partial control of access which may have grade separations at intersections.

**Source:** Laws 1996, LB 901, § 5.

**60-618.02 Electric personal assistive mobility device, defined.**

Electric personal assistive mobility device shall mean a self-balancing, two-nontandem-wheeled device, designed to transport only one person and containing an electric propulsion system with an average power of seven hundred fifty watts or one horsepower, whose maximum speed on a paved level surface, when powered solely by such a propulsion system and while being ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour.

**Source:** Laws 2002, LB 1105, § 449.

**60-619 Farm tractor, defined.**

Farm tractor shall mean every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

**Source:** Laws 1993, LB 370, § 115.

**60-620 Final conviction, defined.**

Final conviction shall mean the final determination of all questions of fact and of law.

**Source:** Laws 1993, LB 370, § 116.

**60-621 Freeway, defined.**

Freeway shall mean a divided arterial highway designed primarily for through traffic with full control of access and with grade separations at all intersecting road crossings, including all interchanges and approach and exit roads thereto.

**Source:** Laws 1993, LB 370, § 117.

**60-622 Full control of access, defined.**

Full control of access shall mean that the right of owners or occupants of abutting land or other persons to access or view is fully controlled by public authority having jurisdiction and that such control is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings or intersections at grade or direct private driveway connections.

**Source:** Laws 1993, LB 370, § 118.

**60-623 Grade separation, defined.**

Grade separation shall mean a crossing of two highways at different levels.

**Source:** Laws 1993, LB 370, § 119.

**60-624 Highway, defined.**

Highway shall mean 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.

**Source:** Laws 1993, LB 370, § 120.

A hospital driveway which is privately maintained and subject to use by patients, visitors, and others having legitimate business at the hospital is not a "highway," within the meaning of this section and, therefore, the rules of the road as set forth in sections 39-601 to 39-6,122 do not apply to its use. However, common law applicable to users of public ways does apply.

*Bassinger v. Agnew*, 206 Neb. 1, 290 N.W.2d 793 (1980) (sections 39-601 to 39-6,122 were transferred to Chapter 60, article 6).

Where highway includes two roadways thirty feet apart, each crossing thereof is a separate intersection. *Therkildsen v. Gottsch*, 194 Neb. 729, 235 N.W.2d 622 (1975).

**60-624.01 Idle reduction technology, defined.**

Idle reduction technology means any device or system of devices that is installed on a heavy-duty diesel-powered on-highway truck or truck-tractor and is designed to provide to such truck or truck-tractor those services, such as heat, air conditioning, or electricity, that would otherwise require the operation of the main drive engine while the truck or truck-tractor is temporarily parked or remains stationary.

**Source:** Laws 2008, LB756, § 20.

**60-625 Implement of husbandry, defined.**

Implement of husbandry shall mean every vehicle or implement designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry and used primarily off any highway.

**Source:** Laws 1993, LB 370, § 121; Laws 2000, LB 1361, § 1.

**60-625.01 Impoundment of operator's license, defined.**

Impoundment of operator's license shall have the meaning found in section 60-470.01.

**Source:** Laws 2001, LB 38, § 44.

**60-626 Interchange, defined.**

Interchange shall mean a grade-separated intersection with one or more turning roadways for travel between any of the highways radiating from and forming part of such intersection.

**Source:** Laws 1993, LB 370, § 122.

**60-627 Intersection, defined.**

Intersection shall mean the area embraced within the prolongation or connection of the lateral curb lines or, if there are no lateral curb lines, the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. When a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection. The junction of an alley with a highway shall not constitute an intersection.

**Source:** Laws 1993, LB 370, § 123.

Intersection right-of-way is a qualified, not absolute, right to proceed, exercising due care, in a lawful manner in preference to an opposing vehicle. Reese v. Mayer, 198 Neb. 499, 253 N.W.2d 317 (1977).

**60-628 Local authority, defined.**

Local authority shall mean every county, municipal, and other local board or body having power to enact laws, rules, or regulations relating to traffic under the Constitution of Nebraska and the laws of this state and generally including the directors of state institutions, the Game and Parks Commission, and all natural resources districts with regard to roads not a part of the state highway system and within the limits of such institution, of an area under Game and Parks Commission control, or of an area owned or leased by a natural resources district, but outside the limits of any incorporated city or village.

**Source:** Laws 1993, LB 370, § 124.

**60-629 Mail, defined.**

Mail shall mean to deposit in the United States mail properly addressed and with postage prepaid.

**Source:** Laws 1993, LB 370, § 125.

**60-630 Maintenance, defined.**

Maintenance shall mean the act, operation, or continuous process of repair, reconstruction, or preservation of the whole or any part of any highway, including surface, shoulders, roadsides, traffic control devices, structures, waterways, and drainage facilities, for the purpose of keeping it at or near or improving upon its original standard of usefulness and safety.

**Source:** Laws 1993, LB 370, § 126.

**60-631 Manual, defined.**

Manual shall mean the Manual on Uniform Traffic Control Devices adopted by the Department of Roads pursuant to section 60-6,118.

**Source:** Laws 1993, LB 370, § 127.

**60-632 Median, defined.**

Median shall mean that part of a divided highway, such as a physical barrier or clearly indicated dividing section or space, so constructed as to impede vehicular traffic across or within such barrier, section, or space or to divide such highway into two roadways for vehicular travel in opposite directions.

**Source:** Laws 1993, LB 370, § 128.

**60-633 Median crossover, defined.**

Median crossover shall mean a connection between roadways of a divided highway the use of which may permit a vehicle to reverse its direction by continuously moving forward.

**Source:** Laws 1993, LB 370, § 129.

**60-634 Median opening, defined.**

Median opening shall mean a gap in a median provided for crossing and turning traffic.

**Source:** Laws 1993, LB 370, § 130.

**60-635 Metal tire, defined.**

Metal tire shall mean every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

**Source:** Laws 1993, LB 370, § 131.

**60-636 Minibike, defined.**

Minibike shall mean a two-wheel motor vehicle which has a total wheel and tire diameter of less than fourteen inches or an engine-rated capacity of less than forty-five cubic centimeters displacement or any other two-wheel motor vehicle primarily designed by the manufacturer for off-road use only. Minibike shall not include an electric personal assistive mobility device.

**Source:** Laws 1993, LB 370, § 132; Laws 2002, LB 1105, § 450.

**60-636.01 Minitruck, defined.**

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a

piston or rotor displacement of one thousand cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

**Source:** Laws 2010, LB650, § 37.

**60-637 Moped, defined.**

Moped shall mean a bicycle with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than thirty miles per hour on level ground.

**Source:** Laws 1993, LB 370, § 133.

**60-638 Motor vehicle, defined.**

Motor vehicle shall mean every self-propelled land vehicle, not operated upon rails, except mopeds, self-propelled chairs used by persons who are disabled, and electric personal assistive mobility devices.

**Source:** Laws 1993, LB 370, § 134; Laws 2002, LB 1105, § 451.

**60-639 Motorcycle, defined.**

Motorcycle shall mean every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, excluding tractors and electric personal assistive mobility devices.

**Source:** Laws 1993, LB 370, § 135; Laws 2002, LB 1105, § 452.

**60-640 Motor-driven cycle, defined.**

Motor-driven cycle shall mean every motorcycle, including every motor scooter, with a motor which produces not to exceed five brake horsepower as measured at the drive shaft, mopeds, and every bicycle with motor attached. Motor-driven cycle shall not include an electric personal assistive mobility device.

**Source:** Laws 1993, LB 370, § 136; Laws 2002, LB 1105, § 453.

**60-641 Nighttime, defined.**

Nighttime shall mean that period of time between sunset and sunrise.

**Source:** Laws 1993, LB 370, § 137.

**60-642 Operator or driver, defined.**

Operator or driver shall mean any person who operates, drives, or is in actual physical control of a vehicle.

**Source:** Laws 1993, LB 370, § 138.

**60-643 Operator's license, defined.**

Operator's license shall have the meaning found in section 60-474.

**Source:** Laws 1993, LB 370, § 139.

**60-644 Owner, with respect to a vehicle, defined.**

Owner, with respect to a vehicle, shall mean a person, other than a person holding a security interest, having the property in or title to a vehicle, including a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excluding a lessee under a lease not intended as security.

**Source:** Laws 1993, LB 370, § 140.

**60-645 Park or parking, defined.**

Park or parking shall mean the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

**Source:** Laws 1993, LB 370, § 141.

**60-646 Peace officer, defined.**

Peace officer shall mean any town marshal, chief of police, local police officer, sheriff, or deputy sheriff, the Superintendent of Law Enforcement and Public Safety, or any officer of the Nebraska State Patrol and shall also include members of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder and Game and Parks Commission conservation officers while in areas under the control of the Game and Parks Commission. With respect to directing traffic only, peace officer shall also include any person authorized to direct or regulate traffic.

**Source:** Laws 1993, LB 370, § 142; Laws 1998, LB 922, § 405.

**60-647 Pedestrian, defined.**

Pedestrian shall mean any person afoot.

**Source:** Laws 1993, LB 370, § 143.

**60-648 Pneumatic tire, defined.**

Pneumatic tire shall mean any tire designed so that compressed air supports the load of the wheel.

**Source:** Laws 1993, LB 370, § 144.

**60-649 Private road or driveway, defined.**

Private road or driveway shall mean every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

**Source:** Laws 1993, LB 370, § 145.

**60-649.01 Property-carrying unit, defined.**

Property-carrying unit shall mean any part of a commercial motor vehicle combination, except the truck-tractor, used to carry property and shall include trailers and semitrailers.

**Source:** Laws 2006, LB 853, § 16.

**60-650 Railroad, defined.**

Railroad shall mean a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

**Source:** Laws 1993, LB 370, § 146.

**60-651 Railroad sign or signal, defined.**

Railroad sign or signal shall mean any sign, signal, or device erected by authority of a public body or official or by a railroad intended to give notice of the presence of railroad tracks or the approach of a railroad train.

**Source:** Laws 1993, LB 370, § 147.

**60-652 Railroad train, defined.**

Railroad train shall mean a steam engine or an engine with an electric or other motor, with or without cars coupled thereto, operated upon rails.

**Source:** Laws 1993, LB 370, § 148.

**60-653 Registration, defined.**

Registration shall mean the registration certificate or certificates and license plates issued under the Motor Vehicle Registration Act.

**Source:** Laws 1993, LB 370, § 149; Laws 2005, LB 274, § 237.

**Cross References**

**Motor Vehicle Registration Act**, see section 60-301.

**60-654 Residential district, defined.**

Residential district shall mean the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

**Source:** Laws 1993, LB 370, § 150.

**60-654.01 Revocation of operator's license, defined.**

Revocation of operator's license shall have the meaning found in section 60-476.01.

**Source:** Laws 2001, LB 38, § 45.

**60-655 Right-of-way, defined.**

Right-of-way shall mean the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.

**Source:** Laws 1993, LB 370, § 151.

The standard for determining whether a vehicle is "approaching" is whether or not the vehicle poses an immediate hazard; that is, whether the circumstances are such that there is a danger of collision if one vehicle does not grant precedence to the other. *Springer v. Bohling*, 259 Neb. 71, 607 N.W.2d 836 (2000).

The right-of-way does not include a right to encroach upon that half of the highway upon which cars coming from the opposite direction are entitled to travel. Generally, an unexcused vehicular encroachment on another's lane of traffic, such as driving to the left of the middle of a roadway, prevents acquisition of a right-of-way and precludes the unlawful encroachment from becoming a favored position in movement of traffic. *Krul v. Harless*, 222 Neb. 313, 383 N.W.2d 744 (1986).

A police vehicle enjoys privileges as an emergency vehicle as long as the officer operates emergency equipment in good faith belief that he or she is responding to an emergency. *Maple v. City of Omaha*, 222 Neb. 293, 384 N.W.2d 254 (1986).

Vehicle on the right has the favored position but does not have an absolute right to proceed regardless of the circumstances. *Crink v. Northern Nat. Gas. Co.*, 200 Neb. 460, 263 N.W.2d 857 (1978).

Intersection right-of-way is a qualified, not absolute, right to proceed, exercising due care, in a lawful manner in preference to an opposing vehicle. *Reese v. Mayer*, 198 Neb. 499, 253 N.W.2d 317 (1977).

#### **60-656 Roadway, defined.**

Roadway shall mean that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, the term roadway shall refer to any such roadway separately but not to all such roadways collectively.

**Source:** Laws 1993, LB 370, § 152.

#### **60-657 Safety zone, defined.**

Safety zone shall mean an area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as such area.

**Source:** Laws 1993, LB 370, § 153.

#### **60-658 School bus, defined.**

School bus shall mean any motor vehicle which complies with the general design, equipment, and color requirements adopted and promulgated pursuant to subdivision (13) of section 79-318 and which is used to transport students to or from school or in connection with school activities but shall not include buses operated by common carriers in urban transportation of school students.

**Source:** Laws 1993, LB 370, § 154; Laws 1993, LB 575, § 5; Laws 2009, LB549, § 3.

#### **60-658.01 School crossing zone, defined.**

School crossing zone means the area of a roadway designated to the public by the Department of Roads or any county, city, or village as a school crossing zone through the use of a sign or traffic control device as specified by the department or any county, city, or village in conformity with the manual but does not include any area of a freeway. A school crossing zone starts at the location of the first sign or traffic control device identifying the school crossing zone and continues until a sign or traffic control device indicates that the school crossing zone has ended.

**Source:** Laws 1997, LB 91, § 3.

#### **60-659 Security interest, defined.**

Security interest shall mean an equitable title or property right in a vehicle reserved or created by agreement and which secures payment or performance of an obligation, including the interest of a lessor under a lease intended as

security, and which is perfected when it is valid against third parties generally, subject only to specific statutory exceptions.

**Source:** Laws 1993, LB 370, § 155.

**60-660 Semitrailer, defined.**

Semitrailer shall mean any vehicle, with or without motive power, designed to carry persons or property and to be drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

**Source:** Laws 1993, LB 370, § 156.

**60-661 Shoulder, defined.**

Shoulder shall mean that part of the highway contiguous to the roadway and designed for the accommodation of stopped vehicles, for emergency use, and for lateral support of the base and surface courses of the roadway.

**Source:** Laws 1993, LB 370, § 157.

**60-662 Sidewalk, defined.**

Sidewalk shall mean that portion of a highway between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use by pedestrians.

**Source:** Laws 1993, LB 370, § 158.

Sidewalk is portion of street between curb lines, or lateral lines of roadway and adjacent property lines, intended for use by pedestrians. Therkildsen v. Gottsch, 194 Neb. 729, 235 N.W.2d 622 (1975).

**60-663 Snowmobile, defined.**

Snowmobile shall mean a self-propelled motor vehicle designed to travel on snow or ice or a natural terrain steered by wheels, skis, or runners and propelled by a belt-driven track with or without steel cleats.

**Source:** Laws 1993, LB 370, § 159.

**60-664 Solid tire, defined.**

Solid tire shall mean every tire of rubber or other resilient material which does not depend upon compressed air or metal for the support of the load of the wheel to which it attaches.

**Source:** Laws 1993, LB 370, § 160.

**60-665 Stand or standing, defined.**

Stand or standing shall mean the halting of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

**Source:** Laws 1993, LB 370, § 161.

**60-666 State, defined.**

State shall mean a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of Canada.

**Source:** Laws 1993, LB 370, § 162.

**60-667 Stop or stopping, defined.**

(1) Stop, when required, shall mean a complete cessation of movement.

(2) Stop or stopping, when prohibited, shall mean any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or traffic control device.

**Source:** Laws 1993, LB 370, § 163.

**60-668 Through highway, defined.**

Through highway shall mean every highway or portion thereof on which vehicular traffic is given preferential right-of-way and at the entrances to which vehicular traffic from intersecting highways is required by law to yield such right-of-way to vehicles on such highway in obedience to a stop sign, yield sign, or other traffic control device, when such sign or device is erected as provided by law.

**Source:** Laws 1993, LB 370, § 164.

**60-669 Traffic, defined.**

Traffic shall mean pedestrians, ridden or herded animals, and vehicles and other conveyances either singly or together while using any highway for purposes of travel.

**Source:** Laws 1993, LB 370, § 165.

**60-670 Traffic control device, defined.**

Traffic control device shall mean any sign, signal, marking, or other device not inconsistent with the Nebraska Rules of the Road placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

**Source:** Laws 1993, LB 370, § 166.

**60-671 Traffic control signal, defined.**

Traffic control signal shall mean any signal, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

**Source:** Laws 1993, LB 370, § 167.

**60-672 Traffic infraction, defined.**

Traffic infraction shall mean the violation of any provision of the Nebraska Rules of the Road or of any law, ordinance, order, rule, or regulation regulating traffic which is not otherwise declared to be a misdemeanor or a felony.

**Source:** Laws 1993, LB 370, § 168; Laws 2000, LB 74, § 1.

**60-673 Trailer, defined.**

Trailer shall mean any vehicle, with or without motive power, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

**Source:** Laws 1993, LB 370, § 169.

**60-674 Truck, defined.**

Truck shall mean any motor vehicle designed, used, or maintained primarily for the transportation of property.

**Source:** Laws 1993, LB 370, § 170.

**60-675 Truck-tractor, defined.**

Truck-tractor shall mean any motor vehicle designed and primarily used for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

**Source:** Laws 1993, LB 370, § 171.

The classification of a vehicle as a truck-tractor under this section, is not changed by the addition of a box to the vehicle if the design and primary use of the vehicle is to draw other vehicles, and any load carried by the truck-tractor, other than a part of the weight of the vehicle and the load so drawn, is merely incidental to its primary use. *State v. Speicher & Herrick*, 203 Neb. 535, 279 N.W.2d 162 (1979).

**60-676 Vehicle, defined.**

Vehicle shall mean every device in, upon, or by which any person or property is or may be transported or drawn upon a highway except devices moved solely by human power or used exclusively upon stationary rails or tracks.

**Source:** Laws 1993, LB 370, § 172.

**(b) POWERS OF STATE AND LOCAL AUTHORITIES****60-677 Areas not part of state highway system or within an incorporated city or village; jurisdiction.**

The directors of state institutions, and the Game and Parks Commission and natural resources districts for areas under their control, shall have the powers of local authorities provided for in the Nebraska Rules of the Road with regard to roadways running through, within, or along the grounds of the institution or area which are not part of the state highway system and not within the limits of any incorporated city or village. The governing body of an incorporated city or village may delegate to the director of a state institution, or to the Game and Parks Commission or a natural resources district for an area under its control, responsibility for regulating traffic and placing and maintaining traffic control devices on roadways not part of the state highway system running through or within the limits of such institution or area and within the incorporated city or village when such city or village does not exercise its right to regulate traffic on such roadway.

**Source:** Laws 1973, LB 45, § 12; Laws 1984, LB 861, § 16; R.S.1943, (1988), § 39-612; Laws 1993, LB 370, § 173.

**60-678 Regulations; violations; penalty.**

The State of Nebraska or any department, board, commission, or governmental subdivision thereof is hereby authorized, in its respective jurisdiction, to enact regulations permitting, prohibiting, and controlling the use of motor vehicles, minibikes, motorcycles, off-road recreation vehicles of any and all types, other powered vehicles, electric personal assistive mobility devices, and vehicles which are not self-propelled. Any person who operates any of such vehicles without the permission of the appropriate governmental entity or in a

place, time, or manner which has been prohibited by such entity shall be guilty of a Class III misdemeanor.

Such governmental entity may further authorize the supervising official of any area under its ownership or control to permit, control, or prohibit operation of any motor vehicle, minibike, motorcycle, off-road recreational vehicle of any or all types, other powered vehicle, electric personal assistive mobility device, or vehicle which is not self-propelled on all or any portion of any area under its ownership or control at any time by posting or, in case of an emergency, by personal notice. Any person operating any such vehicle where prohibited, where not permitted, or in a manner so as to endanger the peace and safety of the public or as to harm or destroy the natural features or manmade features of any such area shall be guilty of a Class III misdemeanor.

**Source:** Laws 1971, LB 644, § 11; Laws 1977, LB 39, § 102; R.S.1943, (1988), § 60-2106; Laws 1993, LB 370, § 174; Laws 2002, LB 1105, § 454.

**60-679 Roadway; removal of dead or injured persons; peace officer.**

Peace officers may remove a dead body or an injured person from any roadway to the nearest available position off the roadway as may be necessary to keep the roadway open or safe for public travel or to any hospital, clinic, or medical doctor as may be necessary to preserve life.

**Source:** Laws 1973, LB 45, § 84; Laws 1978, LB 593, § 1; Laws 1979, LB 376, § 1; R.S.1943, (1988), § 39-684; Laws 1993, LB 370, § 175.

**Cross References**

Effect of section on alcohol-related offenses, see section 53-1,120.

**60-680 Regulation of highways by local authority; police powers.**

(1) Any local authority with respect to highways under its jurisdiction and within the reasonable exercise of the police power may:

- (a) Regulate or prohibit stopping, standing, or parking;
- (b) Regulate traffic by means of peace officers or traffic control devices;
- (c) Regulate or prohibit processions or assemblages on the highways;
- (d) Designate highways or roadways for use by traffic moving in one direction;
- (e) Establish speed limits for vehicles in public parks;
- (f) Designate any highway as a through highway or designate any intersection as a stop or yield intersection;
- (g) Restrict the use of highways as authorized in section 60-681;
- (h) Regulate operation of bicycles and require registration and inspection of such, including requirement of a registration fee;
- (i) Regulate operation of electric personal assistive mobility devices;
- (j) Regulate or prohibit the turning of vehicles or specified types of vehicles;
- (k) Alter or establish speed limits authorized in the Nebraska Rules of the Road;
- (l) Designate no-passing zones;

(m) Prohibit or regulate use of controlled-access highways by any class or kind of traffic except those highways which are a part of the state highway system;

(n) Prohibit or regulate use of heavily traveled highways by any class or kind of traffic it finds to be incompatible with the normal and safe movement of traffic, except that such regulations shall not be effective on any highway which is part of the state highway system unless authorized by the Department of Roads;

(o) Establish minimum speed limits as authorized in the rules;

(p) Designate hazardous railroad grade crossings as authorized in the rules;

(q) Designate and regulate traffic on play streets;

(r) Prohibit pedestrians from crossing a roadway in a business district or any designated highway except in a crosswalk as authorized in the rules;

(s) Restrict pedestrian crossings at unmarked crosswalks as authorized in the rules;

(t) Regulate persons propelling push carts;

(u) Regulate persons upon skates, coasters, sleds, and other toy vehicles;

(v) Notwithstanding any other provision of law, adopt and enforce an ordinance or resolution prohibiting the use of engine brakes on the National System of Interstate and Defense Highways that has a grade of less than five degrees within its jurisdiction. For purposes of this subdivision, engine brake means a device that converts a power producing engine into a power-absorbing air compressor, resulting in a net energy loss;

(w) Adopt and enforce such temporary or experimental regulations as may be necessary to cover emergencies or special conditions; and

(x) Adopt other traffic regulations except as prohibited by state law or contrary to state law.

(2) No local authority, except an incorporated city with more than forty thousand inhabitants, shall erect or maintain any traffic control device at any location so as to require the traffic on any state highway or state-maintained freeway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the Department of Roads.

(3) No ordinance or regulation enacted under subdivision (1)(d), (e), (f), (g), (j), (k), (l), (m), (n), (p), (q), or (s) of this section shall be effective until traffic control devices giving notice of such local traffic regulations are erected upon or at the entrances to such affected highway or part thereof affected as may be most appropriate.

**Source:** Laws 1973, LB 45, § 97; R.S.1943, (1988), § 39-697; Laws 1993, LB 370, § 176; Laws 2000, LB 1361, § 2; Laws 2002, LB 491, § 2; Laws 2002, LB 1105, § 455.

The city is authorized to regulate or prohibit parking on its streets. There is no requirement that such prohibitions be made by ordinance. *Morrow v. City of Ogallala*, 213 Neb. 414, 329 N.W.2d 351 (1983).

A city ordinance regulating funeral processions was a reasonable and valid exercise of the city's police power under this

section and does not conflict with Nebraska's present right-of-way statutes, sections 39-609(1) and 39-614(1)(a). *Herman v. Lee*, 210 Neb. 563, 316 N.W.2d 56 (1982).

**60-681 Highways, travel on; regulation by local authorities; when authorized; signs.**

Local authorities may by ordinance or resolution prohibit the operation of vehicles upon any highway or impose restrictions as to the weight of vehicles,

for a total period not to exceed ninety days in any one calendar year, when operated upon any highway under the jurisdiction of and for the maintenance of which such local authorities are responsible whenever any such highway by reason of deterioration, rain, snow, or other climatic condition will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weight thereof reduced. Such local authorities enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective until such signs are erected and maintained.

Local authorities may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles or impose limitations as to the weight thereof on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.

**Source:** Laws 1931, c. 110, § 35, p. 316; C.S.Supp.,1941, § 39-1166; R.S.1943, § 39-770; R.S.1943, (1988), § 39-6,189; Laws 1993, LB 370, § 177.

A city ordinance prohibiting vehicles weighing over five tons from using city streets except when such vehicles are delivering goods to or from city residences or businesses is constitutional. State v. Davison, 213 Neb. 173, 328 N.W.2d 206 (1982).

(c) PENALTY AND ENFORCEMENT PROVISIONS

**60-682 Violations; traffic infraction.**

Unless otherwise declared in the Nebraska Rules of the Road with respect to particular offenses, a violation of any provision of the rules shall constitute a traffic infraction.

**Source:** Laws 1973, LB 45, § 102; R.S.1943, (1988), § 39-6,102; Laws 1993, LB 370, § 178.

**Cross References**

**General penalty,** see section 60-689.

**Operator's license,** assessment of points, revocation, see section 60-4,182 et seq.

Prosecution of a traffic infraction is a misdemeanor criminal proceeding authorizing a non-lawyer associate judge of the county court to preside in any such proceeding. Miller v. Peterson, 208 Neb. 658, 305 N.W.2d 364 (1981).

Prosecution for a traffic infraction is a criminal action. State v. Knoles, 199 Neb. 211, 256 N.W.2d 873 (1977).

Held, contributory negligence no defense where defendant's negligence was sole proximate cause of intersection accident. Bonnes v. Olson, 197 Neb. 309, 248 N.W.2d 756 (1976).

**60-682.01 Speed limit violations; fines.**

(1) Any person who operates a vehicle in violation of any maximum speed limit established for any highway or freeway is guilty of a traffic infraction and upon conviction shall be fined:

(a) Ten dollars for traveling one to five miles per hour over the authorized speed limit;

(b) Twenty-five dollars for traveling over five miles per hour but not over ten miles per hour over the authorized speed limit;

(c) Seventy-five dollars for traveling over ten miles per hour but not over fifteen miles per hour over the authorized speed limit;

(d) One hundred twenty-five dollars for traveling over fifteen miles per hour but not over twenty miles per hour over the authorized speed limit;

(e) Two hundred dollars for traveling over twenty miles per hour but not over thirty-five miles per hour over the authorized speed limit; and

(f) Three hundred dollars for traveling over thirty-five miles per hour over the authorized speed limit.

(2) The fines prescribed in subsection (1) of this section shall be doubled if the violation occurs within a maintenance, repair, or construction zone established pursuant to section 60-6,188. For purposes of this subsection, maintenance, repair, or construction zone means (a)(i) the portion of a highway identified by posted or moving signs as being under maintenance, repair, or construction or (ii) the portion of a highway identified by maintenance, repair, or construction zone speed limit signs displayed pursuant to section 60-6,188 and (b) within such portion of a highway where road construction workers are present. The maintenance, repair, or construction zone starts at the location of the first sign identifying the maintenance, repair, or construction zone and continues until a posted or moving sign indicates that the maintenance, repair, or construction zone has ended.

(3) The fines prescribed in subsection (1) of this section shall be doubled if the violation occurs within a school crossing zone as defined in section 60-658.01.

**Source:** Laws 1996, LB 901, § 11; Laws 1997, LB 91, § 4; Laws 2008, LB621, § 2; Laws 2009, LB111, § 1.

**60-683 Peace officers; duty to enforce rules and laws; powers.**

All peace officers are hereby specifically directed and authorized and it shall be deemed and considered a part of the official duties of each of such officers to enforce the provisions of the Nebraska Rules of the Road, including the specific enforcement of maximum speed limits, and any other law regulating the operation of vehicles or the use of the highways. To perform the official duties imposed by this section, the Superintendent of Law Enforcement and Public Safety and all officers of the Nebraska State Patrol shall have the powers stated in section 81-2005. All other peace officers shall have the power:

(1) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of the Motor Vehicle Operator's License Act or of any other law regulating the operation of vehicles or the use of the highways, if and when designated or called upon to do so as provided by law;

(2) To make arrests upon view and without warrant for any violation committed in their presence of any provision of the laws of this state relating to misdemeanors or felonies, if and when designated or called upon to do so as provided by law;

(3) At all times to direct all traffic in conformity with law or, in the event of a fire or other emergency or in order to expedite traffic or insure safety, to direct traffic as conditions may require;

(4) When in uniform, to require the driver of a vehicle to stop and exhibit his or her operator's license and registration certificate issued for the vehicle and submit to an inspection of such vehicle and the license plates and registration certificate for the vehicle and to require the driver of a motor vehicle to present the vehicle within five days for correction of any defects revealed by such motor vehicle inspection as may lead the inspecting officer to reasonably believe that

such motor vehicle is being operated in violation of the statutes of Nebraska or the rules and regulations of the Director of Motor Vehicles;

(5) To inspect any vehicle of a type required to be registered according to law in any public garage or repair shop or in any place where such a vehicle is held for sale or wrecking;

(6) To serve warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways; and

(7) To investigate traffic accidents for the purpose of carrying on a study of traffic accidents and enforcing motor vehicle and highway safety laws.

**Source:** Laws 1939, c. 78, § 1, p. 317; Laws 1941, c. 176, § 13, p. 693; C.S.Supp.,1941, § 39-11,119; R.S.1943, § 39-7,124; Laws 1989, LB 285, § 10; R.S.Supp.,1992, § 39-6,192; Laws 1993, LB 370, § 179; Laws 1996, LB 901, § 6; Laws 2005, LB 274, § 238.

#### Cross References

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

Investigative stop and search of auto by police held unconstitutional where officer had no reasonable suspicion the occupants were committing, had committed, or were about to commit a crime. *State v. Colgrove*, 198 Neb. 319, 253 N.W.2d 20 (1977).

In the absence of any proof of factual foundation, a mere radio dispatch to an officer to stop a vehicle does not constitute a "reasonably founded" suspicion authorizing detention. *State v. Benson*, 198 Neb. 14, 251 N.W.2d 659 (1977).

This section is constitutional and authorizes officers of the law to conduct routine stops of motor vehicles to check registration and operator's licenses even though there is no probable cause to believe a violation of law has occurred or is occurring. *State v. Shepardson*, 194 Neb. 673, 235 N.W.2d 218 (1975).

In enforcing licensing laws, officers are authorized to stop vehicles. *State v. Holmberg*, 194 Neb. 337, 231 N.W.2d 672 (1975).

The provisions of this section furnish no authority for an officer to issue an order to a person not under arrest to follow him where the offense involved was not a felony nor a violation of any law regulating the operation of vehicles or use of the highway. *State v. Embrey*, 188 Neb. 649, 198 N.W.2d 322 (1972).

Federal district court reversed for error in granting habeas corpus relief on Fourth Amendment grounds to state prisoner who had received full and fair hearing in state court with respect to alleged violations of his Fourth Amendment rights. *Holmberg v. Parratt*, 548 F.2d 745 (8th Cir. 1977).

Where officer's only reason for stopping automobile was for baseless check to determine if it carried front license plate, search pursuant to stop was unreasonable and court abstains from comment on constitutionality of section. *United States v. Bell*, 383 F.Supp. 1298 (D. Neb. 1974).

#### **60-684 Person charged with traffic infraction; citation; refusal to sign; penalty.**

Whenever any person is charged with a traffic infraction, such person shall be issued a citation pursuant to the provisions of section 29-424. Any person who refuses to sign the citation shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided by the provisions of section 29-426.

**Source:** Laws 1973, LB 45, § 105; Laws 1974, LB 829, § 9; R.S.1943, (1988), § 39-6,105; Laws 1993, LB 370, § 180.

#### **60-685 Misdemeanor or traffic infraction; lawful complaints.**

When a person has been charged with any act declared to be a misdemeanor or traffic infraction by the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, the Motor Vehicle Safety Responsibility Act, or the Nebraska Rules of the Road, and is issued a citation meeting the requirements prescribed by the Supreme Court, if such citation includes the information and is sworn to as required by the laws of this state, then such citation when filed with a court having jurisdiction shall be deemed a lawful complaint for the purpose of prosecution.

**Source:** Laws 1973, LB 45, § 107; Laws 1974, LB 829, § 10; R.S.1943, (1988), § 39-6,107; Laws 1993, LB 370, § 181; Laws 2005, LB 274, § 239.

## Cross References

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

Motor Vehicle Registration Act, see section 60-301.

Motor Vehicle Safety Responsibility Act, see section 60-569.

**60-686 Posting of bond; forfeiture of bonds; exceptions.**

(1) When any person is required to post bond under any provision of the Nebraska Rules of the Road, such bond may consist of an unexpired guaranteed arrest bond certificate or a similar written instrument by its terms of current force and effect signed by such person and issued to him or her by an automobile club or a similar association or insurance company or a corporation, organized under the laws of this state, not for profit, which has been exempted from the payment of federal income taxes, as provided by section 501(c)(4), (6), or (8) of the Internal Revenue Code, jointly and severally with a corporate surety duly authorized to transact fidelity or surety insurance business in this state or with an insurance company duly authorized to transact both automobile liability and fidelity and surety insurance business in this state to guarantee the appearance of such person at any hearing upon any arrest or apprehension or any violation or, in default of any such appearance, the prompt payment by or on behalf of such person of any fine or forfeiture imposed for such default not in excess of two hundred dollars.

(2) The provisions of subsection (1) of this section shall not apply to any person who is charged with a felony.

**Source:** Laws 1973, LB 45, § 108; Laws 1974, LB 829, § 11; Laws 1974, LB 920, § 1; R.S.1943, (1988), § 39-6,108; Laws 1993, LB 370, § 182; Laws 1995, LB 574, § 56.

**60-687 Arrest or apprehension.**

The procedures outlined in the Nebraska Rules of the Road shall apply only to apprehensions and arrests without a warrant for violations of the provisions of the rules and shall not exclude other lawful means of effecting such arrest or apprehension.

**Source:** Laws 1973, LB 45, § 109; R.S.1943, (1988), § 39-6,109; Laws 1993, LB 370, § 183.

**60-688 Prosecution; disposition thereof.**

Prosecutions for violations declared by the Nebraska Rules of the Road to be misdemeanors or felonies shall be conducted and disposed of in the same manner as provided for such prosecutions under the laws of this state, and traffic infractions shall be treated in the same manner as misdemeanors, except as otherwise provided by law.

**Source:** Laws 1973, LB 45, § 111; R.S.1943, (1988), § 39-6,111; Laws 1993, LB 370, § 184; Laws 2000, LB 74, § 2.

**60-689 Prosecutions where penalty not specifically provided.**

Any person who is found guilty of a traffic infraction in violation of the Nebraska Rules of the Road for which a penalty has not been specifically provided shall be fined:

(1) Not more than one hundred dollars for the first offense;

(2) Not more than two hundred dollars for a second offense within a one-year period; and

(3) Not more than three hundred dollars for a third and subsequent offense within a one-year period.

**Source:** Laws 1973, LB 45, § 112; Laws 1974, LB 829, § 12; Laws 1975, LB 547, § 1; Laws 1977, LB 40, § 207; R.S.1943, (1988), § 39-6,112; Laws 1993, LB 370, § 185.

**60-690 Aiding or abetting; guilty of such offense.**

Any person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of any act declared in the Nebraska Rules of the Road to be a misdemeanor or felony, whether individually or in connection with one or more other persons or as a principal, agent, or accessory, shall be guilty of such offense, and any person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, or directs another to violate any provision of the rules shall be likewise guilty of such offense.

**Source:** Laws 1973, LB 45, § 115; R.S.1943, (1988), § 39-6,115; Laws 1993, LB 370, § 186.

**60-691 Moving traffic offense; conviction; court may require course of instruction.**

When a person has been convicted in any court in this state of any moving traffic offense, the court may, in addition to the penalty provided by law for such offense and as a part of the judgment of conviction or as a condition of probation, require such person, at his or her expense if any, to attend and satisfactorily complete a course of instruction at a driver improvement school, if such school exists, located and operating within the county of such person's residence or within the jurisdiction of such court. Such school shall be designated by the court in its order and shall provide instruction in the recognition of hazardous traffic situations and prevention of traffic accidents.

**Source:** Laws 1969, c. 509, § 2, p. 2088; R.S.1943, (1988), § 60-427.01; Laws 1989, LB 285, § 7; R.S.Supp.,1992, § 39-6,114.01; Laws 1993, LB 370, § 187.

**60-692 Failure to satisfy judgment; effect.**

When any person fails within ten days to satisfy any judgment imposed for any traffic infraction, it shall be the duty of the clerk of the court in which such judgment is rendered within this state to transmit to the Department of Motor Vehicles, immediately after the expiration of such ten-day period, a copy of such judgment.

**Source:** Laws 1973, LB 45, § 110; Laws 1991, LB 420, § 6; R.S.Supp.,1992, § 39-6,110; Laws 1993, LB 370, § 188.

**60-693 Evidence in civil actions; conviction not admissible.**

No evidence of the conviction of any person for any violation of any provision of the Nebraska Rules of the Road shall be admissible in any court in any civil action.

**Source:** Laws 1973, LB 45, § 118; R.S.1943, (1988), § 39-6,118; Laws 1993, LB 370, § 189.

Evidence of conviction for a traffic infraction, including a conviction for violation of a municipal ordinance, is not admissible in a civil suit for damages arising out of the same traffic infraction. *Stevenson v. Wright*, 273 Neb. 789, 733 N.W.2d 559 (2007).

**60-694 Conviction; credibility as a witness.**

The conviction of a person upon a charge of violating any provision of the Nebraska Rules of the Road or other traffic regulation which is less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding.

**Source:** Laws 1973, LB 45, § 119; R.S.1943, (1988), § 39-6,119; Laws 1993, LB 370, § 190.

**60-694.01 Operator's license; revocation; reinstatement fee.**

Whenever an operator's license is ordered revoked by the court or by administrative action of the Department of Motor Vehicles pursuant to the Nebraska Rules of the Road, the licensee shall pay a reinstatement fee to the Department of Motor Vehicles to reinstate his or her eligibility for a new license, in addition to complying with the other applicable provisions of the Nebraska Rules of the Road. The reinstatement fee shall be one hundred twenty-five dollars. The department shall remit the fees to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 2001, LB 38, § 46.

(d) ACCIDENTS AND ACCIDENT REPORTING

**60-695 Peace officers; investigation of traffic accident; duty to report; Department of Roads; powers; duties.**

It shall be the duty of any peace officer who investigates any traffic accident in the performance of his or her official duties in all instances of an accident resulting in injury or death to any person or in which estimated damage exceeds one thousand dollars to the property of any one person to submit an original report of such investigation to the Accident Records Bureau of the Department of Roads within ten days after each such accident. The department shall have authority to collect accident information it deems necessary and shall prescribe and furnish appropriate forms for reporting.

**Source:** Laws 1973, LB 45, § 104; Laws 1985, LB 94, § 1; Laws 1988, LB 1030, § 41; R.S.1943, (1988), § 39-6,104; Laws 1993, LB 370, § 191; Laws 2003, LB 185, § 3.

**60-696 Motor vehicle; accident; duty to stop; information to furnish; report; powers of peace officer; violation; penalty.**

(1) Except as provided in subsection (2) of this section, the driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to property, shall (a) immediately stop such vehicle at the scene of such accident and (b) give his or her name, address, telephone number, and operator's license number to the owner of the property struck or the driver or occupants of any other vehicle involved in the collision.

(2) The driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to an unattended vehicle or property, shall immediately stop such vehicle and leave in a conspicuous place in or on the unattended vehicle or property a written notice containing the information required by subsection (1) of this section. In addition, such driver shall, without unnecessary delay, report the collision, by telephone or otherwise, to an appropriate peace officer.

(3)(a) A peace officer may remove or cause to be removed from a roadway, without the consent of the driver or owner, any vehicle, cargo, or other property which is obstructing the roadway creating or aggravating an emergency situation or otherwise endangering the public safety. Any vehicle, cargo, or other property obstructing a roadway shall be removed by the most expeditious means available to clear the obstruction, giving due regard to the protection of the property removed.

(b) This subsection does not apply if an accident results in or is believed to involve the release of hazardous materials, hazardous substances, or hazardous wastes, as those terms are defined in section 75-362.

(4) Any person violating subsection (1) or (2) of this section is guilty of a Class II misdemeanor. If such person has had one or more convictions under this section in the twelve years prior to the date of the current conviction under this section, such person is guilty of a Class I misdemeanor. As part of any sentence, suspended sentence, or judgment of conviction under this section, the court may order the defendant not to drive any motor vehicle for any purpose in the State of Nebraska for a period of up to one year from the date ordered by the court. If the court orders the defendant not to drive any motor vehicle for any purpose in the State of Nebraska for a period of up to one year from the date ordered by the court, the court shall also order that the operator's license of such person be revoked for a like period.

**Source:** Laws 1931, c. 110, § 28, p. 314; C.S.Supp.,1941, § 39-1159; R.S.1943, § 39-762; Laws 1947, c. 148, § 2(2), p. 409; Laws 1949, c. 119, § 2, p. 316; Laws 1949, c. 120, § 2, p. 317; Laws 1959, c. 169, § 1, p. 617; R.R.S.1943, § 39-762.01; Laws 1978, LB 748, § 26; R.S.1943, (1988), § 39-6,104.02; Laws 1993, LB 370, § 192; Laws 1994, LB 929, § 1; Laws 2001, LB 254, § 1; Laws 2006, LB 925, § 7; Laws 2007, LB561, § 1; Laws 2010, LB914, § 1.

#### Cross References

**Operator's license**, assessment of points, see sections 60-497.01 and 60-4,182 et seq.

In a trial on charge of violating section 39-762 (transferred to section 60-697), request for instruction on leaving scene of property damage accident as lesser offense was properly refused. *State v. Jones*, 186 Neb. 303, 183 N.W.2d 235 (1971).

#### **60-697 Accident; driver's duty; penalty.**

The driver of any vehicle involved in an accident upon either a public highway, private road, or private drive, resulting in injury or death to any person, shall (1) immediately stop such vehicle at the scene of such accident and ascertain the identity of all persons involved, (2) give his or her name and address and the license number of the vehicle and exhibit his or her operator's license to the person struck or the occupants of any vehicle collided with, and (3) render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or

surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person. Any person violating any of the provisions of this section shall upon conviction thereof be punished as provided in section 60-698.

**Source:** Laws 1931, c. 110, § 28, p. 314; C.S.Supp.,1941, § 39-1159; R.S.1943, § 39-762; Laws 1947, c. 148, § 2(1), p. 409; Laws 1949, c. 119, § 1, p. 315; Laws 1949, c. 120, § 1, p. 317; R.R.S.1943, § 39-762; R.S.1943, (1988), § 39-6,104.01; Laws 1993, LB 370, § 193; Laws 2005, LB 274, § 240; Laws 2006, LB 925, § 8.

#### Cross References

**Operator's license**, assessment of points, revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

Under the facts in this case, a sentence of three years imprisonment was not excessive. *State v. Keil*, 192 Neb. 741, 224 N.W.2d 363 (1974).

Injury is a term in common and accepted usage and a penal statute which fails to define it is not unconstitutionally vague. *State v. Etchison*, 188 Neb. 134, 195 N.W.2d 498 (1972).

Under this section, leaving the scene of a property damage accident is not an includable offense. *State v. Jones*, 186 Neb. 303, 183 N.W.2d 235 (1971).

Circumstantial evidence was sufficient to prove knowledge of injury. *In re Interest of Moore*, 186 Neb. 67, 180 N.W.2d 917 (1970).

Knowledge that an accident has happened and that injury has been inflicted is an essential element of the offense under this section. *State v. Snell*, 177 Neb. 396, 128 N.W.2d 823 (1964).

Evidence was sufficient to sustain conviction of leaving the scene of an accident involving personal injury. *State v. Nichols*, 175 Neb. 761, 123 N.W.2d 860 (1963).

Effect of arrest of party for leaving scene of accident considered. *Bryant v. Greene*, 164 Neb. 15, 81 N.W.2d 580 (1957).

This and succeeding section are not invalid as being vague, duplicitous, and illegal. *Carr v. State*, 152 Neb. 248, 40 N.W.2d 677 (1950).

Where deceased voluntarily jumped from a moving vehicle and was injured in alighting without in any manner coming in contact with vehicle, this section does not apply. *Behrens v. State*, 140 Neb. 671, 1 N.W.2d 289 (1941).

The crime of manslaughter is a distinct offense from that of leaving the scene of an accident causing death under this section. *Wright v. State*, 139 Neb. 684, 298 N.W. 685 (1941).

#### **60-698 Accident; failure to stop; penalty.**

Every person convicted of violating section 60-697 relative to the duty to stop in the event of certain accidents shall be guilty of a Class IIIA felony. The court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of not less than one year nor more than fifteen years from the date ordered by the court, and shall order that the operator's license of such person be revoked for a like period. The order of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

**Source:** Laws 1931, c. 110, § 56, p. 324; C.S.Supp.,1941, § 39-1187; R.S.1943, § 39-763; Laws 1953, c. 214, § 2, p. 757; R.R.S.1943, § 39-763; Laws 1978, LB 748, § 27; R.S.1943, (1988), § 39-6,104.03; Laws 1993, LB 31, § 18; Laws 1993, LB 370, § 194; Laws 1997, LB 772, § 6; Laws 2006, LB 925, § 9.

The grade of the offense is determined by the maximum punishment authorized. *Carr v. State*, 152 Neb. 248, 40 N.W.2d 677 (1950).

This section provides penalty for violation of statutory provisions requiring driver to stop in event of an accident. *Behrens v. State*, 140 Neb. 671, 1 N.W.2d 289 (1941).

#### **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; 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 of more than one thousand dollars shall within ten days forward a report of such accident to the Department of Roads.

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 Roads. The Department of Roads 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 Roads 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. The form used for the report shall be so perforated that the parts may be readily separated.

(3) Upon receipt of a report of accident, the Department of Roads shall determine the reportability and classification of the accident and enter all information into a computerized data base. Upon completion, the department shall separate the parts of the accident report and shall forward Part II of the report to the Department of Motor Vehicles for processing as provided in section 60-506.01.

(4) Such reports shall be without prejudice. All reports made by peace officers, made to or filed with peace officers in their respective offices or departments, or filed with or made by or to any other law enforcement agency of the state shall be open to public inspection, but accident reports filed by the operator or owner of a motor vehicle pursuant to this section shall not be open to public inspection. 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.

**Cross References**

**Motor Vehicle Safety Responsibility Act**, see section 60-569.

**Records Management Act**, see section 84-1220.

Report of accident was not admissible in evidence. *Styskal v. Brickey*, 158 Neb. 208, 62 N.W.2d 854 (1954).

**60-6,100 Accidents; reports required of garages and repair shops.**

The person in charge of any garage or repair shop to which is brought any vehicle which shows evidence of having been involved in a serious accident or struck by any bullet shall report to the nearest police station or sheriff's office within twenty-four hours after such vehicle is received, giving the engine number, if applicable, the license number, and the name and address of the owner or operator of such vehicle.

**Source:** Laws 1931, c. 110, § 30, p. 315; C.S.Supp.,1941, § 39-1161; R.S.1943, § 39-765; R.S.1943, (1988), § 39-6,104.05; Laws 1993, LB 370, § 196; Laws 2005, LB 274, § 241.

**60-6,101 Accidents; coroner; report to Department of Roads.**

Any coroner or other official performing the duties of coroner shall report in writing to the Department of Roads the death of any person within his or her jurisdiction as the result of an accident involving a motor vehicle and the circumstances of such accident. Such report by the coroner shall be made within ten days after such death.

**Source:** Laws 1974, LB 66, § 1; R.S.1943, (1988), § 39-6,104.06; Laws 1993, LB 370, § 197; Laws 1993, LB 590, § 1.

Where in course of autopsy, and not for purpose of complying with statute in effect at time of accident, coroner compiled information as to alcohol content of blood, his testimony was not inadmissible in wrongful death case. *Blackledge v. Martin K. Eby Constr. Co., Inc.* 542 F.2d 474 (8th Cir. 1976).

**60-6,102 Accident; death; driver; pedestrian sixteen years or older; coroner; examine body; amount of alcohol or drugs; report to Department of Roads; public information.**

In the case of a driver who dies within four hours after being in a motor vehicle accident, including a motor vehicle accident in which one or more persons in addition to such driver is killed, and of a pedestrian sixteen years of age or older who dies within four hours after being struck by a motor vehicle, the coroner or other official performing the duties of coroner shall examine the body and cause such tests to be made as are necessary to determine the amount of alcohol or drugs in the body of such driver or pedestrian. Such information shall be included in each report submitted pursuant to sections 60-6,101 to 60-6,104 and shall be tabulated on a monthly basis by the Department of Roads. Such information, including the identity of the deceased and any such amount of alcohol or drugs, shall be public information and may be released or disclosed as provided in rules and regulations of the department.

**Source:** Laws 1974, LB 66, § 2; R.S.1943, (1988), § 39-6,104.07; Laws 1993, LB 370, § 198; Laws 1993, LB 590, § 2.

Where in course of autopsy, and not for purpose of complying with statute in effect at time of accident, coroner compiled information as to alcohol content of blood, his testimony was not inadmissible in wrongful death case. *Blackledge v. Martin K. Eby Constr. Co., Inc.* 542 F.2d 474 (8th Cir. 1976).

**60-6,103 Accident; driver or pedestrian sixteen years of age or older; person killed; submit to chemical test; results in writing to Director-State Engineer; public information.**

Any surviving driver or pedestrian sixteen years of age or older who is involved in a motor vehicle accident in which a person is killed shall be

requested, if he or she has not otherwise been directed by a peace officer to submit to a chemical test under section 60-6,197, to submit to a chemical test of blood, urine, or breath as the peace officer directs for the purpose of determining the amount of alcohol or drugs in his or her body fluid. The results of such test shall be reported in writing to the Director-State Engineer who shall tabulate such results on a monthly basis. Such information, including the identity of such driver or pedestrian and any such amount of alcohol or drugs, shall be public information and may be released or disclosed as provided in rules and regulations of the Department of Roads. The provisions of sections 60-6,199, 60-6,200, and 60-6,202 shall, when applicable, apply to the tests provided for in this section.

**Source:** Laws 1974, LB 66, § 3; R.S.1943, (1988), § 39-6,104.08; Laws 1993, LB 370, § 199; Laws 1993, LB 590, § 3.

**60-6,104 Accidents; body fluid; samples; test; report.**

All samples and tests of body fluids under sections 60-6,101 to 60-6,103 shall be submitted to and performed by an individual possessing a valid permit issued by the Department of Health and Human Services for such purpose. Such tests shall be performed according to methods approved by the department. Such individual shall promptly perform such analysis and report the results thereof to the official submitting the sample.

**Source:** Laws 1974, LB 66, § 4; R.S.1943, (1988), § 39-6,104.09; Laws 1993, LB 370, § 200; Laws 1996, LB 1044, § 282; Laws 2007, LB296, § 232.

**60-6,105 Accidents; reports; statements; not available in trial arising out of accident involved; exception.**

No report and no statement contained in a report submitted pursuant to sections 60-6,101 to 60-6,104 or any part thereof shall be made available for any purpose in any trial arising out of the accident involved unless necessary solely to prove compliance with such sections.

**Source:** Laws 1974, LB 66, § 5; R.S.1943, (1988), § 39-6,104.10; Laws 1993, LB 370, § 201.

Where in course of autopsy, and not for purpose of complying with statute in effect at time of accident, coroner compiled information as to alcohol content of blood, his testimony was not inadmissible in wrongful death case. Blackledge v. Martin K. Eby Constr. Co., Inc. 542 F.2d 474 (8th Cir. 1976).

**60-6,106 Accidents; reports; expenses; reimbursement to county by Department of Roads.**

The Department of Roads shall reimburse any county for expenses and costs incurred by the county pursuant to sections 60-6,101 to 60-6,105. The department shall provide the official in each county with the appropriate reporting form.

**Source:** Laws 1974, LB 66, § 6; R.S.1943, (1988), § 39-6,104.11; Laws 1993, LB 370, § 202; Laws 1993, LB 590, § 4.

**60-6,107 Accidents; Department of Health and Human Services; Department of Roads; adopt rules and regulations.**

(1) Except as provided in subsection (2) of this section, the Department of Health and Human Services shall adopt necessary rules and regulations for the administration of the provisions of sections 60-6,101 to 60-6,106.

(2) The Department of Roads shall adopt and promulgate rules and regulations which shall provide for the release and disclosure of the results of tests conducted under sections 60-6,102 and 60-6,103.

**Source:** Laws 1974, LB 66, § 7; R.S.1943, (1988), § 39-6,104.12; Laws 1993, LB 370, § 203; Laws 1993, LB 590, § 5; Laws 1996, LB 1044, § 283; Laws 2007, LB296, § 233.

(e) APPLICABILITY OF TRAFFIC LAWS

**60-6,108 Required obedience to traffic laws; private property used for public road by consent of owner; provisions uniform throughout the state.**

(1) The provisions of the Nebraska Rules of the Road relating to operation of vehicles refer exclusively to operation of vehicles upon highways except where a different place is specifically referred to in a given section, but sections 60-6,196, 60-6,197, 60-6,197.04, and 60-6,212 to 60-6,218 shall apply upon highways and anywhere throughout the state except private property which is not open to public access.

(2) Nothing in the Nebraska Rules of the Road shall be construed to prevent the owner of real property used by the public for the purposes of vehicular travel, by permission of the owner and not as a matter of right, from prohibiting such use nor from requiring other, different, or additional conditions from those specified or otherwise regulating the use thereof by such owner.

(3) The Nebraska Rules of the Road shall be applicable and uniform throughout this state and in all political subdivisions and municipalities of this state, and no local authority shall enact or enforce any ordinance directly contrary to the Nebraska Rules of the Road unless expressly authorized by the Legislature.

**Source:** Laws 1973, LB 45, § 3; Laws 1992, LB 291, § 3; R.S.Supp.,1992, § 39-603; Laws 1993, LB 370, § 204; Laws 2004, LB 208, § 9.

**60-6,109 Drivers to exercise due care with pedestrian; audible signal.**

Notwithstanding the other provisions of the Nebraska Rules of the Road, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or obviously confused or incapacitated person upon a roadway.

**Source:** Laws 1973, LB 45, § 44; R.S.1943, (1988), § 39-644; Laws 1993, LB 370, § 205.

In order for a driver to be held to the higher standard of care in this section, there must be evidence both that the person was actually confused or actually incapacitated and that such condition was objectively obvious to a reasonable driver. *State v. Welch*, 275 Neb. 517, 747 N.W.2d 613 (2008).

This section does not except the operation of section 39-643, which pertains to the duty of care required by a pedestrian who crosses the street between intersections. *Hines v. Pollock*, 229 Neb. 614, 428 N.W.2d 207 (1988) (pursuant to Laws 1993, LB 370, section 250, language from section 39-643 was placed in section 60-6,154).

This section merely sets out a higher standard of care in the situations described therein; intoxicated plaintiff was not an

“obviously confused or incapacitated person” within the meaning of the statute. *Hines v. Pollock*, 229 Neb. 614, 428 N.W.2d 207 (1988).

Defendant failed to exercise due care when he failed to see a pedestrian who was in plain sight near a crosswalk and struck her with the cement truck he was driving. This section is not unconstitutionally vague. Due care under the section means the absence of negligence. *State v. Mattan*, 207 Neb. 679, 300 N.W.2d 810 (1981).

A driver who is aware that a pedestrian standing on the curb is a 78-year-old with poor eyesight is compelled under this section to maintain a proper lookout and to exercise due care. *Dutton v. Travis*, 4 Neb. App. 875, 551 N.W.2d 759 (1996).

**60-6,110 Obedience to peace officers; violation; penalty.**

(1) Any person who knowingly fails or refuses to obey any lawful order of any peace officer who is controlling or directing traffic shall be guilty of a traffic infraction.

(2) Any person who knowingly fails to obey any lawful order of a peace officer shall be guilty of a Class III misdemeanor whenever such order is given in furtherance of the apprehension of a person who has violated the Nebraska Rules of the Road or of a person whom such officer reasonably believes has violated the rules.

**Source:** Laws 1973, LB 45, § 4; Laws 1977, LB 41, § 8; R.S.1943, (1988), § 39-604; Laws 1993, LB 370, § 206.

A person driving in response to a lawful order by a law enforcement officer is engaged in privileged conduct for which he cannot be punished. *Fulmer v. Jensen*, 221 Neb. 582, 379 N.W.2d 736 (1986).

One who drives in response to the lawful order of a law enforcement officer engages in privileged conduct and may not be punished for so doing. *State v. Lichti*, 219 Neb. 894, 367 N.W.2d 138 (1985).

**60-6,111 Persons riding animals or driving animal-drawn vehicles; farm implements; duties.**

(1) Any person who rides an animal or drives an animal-drawn vehicle, a farm tractor, or an implement of husbandry upon a roadway shall be granted all of the rights and shall be subject to all of the duties made applicable to the driver of a vehicle by the Nebraska Rules of the Road except those provisions of the rules which by their very nature can have no application.

(2) Whenever the slowness of such animal, animal-drawn vehicle, farm tractor, or implement of husbandry is obstructing the normal flow of traffic, the rider or driver shall drive to the nearest available shoulder of the highway and allow traffic to pass.

**Source:** Laws 1973, LB 45, § 5; R.S.1943, (1988), § 39-605; Laws 1993, LB 370, § 207.

**60-6,112 Rules of the road; exceptions.**

Unless specifically made applicable, the Nebraska Rules of the Road, except those provisions relating to careless driving, reckless driving, and driving while under the influence of alcoholic liquor or drugs, shall not apply to:

(1) Persons, teams of draft animals, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway, but the rules shall apply to such persons and vehicles when traveling to or from such work; or

(2) Government employees and public utility employees to the extent that there would be a conflict between the rules and the performance of their official duties.

**Source:** Laws 1973, LB 45, § 6; Laws 1986, LB 896, § 1; Laws 1987, LB 133, § 1; R.S.1943, (1988), § 39-606; Laws 1993, LB 370, § 208.

This section does not absolve persons engaged in road work from obeying the fundamental premise that an operator of a vehicle is under a continuing duty to exercise reasonable care for the safety of others. *Gatzemeyer v. Neligh Township*, 233 Neb. 329, 445 N.W.2d 593 (1989).

Under the facts of this case, a wrongful death action was allowed against the driver and operator of a snowplow when the plow was in operation on the left side of the road in the face of oncoming traffic. *Beebe v. Sorensen Sand & Gravel Co.*, 209 Neb. 559, 308 N.W.2d 829 (1981).

**60-6,113 Government vehicles; provisions applicable.**

Unless specifically exempted, the Nebraska Rules of the Road shall apply to all drivers of vehicles owned or operated on behalf of the United States or any state or political subdivision thereof.

**Source:** Laws 1973, LB 45, § 7; R.S.1943, (1988), § 39-607; Laws 1993, LB 370, § 209.

**60-6,114 Authorized emergency vehicles; privileges; conditions.**

(1) Subject to the conditions stated in the Nebraska Rules of the Road, the driver of an authorized emergency vehicle, when responding to an emergency call, when pursuing an actual or suspected violator of the law, or when responding to but not when returning from a fire alarm, may:

(a) Stop, park, or stand, irrespective of the provisions of the rules, and disregard regulations governing direction of movement or turning in specified directions; and

(b) Except for wreckers towing disabled vehicles and highway maintenance vehicles and equipment:

(i) Proceed past a steady red indication, a flashing red indication, or a stop sign but only after slowing down as may be necessary for safe operation; and

(ii) Exceed the maximum speed limits so long as he or she does not endanger life, limb, or property.

(2) Except when operated as a police vehicle, the exemptions granted in subsection (1) of this section shall apply only when the driver of such vehicle, while in motion, sounds an audible signal by bell, siren, or exhaust whistle as may be reasonably necessary and when such vehicle is equipped with at least one lighted light displaying a red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle.

(3) The exemptions granted in subsection (1) of this section shall not relieve the driver from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect such driver from the consequences of his or her reckless disregard for the safety of others.

(4) Authorized emergency vehicles operated by police and fire departments shall not be subject to the size and weight limitations of sections 60-6,288 to 60-6,290 and 60-6,294.

**Source:** Laws 1973, LB 45, § 8; R.S.1943, (1988), § 39-608; Laws 1993, LB 370, § 210; Laws 2005, LB 82, § 2.

The driver of an emergency vehicle has the right to proceed past a steady red light, but must exercise due care in doing so. *Gatewood v. City of Bellevue*, 232 Neb. 525, 441 N.W.2d 585 (1989).

Police vehicle enjoys privileges as an emergency vehicle as long as the officer operates emergency equipment in good faith belief that he or she is responding to an emergency. *Police*

officer exercised due regard in operating an emergency vehicle. *Maple v. City of Omaha*, 222 Neb. 293, 384 N.W.2d 254 (1986).

The trial court did not err in refusing to direct a verdict in favor of the plaintiff, who was injured when he was struck by a police car responding to an emergency call. *Stephen v. City of Lincoln*, 209 Neb. 792, 311 N.W.2d 889 (1981).

**60-6,115 Closed road; travel permitted; when.**

Notwithstanding the provisions of subsection (1) of section 60-6,119, when the Department of Roads, any local authority, or its authorized representative or permittee has closed, in whole or in part, by barricade or otherwise, during repair or construction, any portion of any highway, the restrictions upon the use of such highway shall not apply to persons living along such closed highway or to persons who would need to travel such highway during the normal course of their operations if no other route of travel is available to such person, but extreme care shall be exercised by such persons on such highway.

**Source:** Laws 1993, LB 370, § 211.

Subsection (5) of this section applies to the operation of an automobile while it is on that part of the road which is closed and requires extreme caution so as to avoid the additional hazards that may be incident to the reason why the road has

been closed. *Birchem v. Eggers*, 236 Neb. 775, 463 N.W.2d 824 (1990) (pursuant to Laws 1993, LB 370, section 211, language from subsection (5) of section 39-609 was placed in section 60-6,115).

**60-6,116 Vehicle owner; driver violations.**

The owner of any vehicle or any person employing or otherwise directing the driver of any vehicle shall not require or knowingly permit the operation of such vehicle in any manner contrary to the Nebraska Rules of the Road.

**Source:** Laws 1973, LB 45, § 116; R.S.1943, (1988), § 39-6,116; Laws 1993, LB 370, § 212.

**60-6,117 Parental duties; child less than sixteen.**

The parent or guardian of any child who is less than sixteen years old shall not knowingly permit any such child to violate any provision of the Nebraska Rules of the Road.

**Source:** Laws 1973, LB 45, § 87; R.S.1943, (1988), § 39-687; Laws 1993, LB 370, § 213.

## (f) TRAFFIC CONTROL DEVICES

**60-6,118 Manual on Uniform Traffic Control Devices; adoption by Department of Roads.**

Consistent with the provisions of the Nebraska Rules of the Road, the Department of Roads may adopt and promulgate rules and regulations adopting and implementing a manual providing a uniform system of traffic control devices on all highways within this state which, together with any supplements adopted by the department, shall be known as the Manual on Uniform Traffic Control Devices.

**Source:** Laws 1973, LB 45, § 98; Laws 1984, LB 677, § 1; R.S.1943, (1988), § 39-698; Laws 1993, LB 370, § 214.

**60-6,119 Obedience to traffic control devices; exceptions.**

(1) The driver of any vehicle shall obey the instructions of any traffic control device applicable thereto placed in accordance with the Nebraska Rules of the Road, unless otherwise directed by a peace officer, subject to the exceptions granted the driver of an authorized emergency vehicle in the rules.

(2) No provision of the rules for which traffic control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by a reasonably observant person. Whenever any provision of the rules does not state that traffic control devices are required, such provision shall be effective even though no devices are erected or in place.

(3) Whenever traffic control devices are placed in position approximately conforming to the requirements of the rules, such devices shall be presumed to have been so placed by the official act or direction of lawful authority unless the contrary is established by competent evidence.

(4) Any traffic control device placed pursuant to the rules and purporting to conform with the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of the rules unless the contrary is established by competent evidence.

**Source:** Laws 1973, LB 45, § 9; R.S.1943, (1988), § 39-609; Laws 1993, LB 370, § 215.

Subsection (5) of this section applies to the operation of an automobile while it is on that part of the road which is closed and requires extreme caution so as to avoid the additional hazards that may be incident to the reason why the road has been closed. *Birchem v. Eggers*, 236 Neb. 775, 463 N.W.2d 824 (1990) (pursuant to Laws 1993, LB 370, section 211, language from subsection (5) of section 39-609 was placed in section 60-6,115).

A city ordinance regulating funeral processions was a reasonable and valid exercise of the city's police power under section

39-697(1)(c) (transferred to section 60-680) and does not conflict with Nebraska's present right-of-way statutes, this section and section 39-614(1)(a) (transferred to section 60-6,123). *Herman v. Lee*, 210 Neb. 563, 316 N.W.2d 56 (1982).

This section does not apply to a highway partially barricaded but not closed to traffic. *Central Constr. Co. v. Republican City School Dist. No. 1*, 206 Neb. 615, 294 N.W.2d 347 (1980).

### **60-6,120 Placing and maintaining traffic control devices; jurisdiction.**

(1) The Department of Roads shall place and maintain, or provide for such placing and maintaining, such traffic control devices, conforming to the manual, upon all state highways as it deems necessary to indicate and to carry out the Nebraska Rules of the Road or to regulate, warn, or guide traffic.

(2)(a) In incorporated cities and villages with less than forty thousand inhabitants, the department shall have exclusive jurisdiction regarding the erection and maintenance of traffic control devices on the state highway system but shall not place traffic control devices on the state highway system within incorporated cities and villages of more than twenty-five hundred inhabitants without consultation with the proper city officials.

(b) In incorporated cities of forty thousand or more inhabitants, except on state-maintained freeways of the state highway system where the department retains exclusive jurisdiction, the city shall have jurisdiction regarding erection and maintenance of traffic control devices on the state highway system after consultation with the department, except that there shall be joint jurisdiction with the department for such traffic control devices for which the department accepts responsibility for the erection and maintenance.

(3) No local authority shall place or maintain any traffic control device upon any highway under the jurisdiction of the department, except by permission of the department, or on any state-maintained freeway of the state highway system.

(4) The placing of traffic control devices by the department shall not be a departmental rule, regulation, or order subject to the statutory procedures for such rules, regulations, or orders but shall be considered as establishing precepts extending the provisions of the Nebraska Rules of the Road as necessary to regulate, warn, or guide traffic. Violation of such traffic control devices shall be punishable as provided in the rules.

**Source:** Laws 1973, LB 45, § 10; R.S.1943, (1988), § 39-610; Laws 1993, LB 370, § 216.

### **60-6,121 Placing and maintaining traffic control devices; local authorities.**

Local authorities in their respective jurisdictions shall place and maintain such traffic control devices upon highways under their jurisdictions as they deem necessary to indicate and to carry out the provisions of the Nebraska Rules of the Road or to regulate, warn, or guide traffic. All such traffic control devices erected pursuant to the rules shall conform with the manual.

**Source:** Laws 1973, LB 45, § 11; R.S.1943, (1988), § 39-611; Laws 1993, LB 370, § 217.

Once a city elects to install a pedestrian crosswalk signal, it is required to conform to the Manual on Uniform Traffic Control Devices in determining the pedestrian clearance interval, and

the discretionary immunity exception of section 13-910 does not apply. *Tadros v. City of Omaha*, 269 Neb. 528, 694 N.W.2d 180 (2005).

**60-6,122 Traffic control devices; when illegal to sell or lease.**

It shall be unlawful for any person to sell, lease, or offer for sale or lease any traffic control devices which are not in compliance with the manual.

**Source:** Laws 1973, LB 45, § 13; R.S.1943, (1988), § 39-613; Laws 1993, LB 370, § 218.

**60-6,123 Traffic control signals; meaning; turns on red signal; when; signal not in service; effect.**

Whenever traffic is controlled by traffic control signals exhibiting different colored lights or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word legend, number, or symbol, and such lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1)(a) Vehicular traffic facing a circular green indication may proceed straight through or turn right or left unless a sign at such place prohibits either such turn, but vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such indication is exhibited;

(b) Vehicular traffic facing a green arrow indication, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time, and such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection; and

(c) Unless otherwise directed by a pedestrian-control signal, pedestrians facing any green indication, except when the sole green indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk;

(2)(a) Vehicular traffic facing a steady yellow indication is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection, and upon display of a steady yellow indication, vehicular traffic shall stop before entering the nearest crosswalk at the intersection, but if such stop cannot be made in safety, a vehicle may be driven cautiously through the intersection; and

(b) Pedestrians facing a steady yellow indication, unless otherwise directed by a pedestrian-control signal, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway;

(3)(a) Vehicular traffic facing a steady red indication alone shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, before entering the intersection. The traffic shall remain standing until an indication to proceed is shown except as provided in subdivisions (3)(b) and (3)(c) of this section;

(b) Except where a traffic control device is in place prohibiting a turn, vehicular traffic facing a steady red indication may cautiously enter the intersection to make a right turn after stopping as required by subdivision (3)(a) of

this section. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection;

(c) Except where a traffic control device is in place prohibiting a turn, vehicular traffic facing a steady red indication at the intersection of two one-way streets may cautiously enter the intersection to make a left turn after stopping as required by subdivision (3)(a) of this section. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection; and

(d) Unless otherwise directed by a pedestrian-control signal, pedestrians facing a steady red indication alone shall not enter the roadway;

(4) If a traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking, the stop shall be made at the signal; and

(5)(a) If a traffic control signal at an intersection is not operating because of a power failure or other cause and no peace officer, flagperson, or other traffic control device is providing direction for traffic at the intersection, the intersection shall be treated as a multi-way stop; and

(b) If a traffic control signal is not in service and the signal heads are turned away from traffic or covered with opaque material, subdivision (a) of this subdivision shall not apply.

**Source:** Laws 1973, LB 45, § 14; Laws 1980, LB 821, § 1; Laws 1987, LB 135, § 1; R.S.1943, (1988), § 39-614; Laws 1993, LB 370, § 219; Laws 2010, LB805, § 10.

In the case of a collision involving two vehicles approaching an intersection from opposite directions with a green light for both vehicles, a determination of which vehicle was "lawfully" in the intersection first, thereby possessing a superior right-of-way for purposes of this section, was a question of fact for the jury. *Nguyen v. Rezac*, 256 Neb. 458, 590 N.W.2d 375 (1999).

Speeding up to cross an intersection on a yellow light in violation of subdivision (2)(a) of this section provides sufficient cause for a police officer observing the violation to make an investigatory stop. *State v. LaMere*, 230 Neb. 629, 432 N.W.2d 822 (1988).

A pedestrian crossing at a regular crosswalk with the right-of-way has a right, until he has notice or knowledge to the contrary, to assume that others will respect his right-of-way.

Even though a statute grants the right-of-way to a pedestrian crossing a street in the crosswalk, it does not excuse contributorily negligence on his part. *Holly v. Mitchell*, 213 Neb. 203, 328 N.W.2d 750 (1982).

A city ordinance regulating funeral processions was a reasonable and valid exercise of the city's police power under section 39-697(1)(c) (transferred to section 60-680) and does not conflict with Nebraska's present right-of-way statutes, section 39-609(1) (transferred to section 60-6,119) and this section. *Herman v. Lee*, 210 Neb. 563, 316 N.W.2d 56 (1982).

Directed verdict was improperly granted to a motorist where a factual issue existed as to whether the motorist or a bicyclist was in the favored position to proceed into the intersection. *Luellman v. Ambroz*, 2 Neb. App. 855, 516 N.W.2d 627 (1993).

### 60-6,124 Pedestrian-control signals.

Whenever pedestrian-control signals exhibiting the words WALK or DONT WALK or exhibiting the symbol of a walking person or an upraised hand are in place, such signals shall indicate as follows:

(1) Pedestrians facing a steady WALK indication or a symbol of a walking person may proceed across the roadway in the direction of such signal and shall be given the right-of-way by the drivers of all vehicles; and

(2) No pedestrian shall start to cross the roadway in the direction of a DONT WALK indication or a symbol of an upraised hand, but any pedestrian who has partially completed his or her crossing on the WALK or walking person

indication shall immediately proceed to a sidewalk or safety island while the flashing DONT WALK or flashing upraised hand indication is showing.

**Source:** Laws 1973, LB 45, § 15; Laws 1987, LB 135, § 2; R.S.1943, (1988), § 39-615; Laws 1993, LB 370, § 220.

A pedestrian crossing at a regular crosswalk with the right-of-way has a right, until he has notice or knowledge to the contrary, to assume that others will respect his right-of-way. Even though a statute grants the right-of-way to a pedestrian

crossing a street in the crosswalk, it does not excuse contributory negligence on his part. *Holly v. Mitchell*, 213 Neb. 203, 328 N.W.2d 750 (1982).

#### **60-6,125 Flashing signals; exception.**

Whenever an illuminated flashing red or yellow light is used in a traffic signal or with a traffic sign, it shall require obedience by vehicular traffic as follows:

(1) When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. The right to proceed shall be subject to the rules applicable after making a stop at a stop sign; and

(2) When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such light only with caution.

This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules set forth in the Nebraska Rules of the Road pertaining to such railroad grade crossings.

**Source:** Laws 1973, LB 45, § 16; R.S.1943, (1988), § 39-616; Laws 1993, LB 370, § 221.

Generally, the failure to see an approaching vehicle is not negligence as a matter of law unless the vehicle is undisputably

in a favored position. *Treffer v. Seevers*, 195 Neb. 114, 237 N.W.2d 114 (1975).

#### **60-6,126 Lane direction control signals; signs.**

When lane direction control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a specified or appropriate green indication is shown but shall not enter or travel in any lane over which a specified or appropriate red indication is shown. When such signals are in use, signs adequate to advise motorists of the meaning of such signals shall be erected.

**Source:** Laws 1973, LB 45, § 17; R.S.1943, (1988), § 39-617; Laws 1993, LB 370, § 222.

#### **60-6,126.01 Road name signs; authorized.**

Local authorities may place and maintain road name signs on the same sign posts as signs under the jurisdiction of the Department of Roads when highway visibility would not be impaired. Local authorities may also place and maintain road name signs in the right-of-way of any highway under the jurisdiction of the Department of Roads when highway visibility would not be impaired.

**Source:** Laws 2006, LB 853, § 17.

**60-6,127 Display of unauthorized signs, signals, or markings; public nuisance; removal.**

(1) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, light, marking, or device which purports to be, is an imitation of, or resembles a lawful traffic control device or railroad sign or signal, which uses the words stop or danger prominently displayed, which implies the need or requirement of stopping or the existence of danger, which attempts to direct the movement of traffic, which otherwise copies or resembles any lawful traffic control device, or which hides from view or interferes with the effectiveness of a traffic control device or any railroad sign or signal.

(2) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal which bears commercial advertising except as authorized by sections 39-204 to 39-206.

(3) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs unless prohibited by another statute.

(4) Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance, and the authority having jurisdiction over any highway where such prohibited sign, signal, or marking is found may remove it or cause it to be removed without notice.

**Source:** Laws 1973, LB 45, § 18; R.S.1943, (1988), § 39-618; Laws 1993, LB 370, § 223.

**60-6,128 Advertising devices adjacent to highway; when prohibited; public nuisance; removal.**

No advertising devices shall be erected or operated upon any private property adjacent to or near any highway which:

(1) Have a light, the beam of which is concentrated on the highway or adversely affects the vision of operators of vehicles upon the roadway by the use of flashing red, amber, yellow, or green lights which have the very obvious appearance of devices generally used as official traffic control devices; or

(2) Have photo-flash type lights, flood lights, spotlights, or other lighted signs which use the words Stop or Danger prominently displayed, which imply the need or requirement of stopping or the existence of danger, or which otherwise copy or resemble official traffic control devices.

Nothing in this section shall be construed to apply to official traffic control devices erected by the public agencies having jurisdiction.

Any advertising device erected, maintained, or operated in violation of this section is hereby declared to be a public nuisance. It shall be the duty of the public agency having jurisdiction to notify the owner of all lights in violation of the provisions of this section, and the public agency may remove such lights if the owner fails or refuses to remove them within a reasonable time after he or she is notified of such violation.

**Source:** Laws 1963, c. 224, § 3, p. 704; R.R.S.1943, § 39-714.05; R.S. 1943, (1988), § 39-618.01; Laws 1993, LB 370, § 224.

**60-6,129 Interference with official traffic control devices or railroad signs or signals; prohibited; liability in civil action.**

(1) No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any traffic control device, any railroad sign or signal, or any part of such a device, sign, or signal.

(2) Any person who moves, alters, damages, or destroys warning devices placed upon roads which the Department of Roads or any local authority or its representative has closed in whole or in part for the protection of the public or for the protection of the highway from damage during construction, improvement, or maintenance operation and thereby causes injury or death to any person or damage to any property, equipment, or material thereon shall be liable, subject to sections 25-21,185 and 25-21,185.07 to 25-21,185.12, for the full or allocated amount of such death, injury, or damage, and such amount may be recovered by the injured or damaged party or his or her legal representative in a civil action brought in any court of competent jurisdiction.

**Source:** Laws 1973, LB 45, § 19; Laws 1992, LB 262, § 10; R.S.Supp.,1992, § 39-619; Laws 1993, LB 370, § 225.

**60-6,130 Signs, markers, devices, or notices; prohibited acts; penalty.**

(1) Any person who willfully or maliciously shoots upon the public highway and injures, defaces, damages, or destroys any signs, monuments, road markers, traffic control devices, traffic surveillance devices, or other public notices lawfully placed upon such highways shall be guilty of a Class III misdemeanor.

(2) No person shall willfully or maliciously injure, deface, alter, or knock down any sign, traffic control device, or traffic surveillance device.

(3) It shall be unlawful for any person, other than a duly authorized representative of the Department of Roads, a county, or a municipality, to remove any sign, traffic control device, or traffic surveillance device placed along a highway for traffic control, warning, or informational purposes by official action of the department, county, or municipality. It shall be unlawful for any person to possess a sign or device which has been removed in violation of this subsection.

(4) Any person violating subsection (2) or (3) of this section shall be guilty of a Class II misdemeanor and shall be assessed liquidated damages in the amount of the value of the sign, traffic control device, or traffic surveillance device and the cost of replacing it.

**Source:** G.S.1873, c. 58, § 100, p. 743; R.S.1913, § 3040; Laws 1915, c. 60, § 1, p. 154; C.S.1922, § 2791; C.S.1929, § 39-1026; R.S.1943, § 39-714; Laws 1971, LB 331, § 1; C.S.Supp.,1972, § 39-714; Laws 1977, LB 41, § 9; Laws 1989, LB 283, § 1; R.S.Supp.,1992, § 39-619.01; Laws 1993, LB 370, § 226.

**(g) USE OF ROADWAY AND PASSING****60-6,131 Driving on right half of roadway required; exceptions.**

(1) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway except as follows:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) When an obstruction exists making it necessary to drive to the left of the center of the highway, except that any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(c) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(d) Upon a roadway restricted to one-way traffic.

(2) Upon all roadways, any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(3) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the centerline of the roadway except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes or except as permitted under subdivision (1)(b) of this section. This subsection shall not be construed to prohibit the crossing of the centerline in making a left turn into or from an alley, private road, or driveway unless such movement is otherwise prohibited by signs.

**Source:** Laws 1973, LB 45, § 20; R.S.1943, (1988), § 39-620; Laws 1993, LB 370, § 227.

Violation of this statute is only evidence of negligence and does not constitute negligence per se. *Bourke v. Watts*, 223 Neb. 511, 391 N.W.2d 552 (1986).

Violation of a statute is evidence of negligence, but not negligence per se. *Clark Bilt, Inc. v. Wells Dairy Co.*, 200 Neb. 20, 261 N.W.2d 772 (1978).

#### **60-6,132 Vehicles proceeding in opposite direction; passing.**

Passing vehicles proceeding in opposite directions shall each keep to the right side of the roadway, passing left to left, and upon roadways having width for not more than one lane of traffic in each direction, each driver shall give to the other, as nearly as possible, at least one-half of the main-traveled portion of the roadway.

**Source:** Laws 1973, LB 45, § 21; R.S.1943, (1988), § 39-621; Laws 1993, LB 370, § 228.

#### **60-6,133 Overtaking and passing rules; vehicles proceeding in same direction.**

Except when overtaking and passing on the right is permitted, the following rules shall govern the overtaking and passing of vehicles proceeding in the same direction:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall first give a visible signal of his or her intention and shall pass to the left of the other vehicle at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle; and

(2) The driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

**Source:** Laws 1973, LB 45, § 22; R.S.1943, (1988), § 39-622; Laws 1993, LB 370, § 229; Laws 1993, LB 575, § 6; Laws 2000, LB 1361, § 3.

**60-6,134 Overtaking and passing upon the right; when permitted.**

(1) The driver of a vehicle may overtake and pass on the right of another vehicle only under the following conditions:

(a) When the vehicle to be overtaken is making or about to make a left turn;

(b) Upon a two-way street or highway with an unobstructed roadway, not occupied by parked vehicles, of sufficient width for two or more lanes of moving vehicles going in the same direction when the passing vehicle is traveling in one of such lanes; or

(c) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, when the roadway is free from obstructions and of sufficient width for two or more lanes of moving vehicles.

(2) In no event shall the driver of a vehicle overtake and pass another vehicle upon the right unless such movement may be made safely upon the roadway.

**Source:** Laws 1973, LB 45, § 23; Laws 1983, LB 406, § 1; R.S.1943, (1988), § 39-623; Laws 1993, LB 370, § 230.

**60-6,134.01 School crossing zone; overtaking and passing prohibited; penalty.**

It is unlawful for a person operating a motor vehicle to overtake and pass another vehicle in a school crossing zone in which the roadway has only one lane of traffic in each direction. Any person convicted of overtaking and passing another vehicle in a school crossing zone is guilty of a traffic infraction and shall be fined not more than two hundred dollars for the first offense and at least two hundred dollars but not more than four hundred dollars for a second or subsequent offense.

**Source:** Laws 1997, LB 91, § 5.

**60-6,135 Limitations on overtaking and passing on the left; precautions required; return to right side of highway.**

(1) No vehicle shall overtake another vehicle proceeding in the same direction on an undivided two-way roadway when such overtaking requires the overtaking vehicle to be driven on the left side of the center of the roadway unless the left side is clearly visible for a distance sufficient to accomplish such overtaking and is free from oncoming traffic for a distance sufficient to:

(a) Permit the overtaking vehicle to return to an authorized lane of traffic before coming within two hundred feet of any approaching vehicle; and

(b) Permit the overtaking vehicle to be safely clear of the overtaken vehicle while returning to the authorized lane of travel as provided in the Nebraska Rules of the Road.

(2) After completing such overtaking, the overtaking vehicle shall return to the authorized lane of travel as soon as practicable.

(3) Any such overtaking shall be subject to the rules.

(4) The provisions of this section shall not permit the crossing of the centerline of an undivided highway providing for two or more lanes of traffic in each direction for the purpose of overtaking and passing another vehicle.

**Source:** Laws 1973, LB 45, § 24; R.S.1943, (1988), § 39-624; Laws 1993, LB 370, § 231.

**60-6,136 Limitations on overtaking, passing, or driving to the left of the center of roadway; when prohibited.**

(1) No driver shall overtake and pass another vehicle or drive to the left of the center of the roadway whenever:

(a) He or she approaches the crest of a grade or is upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(b) He or she approaches within one hundred feet of or traverses any intersection or railroad grade crossing;

(c) The view is obstructed when he or she approaches within one hundred feet of any bridge, viaduct, or tunnel; or

(d) The section of roadway is designated as a no-passing zone under section 60-6,137.

(2) The limitations imposed by subsection (1) of this section shall not apply (a) upon a one-way roadway, (b) under the conditions described in subdivision (1)(b) of section 60-6,131, or (c) to the driver of a vehicle turning left into or from an alley, private road, or driveway unless otherwise prohibited by signs.

**Source:** Laws 1973, LB 45, § 25; R.S.1943, (1988), § 39-625; Laws 1993, LB 370, § 232.

A driver is negligent as a matter of law if he makes a left turn between intersections without signaling. Ben Gay, Inc., v. Giesbrecht, 720 F.2d 1003 (8th Cir. 1983).

**60-6,137 No-passing zones; exception.**

(1) The Department of Roads and local authorities may determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving to the left of the center of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones. When such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey such indications.

(2) Where signs or markings are in place to define a no-passing zone, no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

(3) This section shall not apply (a) under the conditions described in subdivision (1)(b) of section 60-6,131 or (b) to the driver of a vehicle turning left into or from an alley, private road, or driveway unless otherwise prohibited by signs.

**Source:** Laws 1973, LB 45, § 26; R.S.1943, (1988), § 39-626; Laws 1993, LB 370, § 233.

**60-6,138 One-way roadways and rotary traffic islands; jurisdiction; exception for emergency vehicles.**

(1) The Department of Roads and local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all times or at such times as shall be indicated by traffic control devices.

(2) Except for emergency vehicles, no vehicle shall be operated, backed, pushed, or otherwise caused to move in a direction which is opposite to the direction designated by competent authority on any deceleration lane, acceleration lane, access ramp, shoulder, or roadway.

(3) A vehicle which passes around a rotary traffic island shall be driven only to the right of such island.

**Source:** Laws 1973, LB 45, § 27; R.S.1943, (1988), § 39-627; Laws 1993, LB 370, § 234.

**60-6,139 Driving on roadways laned for traffic; rules; traffic control devices.**

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent with this section, shall apply:

(1) A vehicle shall be driven as nearly as practicable within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except (a) when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, (b) in preparation for making a left turn, or (c) when such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by traffic control devices;

(3) Traffic control devices may be erected by the Department of Roads or local authorities to direct specified traffic to use a designated lane or to designate those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device; and

(4) Traffic control devices may be installed by the department or local authorities to prohibit the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

**Source:** Laws 1973, LB 45, § 28; R.S.1943, (1988), § 39-628; Laws 1993, LB 370, § 235.

**60-6,140 Following vehicles; restrictions.**

(1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, and such driver shall have due regard for the speed of such vehicles and the traffic upon and the condition of the roadway.

(2) The driver of any motor vehicle drawing a trailer, semitrailer, or another vehicle, when traveling upon a roadway outside of a business or residential district, who is following another vehicle shall, subject to varying road condi-

tions, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger and shall not follow another motor vehicle drawing a trailer, semitrailer, or another vehicle more closely than one hundred feet. This subsection shall not prevent a vehicle from overtaking and passing any other vehicle.

(3) The driver of a motor vehicle upon any roadway outside of a business or residential district in a caravan or motorcade, whether or not towing other vehicles, shall operate such vehicle so as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This subsection shall not apply to funeral processions.

(4) The driver of any motor vehicle when traveling upon a roadway outside of a business or residential district shall not follow any highway maintenance vehicle more closely than one hundred feet if:

(a) Such highway maintenance vehicle is engaged in plowing snow, removing deposited material from the surface of the road, or spreading salt, sand, or other material upon the surface of the road or is in motion on or near the traveled portion of a road performing other highway maintenance duties; and

(b) Such highway maintenance vehicle is displaying a flashing amber or white light.

This subsection shall not prevent a vehicle from overtaking and passing any other vehicle.

(5) The driver of any motor vehicle, when traveling upon a roadway outside of a business or residential district, who is following another vehicle displaying flashing amber or white lights shall not follow such vehicle more closely than one hundred feet. This subsection shall not prevent a vehicle from overtaking and passing any other vehicle.

**Source:** Laws 1973, LB 45, § 29; Laws 1986, LB 437, § 1; R.S.1943, (1988), § 39-629; Laws 1993, LB 370, § 236.

A state trooper had probable cause to stop a vehicle, in which the defendant was a passenger, for following too closely, despite the trooper's statement that he had a hunch the passengers could be involved in transporting contraband. The trooper testified that he observed the vehicle following one car length

behind a semi-truck while both vehicles were traveling over 70 miles per hour in the rain; thus, the trooper's alleged ulterior motivation for the stop was irrelevant. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

**60-6,141 Driving on divided highways; driving on median prohibited; exceptions.**

(1) Whenever any highway has been divided into two or more roadways by a median, a driver shall drive only upon the right-hand roadway unless directed or permitted to use another roadway by traffic control devices or competent authority.

(2) No driver shall drive any vehicle over, across, or within any median except through a median opening or median crossover as established by competent authority. Medians on freeways shall not be crossed or entered upon at any point unless specifically directed by competent authority.

(3) No driver except drivers of authorized emergency vehicles and drivers of wreckers or other vehicles assisting a stranded vehicle shall use any emergency entrance or median crossover on a freeway intended only for emergency vehicles, but no such excepted driver shall drive in such manner as to create a hazard to any other vehicle.

**Source:** Laws 1973, LB 45, § 30; Laws 1981, LB 64, § 1; R.S.1943, (1988), § 39-630; Laws 1993, LB 370, § 237.

**60-6,142 Driving on highway shoulders prohibited; exceptions.**

No person shall drive on the shoulders of highways, except that:

(1) Vehicles may be driven on the shoulders of highways (a) by federal mail carriers while delivering the United States mail or (b) to safely remove a vehicle from a roadway;

(2) Implements of husbandry may be driven on the shoulders of highways; and

(3) Bicycles and electric personal assistive mobility devices may be operated on paved shoulders of highways included in the state highway system other than Nebraska segments of the National System of Interstate and Defense Highways.

**Source:** Laws 1973, LB 45, § 31; Laws 1988, LB 969, § 1; R.S.1943, (1988), § 39-631; Laws 1993, LB 370, § 238; Laws 1993, LB 575, § 7; Laws 2002, LB 1105, § 456.

**60-6,143 Controlled-access highway; entrances; exits.**

No person shall drive a vehicle onto or from any controlled-access highway except at such entrances and exits as are established by competent authority.

**Source:** Laws 1973, LB 45, § 32; R.S.1943, (1988), § 39-632; Laws 1993, LB 370, § 239.

**60-6,144 Restrictions on use of controlled-access highway.**

Use of a freeway and entry thereon by the following shall be prohibited at all times except by permit from the Department of Roads or from the local authority in the case of freeways not under the jurisdiction of the department:

(1) Pedestrians except in areas specifically designated for that purpose;

(2) Hitchhikers or walkers;

(3) Vehicles not self-propelled;

(4) Bicycles, motor-driven cycles, motor scooters not having motors of more than ten horsepower, and electric personal assistive mobility devices;

(5) Animals led, driven on the hoof, ridden, or drawing a vehicle;

(6) Funeral processions;

(7) Parades or demonstrations;

(8) Vehicles, except emergency vehicles, unable to maintain minimum speed as provided in the Nebraska Rules of the Road;

(9) Construction equipment;

(10) Implements of husbandry, whether self-propelled or towed;

(11) Vehicles with improperly secured attachments or loads;

(12) Vehicles in tow, when the connection consists of a chain, rope, or cable, except disabled vehicles which shall be removed from such freeway at the nearest interchange;

(13) Vehicles with deflated pneumatic, metal, or solid tires or continuous metal treads except maintenance vehicles;

(14) Any person standing on or near a roadway for the purpose of soliciting or selling to an occupant of any vehicle; or

(15) Overdimensional vehicles.

**Source:** Laws 1973, LB 45, § 33; R.S.1943, (1988), § 39-633; Laws 1993, LB 370, § 240; Laws 1993, LB 575, § 8; Laws 2002, LB 1105, § 457; Laws 2006, LB 853, § 18.

**60-6,145 Official signs on controlled-access highway.**

The Department of Roads and local authorities shall erect and maintain at appropriate locations official signs on freeways under their respective jurisdictions apprising motorists of the restrictions placed upon the use of such highways by the Nebraska Rules of the Road. When the department or local authority posts such signs, it need not follow the usual rules and procedure of posting signs on or near freeways nor shall the department be required to conform with the formalities of public hearings. When such signs are erected, no person shall violate the restrictions stated on such signs.

**Source:** Laws 1973, LB 45, § 34; R.S.1943, (1988), § 39-634; Laws 1993, LB 370, § 241.

(h) RIGHT-OF-WAY

**60-6,146 Vehicles approaching or entering intersection at same time; right-of-way; entering a highway or roadway.**

(1) When two vehicles approach or enter an intersection from different roadways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(2) Notwithstanding the provisions of subsection (1) of this section, a vehicle entering a highway from an acceleration lane, a ramp, or any other approach road shall yield the right-of-way to a vehicle on the main roadway entering such merging area at the same time, regardless of whether the approach road is to the left or the right of the main roadway, unless posted signs indicate otherwise.

(3) The driver of a vehicle about to enter or cross a paved roadway from an unpaved roadway and who is not subject to control by a traffic control device shall yield the right-of-way to all vehicles approaching on such paved roadway.

(4) The right-of-way rules set forth in subsections (1) and (3) of this section are modified at through highways and otherwise as stated in the Nebraska Rules of the Road.

**Source:** Laws 1973, LB 45, § 35; R.S.1943, (1988), § 39-635; Laws 1993, LB 370, § 242.

At four-way stop signs, no driver has a preferred or favored status, and all have a duty to stop followed by a duty to use ordinary care as they proceed through the intersection. *Salazar v. Nemeec*, 253 Neb. 298, 570 N.W.2d 366 (1997).

Under subsection (1) of this section, when a collision occurs in an ordinary city or country intersection, unless there is evidence that one of the vehicles was traveling at a very much greater rate of speed than the other, it is self-evident that the vehicles were reaching the intersection at approximately the same time. *Workman v. Stehlik*, 238 Neb. 666, 471 N.W.2d 760 (1991).

When two vehicles approach an intersection at the same time, the vehicle on the right has the immediate use of the intersection. *Muirhead v. Gunst*, 204 Neb. 1, 281 N.W.2d 207 (1979).

Vehicle on the right has the favored position but does not have an absolute right to proceed regardless of the circumstances. *Crink v. Northern Nat. Gas Co.*, 200 Neb. 460, 263 N.W.2d 857 (1978).

Intersection right-of-way is a qualified, not absolute, right to proceed, exercising due care, in a lawful manner in preference to an opposing vehicle. *Reese v. Mayer*, 198 Neb. 499, 253 N.W.2d 317 (1977).

**60-6,147 Vehicle turning left; yield right-of-way.**

The driver of a vehicle who intends to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any

vehicle approaching from the opposite direction which is within the intersection or approaching so close as to constitute an immediate hazard.

**Source:** Laws 1973, LB 45, § 36; R.S.1943, (1988), § 39-636; Laws 1993, LB 370, § 243.

In an intersection collision involving a vehicle turning left with a green light and a vehicle subsequently entering the intersection with a green light from the opposite direction, the determination of which vehicle was required to yield to the other pursuant to this section was a question of fact for the jury. *Nguyen v. Rezac*, 256 Neb. 458, 590 N.W.2d 375 (1999).

The degree of care required by this section was increased by the fact that the sun restricted the visibility of the left-turning driver. *Ambrosio v. Price*, 495 F.Supp. 381 (D. Neb. 1979).

A driver is charged with exercising due diligence to determine whether it is safe to turn left on a roadway. *Mitchell v. Kesting*, 221 Neb. 506, 378 N.W.2d 188 (1985).

### **60-6,148 Preferential right-of-way; stop and yield signs.**

(1) Competent authority may provide for preferential right-of-way at an intersection and indicate such by stop signs or yield signs erected by such authorities.

(2) Except when directed to proceed by a peace officer or traffic control signal, every driver of a vehicle approaching an intersection where a stop is indicated by a stop sign shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if no crosswalk is indicated, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, such driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on such highway as to constitute an immediate hazard if such driver moved across or into such intersection.

(3) The driver of a vehicle approaching a yield sign shall slow to a speed reasonable under the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if no crosswalk is indicated, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After slowing or stopping, such driver shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard if such driver moved across or into such intersection.

**Source:** Laws 1973, LB 45, § 37; R.S.1943, (1988), § 39-637; Laws 1993, LB 370, § 244.

At four-way stop signs, no driver has a preferred or favored status, and all have a duty to stop followed by a duty to use ordinary care as they proceed through the intersection. *Salazar v. Nemeec*, 253 Neb. 298, 570 N.W.2d 366 (1997).

### **60-6,149 Vehicle entering roadway from private road or driveway; yield right-of-way.**

The driver of a vehicle emerging from an alley, driveway, private road, or building shall stop such vehicle immediately before driving onto a sidewalk and shall yield the right-of-way to any pedestrian approaching on any sidewalk. Before entering the highway, the driver shall yield the right-of-way to all vehicles approaching on such highway.

The driver of a vehicle entering an alley, building, private road, or driveway shall yield the right-of-way to any pedestrian approaching on any sidewalk.

**Source:** Laws 1973, LB 45, § 38; R.S.1943, (1988), § 39-638; Laws 1993, LB 370, § 245.

The statute requiring a driver of a vehicle emerging from a driveway onto a highway to yield the right-of-way to vehicles approaching on such highway applies to a 15-year-old boy riding a bicycle. *McFarland v. King*, 216 Neb. 92, 341 N.W.2d 920 (1983).

Jury damage award to defendant on counterclaim, in auto negligence case, reversed where defendant held negligent as matter of law. *Rief v. Foy*, 198 Neb. 572, 254 N.W.2d 86 (1977).

An automobile driver is required to see only those approaching vehicles which relative to speed and distance are within the radius which denotes the limit of danger. *Laux v. Robinson*, 195 Neb. 601, 239 N.W.2d 786 (1976).

A bicyclist "emerging from an alley, driveway, private road, or building" shall stop before entering a highway or road. *Luellman v. Ambroz*, 2 Neb. App. 855, 516 N.W.2d 627 (1994).

### **60-6,150 Moving a stopped, standing, or parked vehicle; yield right-of-way.**

No person shall move a vehicle which is stopped, standing, or parked without yielding the right-of-way to all other vehicles and pedestrians affected by such movement and in no event until such movement can be made with reasonable safety.

**Source:** Laws 1973, LB 45, § 39; R.S.1943, (1988), § 39-639; Laws 1993, LB 370, § 246.

At four-way stop signs, no driver has a preferred or favored status, and all have a duty to stop followed by a duty to use ordinary care as they proceed through the intersection. *Salazar v. Nemeec*, 253 Neb. 298, 570 N.W.2d 366 (1997).

### **60-6,151 Operation of vehicles upon the approach of emergency vehicles.**

(1) Upon the immediate approach of an authorized emergency vehicle which makes use of proper audible or visual signals:

(a) The driver of any other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the roadway or to either edge or curb of a one-way roadway, clear of any intersection, and shall stop and remain in such position until such emergency vehicle passes unless otherwise directed by any peace officer; and

(b) Any pedestrian using such roadway shall yield the right-of-way until such emergency vehicle passes unless otherwise directed by any peace officer.

(2) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

**Source:** Laws 1973, LB 45, § 40; R.S.1943, (1988), § 39-640; Laws 1993, LB 370, § 247.

A police vehicle enjoys privileges as an emergency vehicle as long as the officer operates emergency equipment in good faith belief that he or she is responding to an emergency. *Maple v. City of Omaha*, 222 Neb. 293, 384 N.W.2d 254 (1986).

Police department standard operating procedures are merely evidence of "proper audible or visual signals." Police officer

exercised due regard in operating an emergency vehicle. *Maple v. City of Omaha*, 222 Neb. 293, 384 N.W.2d 254 (1986).

The trial court did not err in refusing to direct a verdict in favor of the plaintiff, who was injured when he was struck by a police car responding to an emergency call. *Stephen v. City of Lincoln*, 209 Neb. 792, 311 N.W.2d 889 (1981).

## **(i) PEDESTRIANS**

### **60-6,152 Pedestrian obedience to traffic control devices and regulations.**

(1) A pedestrian shall obey the instructions of any traffic control device specifically applicable to pedestrians unless otherwise directed by a peace officer.

(2) Pedestrians shall be subject to traffic and pedestrian-control signals as provided in the Nebraska Rules of the Road.

(3) At all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions set forth in the rules.

**Source:** Laws 1973, LB 45, § 41; R.S.1943, (1988), § 39-641; Laws 1993, LB 370, § 248.

## Cross References

Duties of driver approaching blind or hearing-impaired person, see section 20-128.

Failure to observe blind person, see section 28-1314.

Failure to yield to pedestrian, assessment of points against operator's license, see section 60-4,182 et seq.

Unlawful use of white cane or guide dog, see section 28-1313.

**60-6,153 Pedestrians' right-of-way in crosswalk; traffic control devices.**

(1) Except at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided, when traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway within a crosswalk who is in the lane in which the driver is proceeding or is in the lane immediately adjacent thereto by bringing his or her vehicle to a complete stop.

(2) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to stop.

(3) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(4) The Department of Roads and local authorities in their respective jurisdictions may, after an engineering and traffic investigation, designate unmarked crosswalk locations where pedestrian crossing is prohibited or where pedestrians shall yield the right-of-way to vehicles. Such restrictions shall be effective only when traffic control devices indicating such restrictions are in place.

**Source:** Laws 1973, LB 45, § 42; Laws 1979, LB 395, § 1; R.S.1943, (1988), § 39-642; Laws 1993, LB 370, § 249.

## Cross References

Failure to yield to pedestrian, assessment of points against operator's license, see section 60-4,182 et seq.

The driver of a vehicle shall yield the right-of-way to a pedestrian within a crosswalk. *Therkildsen v. Gottsch*, 194 Neb. 729, 235 N.W.2d 622 (1975).

Pursuant to subsection (2) of this section, a pedestrian who stepped from the curb into traffic failed to prove causation to

withstand a directed verdict because the evidence showed that the driver could not have avoided hitting the pedestrian even if the driver had seen the pedestrian step from the curb. *Fidler v. Koster*, 8 Neb. App. 884, 603 N.W.2d 165 (1999).

**60-6,154 Crossing at other than crosswalks; yield right-of-way.**

(1) Every pedestrian who crosses a roadway at any point other than within a marked crosswalk, or within an unmarked crosswalk at an intersection, shall yield the right-of-way to all vehicles upon the roadway.

(2) Any pedestrian who crosses a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(3) Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(4) No pedestrian shall cross a roadway intersection diagonally unless authorized by traffic control devices, and when authorized to cross diagonally, pedestrians shall cross only in accordance with the traffic control devices pertaining to such crossing movements.

(5) Local authorities and the Department of Roads, by erecting appropriate official traffic control devices, may, within their respective jurisdictions, prohib-

it pedestrians from crossing any roadway in a business district or any designated highway except in a crosswalk.

**Source:** Laws 1973, LB 45, § 43; R.S.1943, (1988), § 39-643; Laws 1993, LB 370, § 250.

Violation of this provision is not determinative of the degree of a pedestrian's negligence, if any. *Hennings v. Schufeldt*, 222 Neb. 416, 384 N.W.2d 274 (1986).

Pedestrians may cross intersection diagonally when authorized by official traffic-control devices, but only in accordance with devices pertaining to such movements. *Therkildsen v. Gottsch*, 194 Neb. 729, 235 N.W.2d 622 (1975).

Pursuant to subsection (1) of this section, a pedestrian who stepped from the curb into traffic failed to prove causation to withstand a directed verdict because the evidence showed that the driver could not have avoided hitting the pedestrian even if the driver had seen the pedestrian step from the curb. *Fidler v. Koster*, 8 Neb. App. 884, 603 N.W.2d 165 (1999).

### **60-6,155 Pedestrians to use right half of crosswalk.**

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

**Source:** Laws 1973, LB 45, § 45; R.S.1943, (1988), § 39-645; Laws 1993, LB 370, § 251.

### **60-6,156 Pedestrians on highways and roadways; sidewalks and shoulders.**

(1) Where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway or shoulder.

(2) Where a sidewalk is not available and a shoulder is available, any pedestrian walking along and upon a highway shall walk only on the shoulder as far as practicable from the edge of the roadway.

(3) Where neither a sidewalk nor a shoulder is available, any pedestrian who walks along and upon a highway shall walk as near as practicable to the edge of the roadway and, if on a two-way roadway, shall walk only on the left side of such roadway.

**Source:** Laws 1973, LB 45, § 46; R.S.1943, (1988), § 39-646; Laws 1993, LB 370, § 252.

Violation of a statute is not negligence per se, but is merely evidence of negligence. *Vanek v. Prohaska*, 233 Neb. 848, 448 N.W.2d 573 (1989).

Where plaintiff is discovered walking on the traveled portion of the highway at the time of an accident, violation of a statute

is not negligence per se but merely evidence of negligence. *Hurlbut v. Landgren*, 200 Neb. 413, 264 N.W.2d 174 (1978).

### **60-6,157 Pedestrians soliciting rides or business; prohibited acts; ordinance authorizing solicitation of contributions.**

(1) Except as otherwise provided in subsection (3) of this section, no person shall stand in a roadway for the purpose of soliciting a ride, employment, contributions, or business from the occupant of any vehicle.

(2) No person shall stand on or in proximity to a highway for the purposes of soliciting the watching or guarding of any vehicle while parked or about to be parked on a highway.

(3)(a) Any municipality may, by ordinance, allow pedestrians over the age of eighteen to enter one or more roadways, except roadways that are part of the state highway system, at specified times and locations and approach vehicles when stopped by traffic control devices or traffic control signals for the purpose of soliciting contributions which are to be devoted to charitable or community betterment purposes.

(b) Any ordinance enacted pursuant to this subsection shall be a general ordinance which shall not exclude or give preference to any individual or the members of any organization, association, or group. Any ordinance whose terms or provisions do not strictly comply with this subsection is void.

**Source:** Laws 1973, LB 45, § 47; R.S.1943, (1988), § 39-647; Laws 1993, LB 370, § 253; Laws 2009, LB278, § 1.

**60-6,158 Driving through safety zone; prohibited.**

The driver of a vehicle shall not at any time drive through or within a safety zone.

**Source:** Laws 1973, LB 45, § 48; R.S.1943, (1988), § 39-648; Laws 1993, LB 370, § 254.

(j) TURNING AND SIGNALS

**60-6,159 Required position and method of turning; right-hand and left-hand turns; traffic control devices.**

(1) Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and, after entering the intersection, the left turn shall be made so as to leave the intersection, as nearly as practicable, in the extreme left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered. Whenever practicable, the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) The Department of Roads and local authorities in their respective jurisdictions may cause traffic control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when such devices are so placed, no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such devices.

**Source:** Laws 1973, LB 45, § 50; R.S.1943, (1988), § 39-650; Laws 1993, LB 370, § 255.

**60-6,160 Turning to proceed in opposite direction; limitation.**

No vehicle shall be turned so as to proceed in the opposite direction upon any curve, upon the approach to or near the crest of a grade where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet, or at any place where such turns are prohibited by signs. No vehicle, except authorized emergency vehicles, shall be turned at any place on a freeway so as to proceed in the opposite direction.

**Source:** Laws 1973, LB 45, § 51; R.S.1943, (1988), § 39-651; Laws 1993, LB 370, § 256.

Violation of this section is a criminal offense within the meaning of the double jeopardy provisions of Article I, section 12, Nebraska Constitution. State v. Knoles, 199 Neb. 211, 256 N.W.2d 873 (1977).

**60-6,161 Turning or moving right or left upon a roadway; required signals; signals prohibited.**

(1) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal in the manner provided in sections 60-6,162 and 60-6,163.

(2) A signal of intention to turn or move right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

(3) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided in such sections to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(4) The brake and turnsignal lights required on vehicles by section 60-6,226 shall not be flashed on one side only on a disabled vehicle, flashed as a courtesy or do pass signal to operators of other vehicles approaching from the rear, or flashed on one side only of a parked vehicle except as may be necessary for compliance with this section.

**Source:** Laws 1973, LB 45, § 52; R.S.1943, (1988), § 39-652; Laws 1993, LB 370, § 257.

The giving of the statutorily required turn signal is not enough; one must exercise reasonable care under all the circumstances. *Huntwork v. Voss*, 247 Neb. 184, 525 N.W.2d 632 (1995).

A driver is charged with exercising due diligence to determine whether it is safe to turn left on a roadway. *Mitchell v. Kesting*, 221 Neb. 506, 378 N.W.2d 188 (1985).

**60-6,162 Signals given by hand and arm or signal lights; signal lights required; exceptions.**

(1) Any stop signal or turnsignal required by the Nebraska Rules of the Road shall be given either by means of the hand and arm or by signal lights except as otherwise provided in this section.

(2) With respect to any motor vehicle having four or more wheels manufactured or assembled, whether from a kit or otherwise, after January 1, 1954, designed or used for the purpose of carrying passengers or freight, or any trailer, in use on a highway, any required signal shall be given by the appropriate signal lights when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle or trailer exceeds twenty-four inches. Such measurement shall apply to any single vehicle or trailer and to any combination of vehicles or trailers. This subsection shall not apply during daylight hours to fertilizer trailers as defined in section 60-326 and implements of husbandry designed primarily or exclusively for use in agricultural operations.

(3) Under any condition when a hand and arm signal would not be visible both to the front and rear of the vehicle of such signaling driver for one hundred feet, the required signals shall be given by such a light or device as required by this section.

**Source:** Laws 1973, LB 45, § 53; Laws 1987, LB 216, § 1; R.S.1943, (1988), § 39-653; Laws 1993, LB 370, § 258; Laws 1995, LB 59, § 1; Laws 2003, LB 238, § 5; Laws 2005, LB 274, § 242.

**60-6,163 Hand and arm signals; how given.**

(1) Except as provided in subsection (2) of this section, all hand and arm signals required by the Nebraska Rules of the Road shall be given from the left

side of the vehicle with the left arm in the following manner and such signals shall indicate as follows:

- (a) Left turn—hand and arm extended to the left horizontally;
- (b) Right turn—hand and forearm extended upward; and
- (c) Stop or decrease speed—hand and arm extended downward.

(2) Any person operating a bicycle may signal a right turn by fully extending the right arm and pointing.

**Source:** Laws 1973, LB 45, § 54; R.S.1943, (1988), § 39-654; Laws 1993, LB 370, § 259; Laws 1993, LB 575, § 9.

(k) STOPPING, STANDING, PARKING, AND BACKING UP

**60-6,164 Stopping, parking, or standing upon a roadway, freeway, or bridge; limitations; duties of driver.**

(1) No person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon a roadway outside of a business or residential district when it is practicable to stop, park, or leave such vehicle off such part of a highway, but in any event an unobstructed width of the roadway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred feet in each direction upon such highway. Such parking, stopping, or standing shall in no event exceed twenty-four hours.

(2) No person shall stop, park, or leave standing any vehicle on a freeway except in areas designated or unless so directed by a peace officer, except that when a vehicle is disabled or inoperable or the driver of the vehicle is ill or incapacitated, such vehicle shall be permitted to park, stop, or stand on the shoulder facing in the direction of travel with all wheels and projecting parts of such vehicle completely clear of the traveled lanes, but in no event shall such parking, standing, or stopping upon the shoulder of a freeway exceed twelve hours.

(3) No person, except law enforcement, fire department, emergency management, public or private ambulance, or authorized Department of Roads or local authority personnel, shall loiter or stand or park any vehicle upon any bridge, highway, or structure which is located above or below or crosses over or under the roadway of any highway or approach or exit road thereto.

(4) Whenever a vehicle is disabled or inoperable in a roadway or for any reason obstructs the regular flow of traffic for reasons other than an accident, the driver shall move or cause the vehicle to be moved as soon as practical so as to not obstruct the regular flow of traffic.

(5) This section does not apply to the driver of any vehicle which is disabled while on the roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position until such time as it can be removed pursuant to subsection (4) of this section.

**Source:** Laws 1973, LB 45, § 70; R.S.1943, (1988), § 39-670; Laws 1993, LB 370, § 260; Laws 1996, LB 43, § 11; Laws 2007, LB561, § 2.

A prima facie violation of this section was shown by presenting evidence that the defendant stopped and left a truck standing on the highway, shifting the burden to the defendant to create a jury question by presenting evidence the truck was not stopped and left standing or it was not practicable to move the

truck. *Tapp v. Blackmore Ranch, Inc.*, 254 Neb. 40, 575 N.W.2d 341 (1998).

Evidence of violation of this section is evidence of negligence or contributory negligence. *Horst v. Johnson*, 237 Neb. 155, 465 N.W.2d 461 (1991).

One who claims that his vehicle was unavoidably stalled and disabled on the highway and that, therefore, the exception of subsection (4) of this section applies had the burden of proving that he comes within that exception. *Porter v. Black*, 205 Neb. 699, 289 N.W.2d 760 (1980).

Subsection (1) does not apply to disabled vehicles, if the driver thereof observes such requirement so far as he is able and weather permits. *Vrba v. Kelly*, 198 Neb. 723, 255 N.W.2d 269 (1977).

**60-6,165 Persons authorized to remove vehicles; cost of removal; lien.**

(1) Whenever any peace officer, or any authorized employee of a law enforcement agency who is employed by a political subdivision of the state and specifically empowered by ordinance to act, finds a vehicle standing upon a highway in violation of any of the provisions of the Nebraska Rules of the Road, such individual may remove the vehicle, have such vehicle removed, or require the driver or other person in charge of the vehicle to move such vehicle to a position off the roadway of such highway or from such highway.

(2) The owner or other person lawfully entitled to the possession of any vehicle towed or stored shall be charged with the reasonable cost of towing and storage fees. Any such towing or storage fee shall be a lien upon the vehicle prior to all other claims. Any person towing or storing a vehicle shall be entitled to retain possession of such vehicle until such charges are paid. The lien provided for in this section shall not apply to the contents of any vehicle.

**Source:** Laws 1973, LB 45, § 71; Laws 1984, LB 482, § 3; Laws 1988, LB 833, § 2; R.S.1943, (1988), § 39-671; Laws 1993, LB 370, § 261.

**60-6,166 Stopping, standing, or parking prohibited; exceptions.**

(1) Except when necessary to avoid conflict with other traffic or when in compliance with law or the directions of a peace officer or traffic control device, no person shall:

(a) Stop, stand, or park any vehicle:

(i) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(ii) On a sidewalk;

(iii) Within an intersection;

(iv) On a crosswalk;

(v) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone unless the Department of Roads or the local authority indicates a different length by signs or markings;

(vi) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(vii) Upon any bridge or other elevated structure over a highway or within a highway tunnel;

(viii) On any railroad track; or

(ix) At any place where official signs prohibit stopping;

(b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(i) In front of a public or private driveway;

(ii) Within fifteen feet of a fire hydrant;

(iii) Within twenty feet of a crosswalk at an intersection;

(iv) Within thirty feet of any flashing signal, stop sign, yield sign, or other traffic control device located at the side of a roadway;

(v) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of such entrance when properly signposted; or

(vi) At any place where official signs prohibit standing; or

(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers:

(i) Within fifty feet of the nearest rail of a railroad crossing; or

(ii) At any place where official signs prohibit parking.

(2) No person shall move a vehicle not lawfully under his or her control into any such prohibited area or away from a curb such a distance as shall be unlawful.

**Source:** Laws 1973, LB 45, § 72; R.S.1943, (1988), § 39-672; Laws 1993, LB 370, § 262.

**60-6,167 Parking regulations; signs; control by Department of Roads or local authority.**

(1) Except as otherwise provided in this section, any vehicle stopped or parked upon a two-way roadway where parking is permitted shall be so stopped or parked with the right-hand wheels parallel to and within twelve inches of the right-hand curb or edge of such roadway. No vehicle shall be parked upon a roadway when there is a shoulder adjacent to the roadway which is available for parking.

(2) Except when otherwise provided by a local authority, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of such roadway, in the direction of authorized traffic movement, with its right-hand wheels within twelve inches of the right-hand curb or edge of the roadway or its left-hand wheels within twelve inches of the left-hand curb or edge of such roadway.

(3) A local authority may permit angle or center parking on any roadway, except that angle or center parking shall not be permitted on any federal-aid highway or on any part of the state highway system unless the Director-State Engineer has determined that such roadway is of sufficient width to permit angle or center parking without interfering with the free movement of traffic.

(4) The Department of Roads or a local authority may prohibit or restrict stopping, standing, or parking on highways under its respective jurisdiction outside the corporate limits of any city or village and erect and maintain proper and adequate signs thereon. No person shall stop, stand, or park any vehicle in violation of the restrictions stated on such signs.

**Source:** Laws 1973, LB 45, § 73; R.S.1943, (1988), § 39-673; Laws 1993, LB 370, § 263; Laws 1993, LB 575, § 18.

**60-6,168 Unattended motor vehicles; conditions.**

No person having control or charge of a motor vehicle shall allow such vehicle to stand unattended on a highway without first stopping the motor of such vehicle, locking the ignition, removing the key from the ignition, and

effectively setting the brakes thereon and, when standing upon any roadway, turning the front wheels of such vehicle to the curb or side of such roadway.

**Source:** Laws 1973, LB 45, § 74; R.S.1943, (1988), § 39-674; Laws 1993, LB 370, § 264.

**60-6,169 Limitations on backing vehicles.**

(1) The driver of a vehicle shall not back such vehicle on any roadway unless such movement can be made with safety and without interfering with other traffic.

(2) The driver of a vehicle shall not back such vehicle upon any roadway or shoulder of any freeway.

**Source:** Laws 1973, LB 45, § 75; R.S.1943, (1988), § 39-675; Laws 1993, LB 370, § 265.

(I) SPECIAL STOPS

**60-6,170 Obedience to signal indicating approach of train; prohibited acts.**

(1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances set forth in this section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall not proceed until he or she can do so safely. The requirements of this subsection shall apply when:

(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(b) A crossing gate is lowered or a flagperson gives or continues to give a signal of the approach or passage of a railroad train;

(c) A railroad train approaching within approximately one-quarter mile of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard; or

(d) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(2) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

**Source:** Laws 1973, LB 45, § 55; R.S.1943, (1988), § 39-655; Laws 1993, LB 370, § 266.

If there is a reasonable excuse for not seeing an approaching train, such as an obstruction preventing one from seeing the train or a distraction diverting the attention, the question whether traversing a railroad crossing is reasonable is a matter for the jury. *Crewdson v. Burlington Northern R. Co.*, 234 Neb. 631, 452 N.W.2d 270 (1990).

Where train was plainly visible and had emitted a signal within approximately one quarter of a mile from grade crossing which was audible from that distance, this section was clearly applicable to action of decedent prior to collision with train. *Wyatt v. Burlington Northern, Inc.*, 209 Neb. 212, 306 N.W.2d 902 (1981).

**60-6,171 Railroad crossing stop signs; jurisdiction.**

The Department of Roads and local authorities on highways under their respective jurisdictions may designate particularly dangerous highway grade crossings of railroads and erect stop signs at the crossings. When such stop signs are erected, the driver of any vehicle shall stop within fifty feet but not

less than fifteen feet from the nearest rail of such railroad and shall proceed only upon exercising due care.

**Source:** Laws 1973, LB 45, § 56; R.S.1943, (1988), § 39-656; Laws 1993, LB 370, § 267.

**60-6,172 Buses and school buses required to stop at all railroad grade crossings; exceptions.**

(1) The driver of any bus carrying passengers for hire or of any school bus, before crossing at grade any track of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, except as otherwise provided in the Nebraska Rules of the Road. The driver shall not proceed until he or she can do so safely. After stopping as required by this section and upon proceeding when it is safe to do so, the driver of any such vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such track and the driver shall not shift gears while crossing such track.

(2) No stop shall be made at any such crossing when a peace officer or a flagperson directs traffic to proceed or at an abandoned or exempted grade crossing which is clearly marked as such by or with the consent of competent authority when such markings can be read from the driver's position.

**Source:** Laws 1973, LB 45, § 57; Laws 1974, LB 863, § 1; R.S.1943, (1988), § 39-657; Laws 1993, LB 370, § 268.

**60-6,173 Grade crossings; certain carriers; required to stop; exceptions.**

(1) The driver of any vehicle which is required to be placarded pursuant to section 75-364, before crossing at a grade any track of a railroad on streets and highways, shall stop such vehicle not more than fifty feet nor less than fifteen feet from the nearest rail or railroad and while stopped shall listen and look in both directions along the track for an approaching train. The driver shall not proceed until precaution has been taken to ascertain that the course is clear.

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

(a) When a peace officer or a flagperson directs traffic to proceed;

(b) At an abandoned or exempted grade crossing which is clearly marked as such by or with the consent of competent authority when such markings can be read from the driver's position; or

(c) At railroad tracks used exclusively for industrial switching purposes within a business district.

(3) Nothing in this section shall be deemed to exempt the driver of any vehicle from compliance with the other requirements contained in the Nebraska Rules of the Road.

**Source:** Laws 1973, LB 45, § 58; R.S.1943, (1988), § 39-658; Laws 1993, LB 370, § 269; Laws 1998, LB 1056, § 1.

**60-6,174 Moving heavy equipment at railroad grade crossings; required to stop.**

(1) No person shall operate or move any crawler-type tractor, any steam shovel, any derrick, any roller, or any equipment or structure having a normal operating speed of ten miles per hour or less or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across any track at a railroad grade crossing without first complying with this section.

(2) Before making any such crossing, the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet nor more than fifty feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train. The person shall not proceed until the crossing can be made safely.

(3) No such crossing shall be made while warning is given by an automatic signal, by crossing gates, by a flagperson, or otherwise of the immediate approach of a railroad train or car. If a flagperson is provided by the railroad, movement over the crossing shall be under his or her direction.

**Source:** Laws 1973, LB 45, § 59; R.S.1943, (1988), § 39-659; Laws 1993, LB 370, § 270.

**60-6,175 School bus; safety requirements; use of stop signal arm; use of warning signal lights; violations; penalty.**

(1) Upon meeting or overtaking, from the front or rear, any school bus on which the stop warning signal lights are flashing, the driver of a motor vehicle shall reduce the speed of such vehicle to not more than twenty-five miles per hour, shall bring such vehicle to a complete stop when the school bus stop signal arm is extended, and shall remain stopped until the stop signal arm is retracted and the school bus resumes motion or until signaled by the bus driver to proceed. This section shall not apply to approaching traffic in the opposite direction on a divided highway or to approaching traffic when there is displayed a sign as provided in subsection (7) of this section directing traffic to proceed. Any person violating this subsection shall be guilty of a Class IV misdemeanor.

(2) Except as provided in subsection (7) of this section, the driver of any school bus, when stopping to receive or discharge pupils, shall turn on flashing stop warning signal lights at a distance of not less than three hundred feet when inside the corporate limits of any city or village and not less than five hundred feet nor more than one thousand feet in any area outside the corporate limits of any city or village from the point where such pupils are to be received or discharged from the bus. At the point of receiving or discharging pupils, the bus driver shall bring the school bus to a stop and extend a stop signal arm. After receiving or discharging pupils, the bus driver shall turn off the flashing stop warning signal lights, retract the stop signal arm, and then proceed on the route. No school bus shall stop to load or unload pupils unless there is at least four hundred feet of clear vision in each direction of travel.

(3) All pupils shall be received and discharged from the right front entrance of every school bus. If such pupils must cross a roadway, the bus driver shall instruct such pupils to cross in front of the school bus and the bus driver shall keep such school bus halted with the flashing stop warning signal lights turned

on and the stop signal arm extended until such pupils have reached the opposite side of such roadway.

(4) The driver of a vehicle upon a divided highway need not stop upon meeting or passing a school bus which is on a different roadway or when upon a freeway and such school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

(5) Every school bus shall bear upon the front and rear thereof plainly visible signs containing the words school bus in letters not less than eight inches high.

(6) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school, all markings thereon indicating school bus shall be covered or concealed. The stop signal arm and system of alternately flashing stop warning signal lights shall not be operable through the usual controls.

(7) When a school bus is (a) parked in a designated school bus loading area which is out of the flow of traffic and which is adjacent to a school site or (b) parked on a roadway which possesses more than one lane of traffic flowing in the same direction and which is adjacent to a school site, the bus driver shall engage only the flashing stop warning signal lights when receiving or discharging pupils if a school bus loading area warning sign is displayed. Such signs shall not be directly attached to any school bus but shall be free standing and placed at the rear of a parked school bus or line of parked school buses. No school district shall utilize a school bus loading area warning sign unless such sign complies with the requirements of section 60-6,176.

**Source:** Laws 1973, LB 45, § 60; Laws 1974, LB 863, § 2; Laws 1977, LB 41, § 11; Laws 1987, LB 347, § 1; R.S.1943, (1988), § 39-660; Laws 1993, LB 370, § 271; Laws 1993, LB 575, § 10.

#### **60-6,176 School bus loading area warning signs; department; duties.**

The Department of Roads shall by rule and regulation adopt and promulgate uniform standards for school bus loading area warning signs. Such standards shall include requirements for the size, material, construction, and required wording. No school district shall use a school bus loading area warning sign unless such sign complies with all rules and regulations adopted and promulgated by the department. The cost of any sign shall be an obligation of the school district.

**Source:** Laws 1987, LB 347, § 2; R.S.1943, (1988), § 39-660.01; Laws 1993, LB 370, § 272.

#### **60-6,177 Signs relating to overtaking and passing school buses.**

The Department of Roads shall post on highways of the state highway system outside of business and residential districts signs to the effect that it is unlawful to pass school buses stopped to load or unload children. Such signs shall be adequate in size and number to properly inform the public of the provisions relative to such passing.

**Source:** Laws 1973, LB 45, § 61; R.S.1943, (1988), § 39-661; Laws 1993, LB 370, § 273.

## (m) MISCELLANEOUS RULES

**60-6,178 Driving upon sidewalk; prohibited; exception.**

No person shall drive any vehicle upon a sidewalk except upon a permanent or duly authorized temporary driveway.

**Source:** Laws 1973, LB 45, § 76; R.S.1943, (1988), § 39-676; Laws 1993, LB 370, § 274.

**60-6,179 Overloading front seat or obstructing driver; prohibited.**

(1) No person shall drive a motor vehicle when it is so loaded, or when there is in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or to interfere with the driver's control over the driving mechanism of such vehicle.

(2) No passenger in a vehicle shall ride in such a position as to interfere with the driver's view ahead or to the sides or to interfere with the driver's control over the driving mechanism of such vehicle.

**Source:** Laws 1973, LB 45, § 77; Laws 1975, LB 252, § 1; R.S.1943, (1988), § 39-677; Laws 1993, LB 370, § 275.

**60-6,179.01 Use of handheld wireless communication device; prohibited acts; enforcement; violation; penalty.**

(1) Except as otherwise provided in subsection (2) of this section, no person shall use a handheld wireless communication device to read a written communication, manually type a written communication, or send a written communication while operating a motor vehicle which is in motion.

(2) The prohibition in subsection (1) of this section does not apply to:

(a) A person performing his or her official duties as a law enforcement officer, a firefighter, an ambulance driver, or an emergency medical technician; or

(b) A person operating a motor vehicle in an emergency situation.

(3) Enforcement of this section by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.

(4) Any person who violates this section shall be guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182 and shall be fined:

(a) Two hundred dollars for the first offense;

(b) Three hundred dollars for a second offense; and

(c) Five hundred dollars for a third and subsequent offense.

(5) For purposes of this section:

(a)(i) Handheld wireless communication device means any device that provides for written communication between two or more parties and is capable of receiving, displaying, or transmitting written communication.

(ii) Handheld wireless communication device includes, but is not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant, a pager, or a laptop computer.

(iii) Handheld wireless communication device does not include an electronic device that is part of the motor vehicle or permanently attached to the motor vehicle or a handsfree wireless communication device; and

(b) Written communication includes, but is not limited to, a text message, an instant message, electronic mail, and Internet web sites.

**Source:** Laws 2010, LB945, § 3.

**60-6,180 Opening and closing vehicle doors; restriction.**

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so and it can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload property or passengers.

**Source:** Laws 1973, LB 45, § 78; R.S.1943, (1988), § 39-678; Laws 1993, LB 370, § 276.

**60-6,181 Traversing defiles, canyons, or mountain highways; audible warning.**

The driver of a motor vehicle traversing defiles, canyons, or mountain highways shall hold such motor vehicle under control and as near the right-hand side of the highway as reasonably possible and, upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway, shall give audible warning with a horn or other device.

**Source:** Laws 1973, LB 45, § 79; R.S.1943, (1988), § 39-679; Laws 1993, LB 370, § 277.

**60-6,182 Traveling on a downgrade; gears; position.**

The driver of a motor vehicle when traveling upon a downgrade upon any highway shall not coast with the gears of such vehicle in neutral.

**Source:** Laws 1973, LB 45, § 80; R.S.1943, (1988), § 39-680; Laws 1993, LB 370, § 278.

**60-6,183 Following fire apparatus in response to an alarm; prohibited.**

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

**Source:** Laws 1973, LB 45, § 81; R.S.1943, (1988), § 39-681; Laws 1993, LB 370, § 279.

**60-6,184 Restrictions on driving over unprotected fire hose.**

No vehicle shall be driven over unprotected hose of a fire department when laid down on any highway or private road or driveway, in use or to be used at any fire or alarm of fire, without the consent of the fire department official in command.

**Source:** Laws 1973, LB 45, § 82; R.S.1943, (1988), § 39-682; Laws 1993, LB 370, § 280.

## (n) SPEED RESTRICTIONS

**60-6,185 Basic rule; speed.**

No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. A person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

**Source:** Laws 1993, LB 370, § 281.

**Cross References**

**Operator's license**, assessment of points for speeding, see section 60-4,182 et seq.

This section is not unconstitutional. *State v. Padley*, 195 Neb. 358, 237 N.W.2d 883 (1976).

Unreasonable classification of persons is not created hereby. *State ex rel. Douglas v. Gradwohl*, 194 Neb. 745, 235 N.W.2d 854 (1975).

**60-6,186 Speed; maximum limits; signs.**

(1) Except when a special hazard exists that requires lower speed for compliance with section 60-6,185, the limits set forth in this section and sections 60-6,187, 60-6,188, 60-6,305, and 60-6,313 shall be the maximum lawful speeds unless reduced pursuant to subsection (2) of this section, and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits:

- (a) Twenty-five miles per hour in any residential district;
- (b) Twenty miles per hour in any business district;
- (c) Fifty miles per hour upon any highway that is not dustless surfaced and not part of the state highway system;
- (d) Fifty-five miles per hour upon any dustless-surfaced highway not a part of the state highway system;
- (e) Sixty miles per hour upon any part of the state highway system other than an expressway or a freeway, except that the Department of Roads may, where existing design and traffic conditions allow, according to an engineering study, authorize a speed limit five miles per hour greater;
- (f) Sixty-five miles per hour upon an expressway that is part of the state highway system;
- (g) Sixty-five miles per hour upon a freeway that is part of the state highway system but not part of the National System of Interstate and Defense Highways; and
- (h) Seventy-five miles per hour upon the National System of Interstate and Defense Highways, except that the maximum speed limit shall be sixty miles per hour for:
  - (i) Any portion of the National System of Interstate and Defense Highways located in Douglas County; and
  - (ii) That portion of the National System of Interstate and Defense Highways designated as Interstate 180 in Lancaster County and Interstate 129 in Dakota County.

(2) The maximum speed limits established in subsection (1) of this section may be reduced by the Department of Roads or by local authorities pursuant to section 60-6,188 or 60-6,190.

(3) The Department of Roads and local authorities may erect and maintain suitable signs along highways under their respective jurisdictions in such number and at such locations as they deem necessary to give adequate notice of the speed limits established pursuant to subsection (1) or (2) of this section upon such highways.

**Source:** Laws 1973, LB 45, § 62; Laws 1974, LB 873, § 1; Laws 1975, LB 381, § 1; Laws 1977, LB 256, § 1; Laws 1987, LB 430, § 1; R.S.1943, (1988), § 39-662; Laws 1993, LB 370, § 282; Laws 1996, LB 901, § 7; Laws 2007, LB35, § 2.

#### Cross References

**Operator's license**, assessment of points for speeding, see section 60-4,182 et seq.

The statute requiring a driver of a vehicle emerging from a driveway onto a highway to yield the right-of-way to vehicles approaching on such highway applies to a 15-year-old boy riding a bicycle. *McFarland v. King*, 216 Neb. 92, 341 N.W.2d 920 (1983).

This section is not unconstitutional. *State v. Padley*, 195 Neb. 358, 237 N.W.2d 883 (1976).

Unreasonable classification of persons is not created hereby. State ex rel. *Douglas v. Gradwohl*, 194 Neb. 745, 235 N.W.2d 854 (1975).

### **60-6,187 Special speed limitations; motor vehicle towing a mobile home; motor-driven cycle.**

(1) No person shall operate any motor vehicle when towing a mobile home at a rate of speed in excess of fifty miles per hour.

(2)(a) A person may operate any motor-driven cycle at a speed in excess of thirty-five miles per hour upon a roadway at nighttime if such motor-driven cycle is equipped with a headlight or headlights capable of revealing a person or vehicle in such roadway at least three hundred feet ahead and with a taillight on the rear exhibiting a red light visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

(b) A person may operate any motor-driven cycle at a speed in excess of twenty-five miles per hour, but not more than thirty-five miles per hour, upon a roadway at nighttime if such motor-driven cycle is equipped with a headlight or headlights capable of revealing a person or vehicle in such roadway at least one hundred feet ahead, but less than three hundred feet ahead, and with a taillight on the rear exhibiting a red light visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

(c) A person shall not operate any motor-driven cycle upon a roadway at nighttime if the headlight or headlights do not reveal a person or vehicle in such roadway at least one hundred feet ahead, or the taillight is not visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

**Source:** Laws 1973, LB 45, § 66; Laws 1974, LB 873, § 2; Laws 1975, LB 381, § 2; Laws 1977, LB 256, § 2; Laws 1979, LB 23, § 2; Laws 1987, LB 430, § 2; Laws 1987, LB 504, § 2; Laws 1990, LB 369, § 1; R.S.Supp.,1992, § 39-666; Laws 1993, LB 370, § 283; Laws 1996, LB 901, § 8; Laws 2005, LB 80, § 1.

## Cross References

**Livestock forage vehicles**, speed limits, see section 60-6,305.

**Mopeds**, maximum speed, see section 60-6,313.

**Operator's license**, assessment of points for speeding, see section 60-4,182 et seq.

Unreasonable classification of persons is not created hereby.  
State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d  
854 (1975).

**60-6,188 Construction zone; signs; Director-State Engineer; authority.**

(1) The maximum speed limit through any maintenance, repair, or construction zone on the state highway system shall be thirty-five miles per hour in rural areas and twenty-five miles per hour in urban areas.

(2) Such speed limits shall take effect only after appropriate signs giving notice of the speed limit are erected or displayed in a conspicuous place in advance of the area where the maintenance, repair, or construction activity is or will be taking place. Such signs shall conform to the manual and shall be regulatory signs imposing a legal obligation and restriction on all traffic proceeding into the maintenance, construction, or repair zone. The signs may be displayed upon a fixed, variable, or movable stand. While maintenance, construction, or repair is being performed, the signs may be mounted upon moving Department of Roads vehicles displaying such signs well in advance of the maintenance zone.

(3) The Director-State Engineer may increase the speed limit through any highway maintenance, repair, or construction zone in increments of five miles per hour if the speed set does not exceed the maximum speed limits established in sections 60-6,186, 60-6,187, 60-6,189, 60-6,190, 60-6,305, and 60-6,313. The Director-State Engineer may delegate the authority to raise speed limits through any maintenance, repair, or construction zone to any department employee in a supervisory capacity or may delegate such authority to a county, municipal, or local engineer who has the duty to maintain the state highway system in such jurisdiction if the maintenance is performed on behalf of the department by contract with the local authority. Such increased speed limit through a maintenance, repair, or construction zone shall be effective when the Director-State Engineer or any officer to whom authority has been delegated gives a written order for such increase and signs posting such speed limit are erected or displayed.

(4) The Department of Roads shall post signs in maintenance, repair, or construction zones which inform motorists that the fine for exceeding the posted speed limit in such zones is doubled.

**Source:** Laws 1993, LB 370, § 284; Laws 1996, LB 901, § 9.

**60-6,189 Driving over bridges; maximum speed; determination by department or local authority; effect.**

(1) No person shall drive a vehicle over any public bridge, causeway, viaduct, or other elevated structure at a speed which is greater than the maximum speed which can be maintained with safety thereon when such structure is posted with signs as provided in subsection (2) of this section.

(2) The Department of Roads or a local authority may conduct an investigation of any bridge or other elevated structure constituting a part of a highway under its jurisdiction, and if it finds that such structure cannot safely withstand vehicles traveling at the speed otherwise permissible, the department or local

authority shall determine and declare the maximum speed of vehicles which such structure can safely withstand and shall cause suitable signs stating such maximum speed to be erected and maintained before each end of such structure.

(3) Upon the trial of any person charged with a violation of subsection (1) of this section, proof of such determination of the maximum speed by the department or local authority and the existence of such signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety on such bridge or structure.

**Source:** Laws 1993, LB 370, § 285.

**Cross References**

**Operator's license**, assessment of points for speeding, see section 60-4,182 et seq.

Unreasonable classification of persons is not created hereby.  
State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

**60-6,190 Establishment of state speed limits; power of Department of Roads; other than state highway system; power of local authority; signs.**

(1) Whenever the Department of Roads determines, upon the basis of an engineering and traffic investigation, that any maximum speed limit is greater or less than is reasonable or safe under the conditions found to exist at any intersection, place, or part of the state highway system outside of the corporate limits of cities and villages as well as inside the corporate limits of cities and villages on freeways which are part of the state highway system, it may determine and set a reasonable and safe maximum speed limit for such intersection, place, or part of such highway which shall be the lawful speed limit when appropriate signs giving notice thereof are erected at such intersection, place, or part of the highway, except that the maximum rural and freeway limits shall not be exceeded. Such a maximum speed limit may be set to be effective at all times or at such times as are indicated upon such signs.

(2) The speed limits set by the department shall not be a departmental rule, regulation, or order subject to the statutory procedures for such rules, regulations, or orders but shall be an authorization over the signature of the Director-State Engineer and shall be maintained on permanent file at the headquarters of the department. Certified copies of such authorizations shall be available from the department at a reasonable cost for duplication. Any change to such an authorization shall be made by a new authorization which cancels the previous authorization and establishes the new limit, but the new limit shall not become effective until signs showing the new limit are erected as provided in subsection (1) of this section.

(3) On county highways which are not part of the state highway system or within the limits of any state institution or any area under control of the Game and Parks Commission or a natural resources district and which are outside of the corporate limits of cities and villages, county boards shall have the same power and duty to alter the maximum speed limits as the department if the change is based on an engineering and traffic investigation comparable to that made by the department. The limit outside of a business or residential district shall not be decreased to less than thirty-five miles per hour.

(4) On all highways within their corporate limits, except on state-maintained freeways which are part of the state highway system, incorporated cities and

villages shall have the same power and duty to alter the maximum speed limits as the department if the change is based on engineering and traffic investigation, except that no imposition of speed limits on highways which are part of the state highway system in cities and villages under forty thousand inhabitants shall be effective without the approval of the department.

(5) The director of any state institution, the Game and Parks Commission, or a natural resources district, with regard to highways which are not a part of the state highway system, which are within the limits of such institution or area under Game and Parks Commission or natural resources district control, and which are outside the limits of any incorporated city or village, shall have the same power and duty to alter the maximum speed limits as the department if the change is based on an engineering and traffic investigation comparable to that made by the department.

(6) Not more than six such speed limits shall be set per mile along a highway, except in the case of reduced limits at intersections. The difference between adjacent speed limits along a highway shall not be reduced by more than twenty miles per hour, and there shall be no limit on the difference between adjacent speed limits for increasing speed limits along a highway.

(7) When the department or a local authority determines by an investigation that certain vehicles in addition to those specified in sections 60-6,187, 60-6,305, and 60-6,313 cannot with safety travel at the speeds provided in sections 60-6,186, 60-6,187, 60-6,189, 60-6,305, and 60-6,313 or set pursuant to this section or section 60-6,188 or 60-6,189, the department or local authority may restrict the speed limit for such vehicles on highways under its respective jurisdiction and post proper and adequate signs.

**Source:** Laws 1973, LB 45, § 63; Laws 1984, LB 861, § 17; Laws 1986, LB 436, § 1; R.S.1943, (1988), § 39-663; Laws 1993, LB 370, § 286; Laws 1996, LB 901, § 10; Laws 2010, LB805, § 11.

**Cross References**

**Operator's license**, assessment of points for speeding, see section 60-4,182 et seq.

Unreasonable classification of persons is not created hereby.  
State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

**60-6,191 Repealed. Laws 1993, LB 575, § 55.**

**60-6,192 Speed determination; use of speed measurement devices; requirements; apprehension of driver; when.**

(1) Determinations made regarding the speed of any motor vehicle based upon the visual observation of any peace officer, while being competent evidence for all other purposes, shall be corroborated by the use of a radio microwave, mechanical, or electronic speed measurement device. The results of such radio microwave, mechanical, or electronic speed measurement device may be accepted as competent evidence of the speed of such motor vehicle in any court or legal proceeding when the speed of the vehicle is at issue. Before the state may offer in evidence the results of such radio microwave, mechanical, or electronic speed measurement device for the purpose of establishing the speed of any motor vehicle, the state shall prove the following:

(a) The radio microwave, mechanical, or electronic speed measurement device was in proper working order at the time of conducting the measurement;

(b) The radio microwave, mechanical, or electronic speed measurement device was being operated in such a manner and under such conditions so as to allow a minimum possibility of distortion or outside interference;

(c) The person operating the radio microwave, mechanical, or electronic speed measurement device and interpreting such measurement was qualified by training and experience to properly test and operate the radio microwave, mechanical, or electronic speed measurement device; and

(d) The operator conducted external tests of accuracy upon the radio microwave, mechanical, or electronic speed measurement device, within a reasonable time both prior to and subsequent to an arrest being made, and the device was found to be in proper working order.

(2) The driver of any motor vehicle measured by use of a radio microwave, mechanical, or electronic speed measurement device to be driving in excess of the applicable speed limit may be apprehended if the apprehending officer:

(a) Is in uniform and displays his or her badge of authority; and

(b)(i) Has observed the recording of the speed of the motor vehicle by the radio microwave, mechanical, or electronic speed measurement device; or

(ii) Has received a radio message from a peace officer who observed the speed recorded and the radio message (A) has been dispatched immediately after the speed of the motor vehicle was recorded and (B) gives a description of the vehicle and its recorded speed.

**Source:** Laws 1973, LB 45, § 64; Laws 1983, LB 88, § 1; R.S.1943, (1988), § 39-664; Laws 1993, LB 370, § 288; Laws 1993, LB 25, § 1.

Before evidence of vehicular speed determined by use of a speed measurement device is admissible, the State must establish with reasonable proof that the equipment was accurate and functioning properly at the time the determination of the speed of the vehicle was made. *State v. Jacobson*, 273 Neb. 289, 728 N.W.2d 613 (2007).

To present "reasonable proof" that a primary measuring instrument that measures the speed of a vehicle was operating correctly, one must show that such device was tested against a device whose instrumental integrity or reliability had been established. *State v. Jacobson*, 273 Neb. 289, 728 N.W.2d 613 (2007).

Where evidence of speed is adduced not to establish a driver's rate of travel so as to prove a charge that he or she exceeded a particular speed limit, but, rather, as one piece of evidence tending to establish that the driver operated a vehicle in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property, the speed is not "at issue", as contemplated by this section and therefore need not be corroborated by a microwave, mechanical, or electronic speed measurement device. *State v. Hill*, 254 Neb. 460, 577 N.W.2d 259 (1998).

The speed of a vehicle is not at issue under this section when the crime charged is reckless driving and evidence is adduced to establish the defendant drove in a manner demonstrating indifferent or wanton disregard for the safety of persons or property. *State v. Howard*, 253 Neb. 523, 571 N.W.2d 308 (1997).

In order to support admission of a VASCAR speed measurement into evidence, the record must reflect compliance with the requirements for the operation and testing of the measuring device as described in subsection (1) of this section. *State v. Chambers*, 241 Neb. 66, 486 N.W.2d 481 (1992).

The accuracy of a primary measuring device must be tested against a reliable testing device. *State v. Chambers*, 241 Neb. 60, 486 N.W.2d 219 (1992).

Radar-based evidence of defendant's speed inadmissible where police officer testified that he had tested radar unit using "inscribed" tuning fork which was not shown to be intended or accurate for that purpose. *State v. Lomack*, 239 Neb. 368, 476 N.W.2d 237 (1991).

Subsection (2) of this section should be read to require a showing of subparts (a) and (c) or a showing of subparts (b) and (c). *State v. Kincaid*, 235 Neb. 89, 453 N.W.2d 738 (1990).

A battery-operated stopwatch is not an "electronic speed measurement" device within the purview of this section. *State v. Chambers*, 233 Neb. 235, 444 N.W.2d 667 (1989).

Corroboration of testimony estimating the rate of speed by visual observation of an officer is not needed when the testimony is offered to show that the defendant was driving recklessly rather than that the defendant was speeding. *State v. Howard*, 5 Neb. App. 596, 560 N.W.2d 516 (1997).

### **60-6,193 Minimum speed regulation; impeding traffic.**

(1) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(2) On a freeway no motor vehicle, except emergency vehicles, shall be operated at a speed of less than forty miles per hour or at such a slow speed as

to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for the safe operation of the motor vehicle because of weather, visibility, roadway, or traffic conditions. All vehicles entering or leaving such freeway from an acceleration or deceleration lane shall conform with the minimum speed regulations while they are within the roadway of the freeway. The minimum speed of forty miles per hour may be altered by the Department of Roads or local authorities on freeways under their respective jurisdictions.

(3) Whenever the department or any local authority within its respective jurisdiction determines on the basis of an engineering and traffic investigation that low speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the department or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.

(4) Vehicular, animal, and pedestrian traffic prohibited on freeways by the Nebraska Rules of the Road shall not travel on any other roadway where minimum speed limits of twenty miles per hour or more are posted.

(5) Any minimum speed limit which is imposed under subsection (2) or (3) of this section shall not be effective until appropriate and adequate signs are erected along the roadway affected by such regulation apprising motorists of such limitation.

(6) On any freeway, or other highway providing for two or more lanes of travel in one direction, vehicles shall not intentionally impede the normal flow of traffic by traveling side by side and at the same speed while in adjacent lanes. This subsection shall not be construed to prevent vehicles from traveling side by side in adjacent lanes because of congested traffic conditions.

**Source:** Laws 1973, LB 45, § 65; R.S.1943, (1988), § 39-665; Laws 1993, LB 370, § 289.

Applicability of this section depends on the factual setting; when a motorist's view of a railroad crossing is obstructed, he has no absolute duty to stop before traveling across, but such duty to stop exists where a reasonably prudent person in the

exercise of ordinary care would have considered a stop necessary under the circumstances. *Anderson v. Union Pacific RR. Co.*, 229 Neb. 321, 426 N.W.2d 518 (1988).

**60-6,194 Charging violations of speed regulation; summons; burden of proof; elements of offense.**

(1) In every charge of violation of any speed regulation in the Nebraska Rules of the Road, the complaint and the summons or notice to appear shall specify the speed at which defendant is alleged to have driven and the maximum speed for the type of vehicle involved applicable within the district or at the location. The speed at which defendant is alleged to have driven and the maximum speed are essential elements of the offense and shall be proved by competent evidence.

(2) The provisions of the rules which set maximum speed limitations shall not be construed to relieve the plaintiff in any action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident.

**Source:** Laws 1973, LB 45, § 67; R.S.1943, (1988), § 39-667; Laws 1993, LB 370, § 290; Laws 1993, LB 26, § 1.

**60-6,195 Racing on highways; violation; penalty.**

(1) No person shall drive any vehicle on any highway in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record, and no person shall in any manner participate in any such race, competition, contest, test, or exhibition.

(2) For purposes of this section:

(a) Drag race shall mean the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other or the operation of one or more vehicles over a common selected course, each starting at the same point and proceeding to the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit; and

(b) Racing shall mean the use of one or more vehicles in an attempt to outgain or outdistance another vehicle, to prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.

(3) Any person convicted of violating this section shall be guilty of a Class II misdemeanor.

**Source:** Laws 1973, LB 45, § 68; Laws 1989, LB 285, § 2; R.S.Supp.,1992, § 39-668; Laws 1993, LB 370, § 291.

Where a person is injured by the racing of two or more other parties on a public highway, all engaged in the race are liable, although only one of the vehicles came in contact with the injured person or the vehicle in which he was riding. Janssen v. Trennepohl, 228 Neb. 6, 421 N.W.2d 4 (1988).

#### (o) ALCOHOL AND DRUG VIOLATIONS

##### **60-6,196 Driving under influence of alcoholic liquor or drug; penalties.**

(1) It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle:

(a) While under the influence of alcoholic liquor or of any drug;

(b) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood; or

(c) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(2) Any person who operates or is in the actual physical control of any motor vehicle while in a condition described in subsection (1) of this section shall be guilty of a crime and upon conviction punished as provided in sections 60-6,197.02 to 60-6,197.08.

**Source:** Laws 1919, c. 190, tit. VII, art. IV, § 32, p. 830; C.S.1922, § 8396; Laws 1925, c. 159, § 13, p. 418; Laws 1927, c. 153, § 1, p. 411; Laws 1929, c. 144, § 1, p. 505; C.S.1929, § 39-1106; Laws 1931, c. 103, § 1, p. 275; Laws 1935, c. 134, § 2, p. 484; Laws 1937, c. 140, § 1, p. 504; C.S.Supp.,1941, § 39-1106; R.S.1943, § 39-727; Laws 1947, c. 148, § 1, p. 408; Laws 1949, c. 116, § 1, p. 310; Laws 1951, c. 118, § 1, p. 528; Laws 1953, c. 135, § 1, p. 422; Laws 1953, c. 214, § 1, p. 755; Laws 1961, c. 186, § 1, p. 574; Laws 1971, LB 948, § 1; Laws 1972, LB 1095, § 1; Laws 1973, LB 290, § 1; R.S.Supp.,1973, § 39-727; Laws 1978, LB 748, § 52;

Laws 1980, LB 651, § 1; Laws 1982, LB 568, § 5; Laws 1986, LB 153, § 3; Laws 1987, LB 404, § 1; Laws 1988, LB 377, § 1; Laws 1990, LB 799, § 1; Laws 1992, LB 291, § 4; R.S.Supp., 1992, § 39-669.07; Laws 1993, LB 370, § 292; Laws 1993, LB 564, § 7; Laws 1998, LB 309, § 13; Laws 1999, LB 585, § 5; Laws 2000, LB 1004, § 1; Laws 2001, LB 38, § 47; Laws 2001, LB 166, § 4; Laws 2001, LB 773, § 15; Laws 2003, LB 209, § 11; Laws 2004, LB 208, § 10.

#### Cross References

**Applicability of statute to private property**, see section 60-6,108.

**Conviction of felony involving use of motor vehicle**, transmittal of abstract, see section 60-497.02.

**Ineligibility for pretrial diversion**, see section 29-3604.

**Motor vehicle homicide penalty**, see section 28-306.

**Operator's license**, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

**Violation of ordinance**, prosecuting attorney, consult victim, see section 29-120.

1. Constitutionality
2. Motor vehicle homicide
3. Manslaughter
4. Offense
5. Testing/sufficiency of evidence
6. Miscellaneous

#### 1. Constitutionality

Driving under the influence of alcoholic liquor or drugs is criminalized under this section, and the fact that a defendant has previously been convicted of such offense is irrelevant to the guilt or innocence of the defendant and is relevant only to the defendant's sentence. *State v. Neiss*, 260 Neb. 691, 619 N.W.2d 222 (2000).

This section is a criminal driving under the influence of alcohol statute and is not part of the statutory scheme for an administrative license revocation. *Kalisek v. Abramson*, 257 Neb. 517, 599 N.W.2d 834 (1999).

Successive, separate prosecutions under this section for driving while intoxicated and operating a motor vehicle with a suspended license do not violate the Double Jeopardy Clause of the U.S. Constitution. *State v. Grimm*, 240 Neb. 863, 484 N.W.2d 830 (1992).

This section does not violate equal protection. Proscribing a particular concentration of breath alcohol is not wholly irrelevant to achieving the purpose of prohibiting people from driving while under the influence of drugs or alcohol. The relationship between the classification and its goal is rational. *State v. Kubik*, 235 Neb. 612, 456 N.W.2d 487 (1990).

Statute is valid exercise of police power, and court in which such conviction is had, is vested with jurisdiction to enforce statutory provisions. *Smith v. State*, 124 Neb. 587, 247 N.W. 421 (1933).

#### 2. Motor vehicle homicide

When the predicate offense for motor vehicle homicide is drunk driving in violation of this section, drunk driving is a lesser-included offense in motor vehicle homicide. *State v. Hoffman*, 227 Neb. 131, 416 N.W.2d 231 (1987).

Driving an automobile while under the influence of alcoholic liquor was an unlawful act upon which conviction of motor vehicle homicide could be based. *Rimpley v. State*, 169 Neb. 171, 98 N.W.2d 868 (1959).

#### 3. Manslaughter

Death arising from violation of this section may constitute manslaughter. *Vaca v. State*, 150 Neb. 516, 34 N.W.2d 873 (1948).

Operating motor vehicle while under the influence of intoxicating liquor is an unlawful act under manslaughter statute. *Anderson v. State*, 150 Neb. 116, 33 N.W.2d 362 (1948).

Conviction of manslaughter was sustained where driver was intoxicated. *Benton v. State*, 124 Neb. 485, 247 N.W. 21 (1933).

Defendant may be tried and punished under general statute relating to manslaughter, though acts charged may be punishable under this section. *Crawford v. State*, 116 Neb. 125, 216 N.W. 294 (1927).

#### 4. Offense

A half-hour delay in videotaping a licensee suspected of drunk driving was not unreasonable, and the videotape was probative of the driver's condition regarding whether a violation of this section had occurred, such delay going to the weight and not the admissibility of the videotape. A violation of this section is but one offense, which can be proved in different ways. *State v. Dake*, 247 Neb. 579, 529 N.W.2d 46 (1995).

A violation of this section is one offense, which may be proven in different ways. A person's breath alcohol concentration may be probative of impairment under subsection (1), as well as proof of a violation of this section based solely on breath alcohol concentration pursuant to subsection (3). *State v. Kubik*, 235 Neb. 612, 456 N.W.2d 487 (1990).

An alcohol violation in this section may be proved in either one of two ways: (1) that a person operated or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor; or (2) that a person while driving a motor vehicle or who was in physical control of a motor vehicle had ten-hundredths of one percent or more by weight of alcohol in his/her body fluid as shown by chemical analysis of his/her blood, breath, or urine. *State v. Babcock*, 227 Neb. 649, 419 N.W.2d 527 (1988).

The substantive offense is driving while under the influence of alcohol or with more than .10 percent of alcohol in one's body fluid. The number of times a person has previously been convicted of such a charge is not itself a crime but, rather, is a factor which the trial court is to consider in imposing sentence. *State v. Jameson*, 224 Neb. 38, 395 N.W.2d 744 (1986).

This section defines one offense which can be proved by any of three ways: (1) By proof that the defendant was in physical control of a motor vehicle while under the influence of alcoholic liquor; (2) by proof that the defendant was in physical control of a motor vehicle while under the influence of any drug; or (3) by proof that the defendant was in physical control of a motor vehicle while having ten-hundredths of one percent or more by weight of alcohol in his or her body fluid. *State v. Hilker*, 210 Neb. 810, 317 N.W.2d 82 (1982).

A violation of this section is either a misdemeanor or a felony and is not a traffic infraction within the meaning of section 39-602(106), R.R.S. 1943 (currently section 60-672). State v. Karel, 204 Neb. 573, 284 N.W.2d 12 (1979).

This section defines but one offense which may result from three conditions. State v. Jablonski, 199 Neb. 341, 258 N.W.2d 918 (1977).

This section is *pari materia* with section 39-727.03 (transferred to section 60-6,197) and other sections mentioned in opinion. Stevenson v. Sullivan, 190 Neb. 295, 207 N.W.2d 680 (1973).

Operation of motor vehicle while under the influence of intoxicating liquor is a criminal offense. State v. Berg, 177 Neb. 419, 129 N.W.2d 117 (1964).

It is unlawful to operate or be in the actual physical control of any motor vehicle while under the influence of intoxicating liquor. State v. Fox, 177 Neb. 238, 128 N.W.2d 576 (1964).

Operation of motor vehicle while under the influence of intoxicating liquor is a punishable offense. State v. Amick, 173 Neb. 770, 114 N.W.2d 893 (1962).

Only one crime is defined. Uldrich v. State, 162 Neb. 746, 77 N.W.2d 305 (1956).

Statute defines but one crime, that of operating a motor vehicle while under the influence of alcoholic liquor or drug. Haffke v. State, 149 Neb. 83, 30 N.W.2d 462 (1948).

#### 5. Testing/sufficiency of evidence

If a test for the presence of alcohol or drugs is utilized, it is one piece of evidence that the defendant's ability to operate a motor vehicle is impaired; it is not conclusive under subsection (1)(a) of this section. State v. Falcon, 260 Neb. 119, 615 N.W.2d 436 (2000).

Pursuant to subsection (1)(a) of this section, impairment can be shown by observations of witnesses, particularly police officers who are trained to make these observations. State v. Falcon, 260 Neb. 119, 615 N.W.2d 436 (2000).

Pursuant to subsection (1)(a) of this section, it is a crime to operate a motor vehicle under the influence of alcoholic liquor or drugs, or both, to a degree that the alcoholic liquor or drugs, or both, appreciably impair the driver's ability to operate the motor vehicle. State v. Falcon, 260 Neb. 119, 615 N.W.2d 436 (2000).

Pursuant to subsection (1)(a) of this section, the phrase "under the influence of alcoholic liquor or of any drug" means the ingestion of alcohol or drugs in an amount sufficient to impair to any appreciable degree the driver's ability to operate a motor vehicle in a prudent and cautious manner. State v. Falcon, 260 Neb. 119, 615 N.W.2d 436 (2000).

Pursuant to subsection (1)(a) of this section, the State is required to prove that the defendant was in actual physical control of a motor vehicle and that the defendant's ability to operate a motor vehicle was impaired by reason of the influence of alcoholic liquor or of drugs. State v. Falcon, 260 Neb. 119, 615 N.W.2d 436 (2000).

A violation of this section is one offense, but it can be proved in more than one way, i.e., excessive blood alcohol content shown through a chemical test or by evidence of physical impairment plus other well-known indicia of intoxication. State v. Blackman, 254 Neb. 941, 580 N.W.2d 546 (1998).

Where the evidence established that the defendant was found behind the wheel of a vehicle which was parked on an Interstate off ramp with the engine running and the headlights on, there was sufficient evidence for the trier of fact to establish that the defendant was operating a motor vehicle. State v. Johnson, 250 Neb. 933, 554 N.W.2d 126 (1996).

A half-hour delay in videotaping a licensee suspected of drunk driving was not unreasonable, and the videotape was probative of the driver's condition regarding whether a violation of this section had occurred, such delay going to the weight and not the admissibility of the videotape. A violation of this section is but one offense, which can be proved in different ways. State v. Dake, 247 Neb. 579, 529 N.W.2d 46 (1995).

It is not necessary for a conviction for driving under the influence of alcoholic liquor that a sample of blood, breath, or urine show a certain concentration of alcohol in a defendant's blood, breath, or urine, as those are alternate offenses under this section. Either a law enforcement officer's observations of the defendant's intoxicated behavior or the defendant's poor performance on field sobriety tests constitutes sufficient evidence to sustain a conviction of driving while under the influence of alcoholic beverages. State v. Green, 238 Neb. 328, 470 N.W.2d 736 (1991).

A test made in compliance with section 39-669.11 (transferred to section 60-6,201) is sufficient to make a *prima facie* case on the issue of blood alcohol concentration. Matters of driving and testing are properly viewed as going to the weight of the breath test results, rather than to the admissibility of the evidence. A valid breath test given within a reasonable time after the accused was stopped is probative of a violation of this section. State v. Kubik, 235 Neb. 612, 456 N.W.2d 487 (1990).

Circumstantial evidence may be used to establish physical control of a motor vehicle within the meaning of this section. State v. Miller, 226 Neb. 576, 412 N.W.2d 849 (1987).

A breath test result which is subject to a margin of error must be adjusted so as to give the defendant the benefit of that margin. However, when there is a conflict in the evidence as to what that margin of error actually is, we will affirm the decision of the trier of fact so long as there is sufficient evidence in the record, if believed, to sustain its finding of guilt. State v. Hvistendahl, 225 Neb. 315, 405 N.W.2d 273 (1987).

An alcohol-related violation of this provision may be proved by establishing that one was in actual physical control of a motor vehicle while under the influence of alcohol or that one was in actual physical control of a motor vehicle while having ten-hundredths of 1 percent by weight of alcohol in his or her body fluid. State v. Burling, 224 Neb. 725, 400 N.W.2d 872 (1987).

Evidence was sufficient to find defendant guilty of driving while under the influence in violation of this section, where he was found asleep at the wheel of an automobile parked in the roadway and appeared intoxicated when awakened. Circumstantial evidence may serve to establish the operation or actual physical control of a motor vehicle, under the provisions of this section. State v. Baker, 224 Neb. 130, 395 N.W.2d 766 (1986).

Operation or physical control of an auto may be established by circumstantial evidence. State v. Orosco, 199 Neb. 532, 260 N.W.2d 303 (1977).

Instructions given correctly set forth the elements of driving under influence and driving with ten-hundredths of one percent of alcohol in the body fluid. State v. Triple, 190 Neb. 713, 211 N.W.2d 920 (1973).

Presumption arising from body fluid test applies only to prosecutions under this section. Hoffman v. State, 160 Neb. 375, 70 N.W.2d 314 (1955).

Conviction sustained of drunken driving based in part on evidence of blood test. Schacht v. State, 154 Neb. 858, 50 N.W.2d 78 (1951).

Evidence which went before a jury of a defendant's failure to pass a chemical breath test for which he was not properly advised of the consequences was prejudicial and constituted plain error so as to require a reversal of the conviction and a remand for a new trial. State v. Hingst, 4 Neb. App. 768, 550 N.W.2d 686 (1996).

#### 6. Miscellaneous

The offense of driving under the influence in violation of this section is a lesser-included offense of driving under the influence causing serious bodily injury in violation of section 60-6,198. State v. Dragoo, 277 Neb. 858, 765 N.W.2d 666 (2009).

A sentence of probation is excessively lenient when record shows a history of alcohol-related motor vehicle offenses spanning more than 30 years, an extreme alcohol addiction, and a lack of respect for court orders. State v. Rice, 269 Neb. 717, 695 N.W.2d 418 (2005).

The Omaha Municipal Code conflicts with this section. *State v. Loyd*, 265 Neb. 232, 655 N.W.2d 703 (2003).

“Operate,” as used in this section, refers to the actual physical handling of the controls of the vehicle while under the influence of intoxicating liquor; therefore, it is unlawful for any person to actually physically handle the controls of any motor vehicle while under the influence of alcohol or while having the prohibited amount of alcohol in one’s breath. *State v. Baker*, 236 Neb. 261, 461 N.W.2d 251 (1990).

As used in this section, the phrase “under the influence of alcoholic liquor” means after the ingestion of alcohol in an amount sufficient to impair to any appreciable degree the ability to operate a motor vehicle in a prudent and cautious manner. *State v. Batts*, 233 Neb. 776, 448 N.W.2d 136 (1989).

The phrase “under the influence of alcohol” means after the ingestion of alcohol in an amount sufficient to impair to any appreciable degree the ability to operate a motor vehicle in a prudent and cautious manner. *State v. Thomte*, 226 Neb. 659, 413 N.W.2d 916 (1987).

The phrase “under the influence of alcoholic liquor,” as used in this provision, means after the ingestion of alcohol in an amount sufficient to impair to any appreciable degree the ability to operate a motor vehicle in a prudent and cautious manner. *State v. Burling*, 224 Neb. 725, 400 N.W.2d 872 (1987).

A defendant charged with driving under the influence, pursuant to this section, has only a statutory right to a jury trial, pursuant to section 24-536 (transferred to section 25-2705), for which proper demand is required. *State v. Bishop*, 224 Neb. 522, 399 N.W.2d 271 (1987).

A complaint for violation of this section need not allege that a defendant operated a motor vehicle on a public highway. *State v. Golgert*, 223 Neb. 950, 395 N.W.2d 520 (1986).

A jury need only be unanimous in its conclusion that the defendant violated the law by committing the act and need not be unanimous as to which of several consistent theories it believes resulted in the violation. *State v. Parker*, 221 Neb. 570, 379 N.W.2d 259 (1986).

Conviction upon charge of refusal to submit to a chemical test under section 39-669.08 (transferred to section 60-6,197) did not operate to bar defendant’s trial upon charge under this section. *State v. Stabler*, 209 Neb. 298, 306 N.W.2d 925 (1981).

A defendant charged under this section is entitled to a jury trial as provided under section 24-536, R.R.S. 1943 (transferred to section 25-2705). *State v. Karel*, 204 Neb. 573, 284 N.W.2d 12 (1979).

It was harmless error, if any, for court to accept defendant’s written, all inclusive “Petition to Enter Plea of Guilty” without

orally informing him he was waiving a trial by jury. *State v. Cooper*, 196 Neb. 728, 246 N.W.2d 65 (1976).

This section defines but one offense. *State v. Weidner*, 192 Neb. 161, 219 N.W.2d 742 (1974).

Under facts in this case, sentence to three years imprisonment was not excessive. *State v. Klinkacek*, 190 Neb. 293, 207 N.W.2d 524 (1973).

Word operate as used in this section relates to actual physical handling of controls of a motor vehicle. *State v. Dubany*, 184 Neb. 337, 167 N.W.2d 556 (1969).

Testimony to support conviction may come from a nonexpert witness. *State v. Lewis*, 177 Neb. 173, 128 N.W.2d 610 (1964).

Instruction given by trial court defining the term under the influence of alcoholic liquor was not erroneous. *Langford v. Ritz Taxicab Co.*, 172 Neb. 153, 109 N.W.2d 120 (1961).

As used in this section, the word operate relates to the actual physical handling of the controls of an automobile. *Waite v. State*, 169 Neb. 113, 98 N.W.2d 688 (1959).

Instruction defining the meaning of statutory terms was not erroneous. *Shanahan v. State*, 162 Neb. 676, 77 N.W.2d 234 (1956).

Jury trial for violation of this section could be waived. *Peterson v. State*, 157 Neb. 618, 61 N.W.2d 263 (1953).

Complaint was not defective because words intoxicating liquor were used instead of words alcoholic liquor. *Franz v. State*, 156 Neb. 587, 57 N.W.2d 139 (1953).

Driver’s license revoked for one year upon plea of guilty, and plea not set aside upon claim of defendant that she was not advised of her constitutional rights. *Kissinger v. State*, 147 Neb. 983, 25 N.W.2d 829 (1957).

For a prior conviction based on a plea of guilty to be used for enhancement purposes in an action under this section, the record must show that the defendant entered the guilty plea to the charge. *State v. Schulte*, 12 Neb. App. 924, 687 N.W.2d 411 (2004).

For purposes of this section, substitution of “revocation” with “suspension” has no prejudicial effect. *State v. Mulinix*, 12 Neb. App. 836, 687 N.W.2d 1 (2004).

Alcohol-related violations of this section may be proved either by establishing that one was in actual physical control of a motor vehicle while under the influence or by establishing that one was in actual physical control of a motor vehicle while having more than the prohibited amount of alcohol in his or her body. *State v. Robinson*, 10 Neb. App. 848, 639 N.W.2d 432 (2002).

### **60-6,197 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; penalty.**

(1) Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.

(2) Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor

vehicle in this state while under the influence of alcoholic liquor or drugs in violation of section 60-6,196.

(3) Any person arrested as described in subsection (2) of this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of subsection (1) of section 60-6,196, the person shall be subject to the administrative revocation procedures provided in sections 60-498.01 to 60-498.04 and upon conviction shall be punished as provided in sections 60-6,197.02 to 60-6,197.08. Any person who refuses to submit to such test or tests required pursuant to this section shall be subject to the administrative revocation procedures provided in sections 60-498.01 to 60-498.04 and shall be guilty of a crime and upon conviction punished as provided in sections 60-6,197.02 to 60-6,197.08.

(4) Any person involved in a motor vehicle accident in this state may be required to submit to a chemical test of his or her blood, breath, or urine by any peace officer if the officer has reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway in this state while under the influence of alcoholic liquor or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving this state. If the person refuses a test under this section and leaves the state for any reason following an accident, he or she shall remain subject to subsection (3) of this section and section 60-498.02 upon return.

(5) Any person who is required to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be advised that refusal to submit to such test or tests is a separate crime for which the person may be charged.

(6) Refusal to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be admissible evidence in any action for a violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section.

**Source:** Laws 1959, c. 168, § 1, p. 613; Laws 1961, c. 187, § 2, p. 577; Laws 1963, c. 229, § 1, p. 716; Laws 1971, LB 948, § 2; Laws 1972, LB 1095, § 2; R.S.Supp.,1972, § 39-727.03; Laws 1982, LB 568, § 6; Laws 1986, LB 153, § 4; Laws 1987, LB 404, § 2; Laws 1987, LB 224, § 1; Laws 1988, LB 377, § 2; Laws 1990, LB 799, § 2; Laws 1992, LB 872, § 1; Laws 1992, LB 291, § 5; R.S.Supp.,1992, § 39-669.08; Laws 1993, LB 370, § 293; Laws 1993, LB 564, § 8; Laws 1996, LB 939, § 2; Laws 1998, LB 309, § 14; Laws 1999, LB 585, § 6; Laws 2000, LB 1004, § 2; Laws 2001, LB 38, § 48; Laws 2001, LB 773, § 16; Laws 2003, LB 209, § 12; Laws 2004, LB 208, § 11.

#### Cross References

**Applicability of statute to private property**, see section 60-6,108.

**Conviction of felony involving use of motor vehicle**, transmittal of abstract, see section 60-497.02.

**Ineligibility for pretrial diversion**, see section 29-3604.

**Operator's license**, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

**Violation of ordinance**, prosecuting attorney, consult victim, see section 29-120.

1. Constitutional
2. Effective

- 3. Test
- 4. Implied consent
- 5. Miscellaneous

### 1. Constitutional

Implied Consent Law as amended in 1971 does not involve compulsion within Fifth Amendment; is constitutional; and penalties are as provided in section 39-727 (transferred to section 60-6,196). *State v. Manley*, 189 Neb. 415, 202 N.W.2d 831 (1972).

Implied Consent Law held constitutional. *State v. Williams*, 189 Neb. 127, 201 N.W.2d 241 (1972).

### 2. Effective

The preliminary test referred to in section 60-6,197.04 (formerly subsection (3) of section 60-6,197) is a different procedure and not a chemical test that will satisfy requirements for a conviction under subsection (3) (formerly subsection (4) of this section). *State v. Howard*, 253 Neb. 523, 571 N.W.2d 308 (1997).

Offering of a preliminary breath test under section 39-669.08 (3) (transferred to section 60-6,197) herein, is not a condition precedent to an arrest under this section. *State v. Orosco*, 199 Neb. 532, 260 N.W.2d 303 (1977).

For implied consent to be effective, person from whom blood sample is taken must have been arrested or taken into custody before test is given. *State v. Baker*, 184 Neb. 724, 171 N.W.2d 798 (1969).

For implied consent to be effective, person must have been arrested or taken into custody before the test may be demanded. *Prigge v. Johns*, 184 Neb. 103, 165 N.W.2d 559 (1969).

For implied consent to be effective, person from whom blood sample is taken must have been arrested or taken into custody before test is given. *Otte v. State*, 172 Neb. 110, 108 N.W.2d 737 (1961).

### 3. Test

The sworn report of the arresting officer must indicate (1) that the person was arrested as described in subsection (2) of this section and the reasons for the arrest, (2) that the person was requested to submit to the required test, and (3) that the person refused to submit to the required test. *Nothnagel v. Neth*, 276 Neb. 95, 752 N.W.2d 149 (2008).

Any person arrested for suspicion of driving under the influence of alcohol may be directed by an officer to submit to a chemical test to determine the concentration of alcohol in that person's body. *Snyder v. Department of Motor Vehicles*, 274 Neb. 168, 736 N.W.2d 731 (2007).

An arrested motorist refuses to submit to a chemical test when the motorist's conduct, demonstrated under the circumstances confronting the officer requesting the chemical test, justifies a reasonable person's belief that the motorist understood the officer's request for a test and manifested a refusal or unwillingness to submit to the requested test. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

A refusal to submit to a chemical test occurs within the meaning of subsection (4) of this section when the licensee, after being asked to submit to a test, so conducts himself as to justify a reasonable person in the requesting officer's position in believing that the licensee understood that he was being asked to submit to a test and manifested an unwillingness to take it. *State v. Beerbohm*, 229 Neb. 439, 427 N.W.2d 75 (1988).

The choice of whether one's blood or urine shall be tested for determination of alcohol content belongs to the licensee; a licensee who, upon the request of a law enforcement officer to do so, refuses to specify which fluid he or she will produce for such testing has refused to submit to a chemical test in violation of subsection (4) of this section. *State v. Beerbohm*, 229 Neb. 439, 427 N.W.2d 75 (1988).

It is established that as a condition precedent to a valid request by an officer to submit to a chemical test under the implied consent law, the arresting officer must have "reasonable

grounds" to believe that the licensee was either driving a motor vehicle or in actual physical control of same while under the influence of intoxicating liquor. *Larson v. Jensen*, 228 Neb. 799, 424 N.W.2d 352 (1988).

A person is not exempted from the provisions of the refusal statute merely because he was too intoxicated to take the test. *State v. Medina*, 227 Neb. 736, 419 N.W.2d 864 (1988).

Anything less than an unqualified, unequivocal assent to an officer's request to submit to a chemical test constitutes a refusal. *State v. Medina*, 227 Neb. 736, 419 N.W.2d 864 (1988); *Clontz v. Jensen*, 227 Neb. 191, 416 N.W.2d 577 (1987).

Deputy had reasonable grounds to request that defendant submit to a chemical test of his blood, breath, or urine where the defendant was observed under circumstances from which the trier of fact could find beyond a reasonable doubt that the defendant had driven while under the influence of alcoholic liquor, in violation of section 39-669.07 (transferred to section 60-6,196). *State v. Baker*, 224 Neb. 130, 395 N.W.2d 766 (1986).

A refusal to submit to a chemical test occurs within the meaning of the implied consent law when the licensee, after being asked to submit to a test, so conducts himself as to justify a reasonable person in the requesting officer's position in believing that the licensee understood he was being asked to submit to a test and manifested an unwillingness to take it. *Pollard v. Jensen*, 222 Neb. 521, 384 N.W.2d 640 (1986).

Where no issue as to the propriety of an arrest is raised and the evidence of the preliminary breath test is relevant only for the limited purpose of establishing probable cause to require a driver to submit to a test of his blood, urine, or breath, the admissibility of the preliminary breath test is a matter of law and should therefore be admitted into evidence out of the presence of the jury. *State v. Klingelhofer*, 222 Neb. 219, 382 N.W.2d 366 (1986).

Reasonable grounds for arrest and arrest are conditions precedent to a valid request to submit to a chemical test. *Fulmer v. Jensen*, 221 Neb. 582, 379 N.W.2d 736 (1986).

A condition precedent to a valid request by an officer to submit to a chemical test is that the officer must have reasonable grounds to believe that the licensee was either driving a motor vehicle or in the actual physical control of same while under the influence of alcoholic liquor. *Emmons v. Jensen*, 221 Neb. 444, 378 N.W.2d 147 (1985).

A delay in chemical testing is nonprejudicial unless it materially affects the results of the test. *Jamros v. Jensen*, 221 Neb. 426, 377 N.W.2d 119 (1985).

Justifiable refusal to take a body fluids test depends on some illegal or unreasonable aspect of the request to submit, the test itself, or both. A conditional refusal is a refusal under Nebraska's implied consent law. A motor vehicle driver is not entitled to consult a lawyer before submitting to a body fluids test because the suspension of a driver's license which results from refusal is a remedial, not strictly punitive, measure. *Bapat v. Jensen*, 220 Neb. 763, 371 N.W.2d 742 (1985).

Under the Nebraska Implied Consent Law, an officer may provide more than one opportunity to acquire a sufficient breath sample, even though only one chance is necessary. *Raymond v. Department of Motor Vehicles*, 219 Neb. 821, 366 N.W.2d 758 (1985).

Only tests taken pursuant to class A or B permits are such a chemical test as to comport with the requirement of subsection (1) of this section and a chemical analysis as to comport with section 39-669.07 (transferred to section 60-6,196). The preliminary test referred to in subsection (3) of this section is a different procedure and not such a chemical test or chemical analysis as to satisfy requirements for a conviction under section 39-669.07 (transferred to section 60-6,196). *State v. Green*, 217 Neb. 70, 348 N.W.2d 429 (1984).

An operator has refused to submit to a test when he conducts himself in a way which would justify a reasonable person in

believing that he understood he had been asked to take the test and manifested an unwillingness to take it. *Bauer v. Peterson*, 212 Neb. 174, 322 N.W.2d 389 (1982).

The results of a test made under the provisions of section 39-669.08 (transferred to section 60-6,197) may be received in evidence only if the requirements of section 39-669.11 (transferred to section 60-6,201) are met. In order to show that the requirements have been met it is necessary to show that the method of performing the test was approved by the Nebraska Department of Health and that the person administering the test was qualified and had a valid license from the Department of Health. *State v. Gerber*, 206 Neb. 75, 291 N.W.2d 403 (1980).

The revocation of a motorist's license to operate a motor vehicle for his refusal to take test under this section on the ground that he has been denied the services of legal counsel is not a deprivation of a constitutional right. *Rusho v. Johns*, 186 Neb. 131, 181 N.W.2d 448 (1970).

Test under this section is not required to be delayed at request of arrested motorist until he be permitted to contact legal counsel. *State v. Oleson*, 180 Neb. 546, 143 N.W.2d 917 (1966). "Chemical test or tests" may refer to a test conducted with chemicals. However, the term also encompasses a test that determines the chemical composition of a person's blood, breath, or urine. *State v. Crabtree*, 3 Neb. App. 363, 526 N.W.2d 688 (1995).

Subsection (2) of this section, previously codified at subsection (2) of section 39-669.08, does not require and section 60-6,204, previously codified at section 39-669.14, was interpreted as not requiring a valid preliminary breath test as a prerequisite to chemical testing of a person arrested for driving under the influence. In this section, "chemical test," as previously codified at section 39-669.08, was interpreted to be a test to determine the body fluid levels of a certain chemical, as well as a test utilizing chemicals. *State v. Cash*, 3 Neb. App. 319, 526 N.W.2d 447 (1995).

#### 4. Implied consent

Any person who operates a motor vehicle in Nebraska is deemed to have given consent to submit to chemical tests for the purpose of determining the concentration of alcohol in the blood, breath, or urine. *Snyder v. Department of Motor Vehicles*, 274 Neb. 168, 736 N.W.2d 731 (2007).

The giving of a sample under this section does not involve a question of involuntariness, want of due process, or self incrimination. *State v. Turner*, 263 Neb. 896, 644 N.W.2d 147 (2002).

Under subsection (5) (formerly subsection (10) of this section), a person arrested for driving under the influence must be advised that refusal to submit to a chemical test is a separate crime for which the person may be charged, but he or she need not be advised of any additional consequences of a refusal to submit to a chemical test. *State v. Turner*, 263 Neb. 896, 644 N.W.2d 147 (2002).

Pursuant to subsection (5) (formerly subsection (10) of this section), substantial compliance with the statute will suffice under certain circumstances. *State v. Roucka*, 253 Neb. 885, 573 N.W.2d 417 (1998).

Pursuant to subsection (10) of this section (60-6,197 (Reissue 1993)), a driver-arrestee who is required to submit to a chemical blood, breath, or urine test under this section should be advised of the natural and direct legal consequence of submitting to a chemical test. Such consequences include that any incriminating results from such a test may be used against the person in a criminal proceeding. *State v. Christner*, 251 Neb. 549, 557 N.W.2d 707 (1997).

A sensible reading of subsection (10) of this section (60-6,197 (Reissue 1993)) indicates that the Legislature intended drivers to be advised of the natural and direct legal consequences flowing from submitting to a chemical blood, breath, or urine test and failing it. *State v. Emrich*, 251 Neb. 540, 557 N.W.2d 674 (1997).

Advisory form under subsection (10) of this section (60-6,197 (Reissue 1993)) must fully advise a motorist of the consequences of both refusing to submit to a chemical breath test and of

submitting to and failing such test, and the failure of the advisory form to do so is plain error. *Perrine v. State*, 249 Neb. 518, 544 N.W.2d 364 (1996).

Pursuant to subsection (10) of this section (60-6,197 (Reissue 1993)), advisory form signed by motorist which failed to mention consequences fails to meet the advisory requirements set forth in this section. *Biddlecome v. Conrad*, 249 Neb. 282, 543 N.W.2d 170 (1996).

Subsection (10) of this section (60-6,197 (Reissue 1993)) requires an arresting officer to advise the arrestee of the natural and direct legal consequences of refusing to submit to the chemical test or taking the test and failing it. *Smith v. State*, 248 Neb. 360, 535 N.W.2d 694 (1995).

One cannot evade the effect of this section simply by repeatedly screaming, while the implied consent form is read to him or her, that he or she does not understand. For purposes of enhancement, a knowing and intelligent waiver of counsel may not be inferred from a defendant's pro se appearance at trial in a prior conviction. At a minimum, a sufficiently complete check-list or other docket entry may be used to establish a valid waiver of counsel as to prior convictions for enhancement purposes. *State v. Green*, 238 Neb. 328, 470 N.W.2d 736 (1991).

Under subsections (3) and (4) of this section, evidence obtained from a driver by testing body fluids in the implied consent context is not testimonial or communicative in nature and does not fall within the constitutional right against self-incrimination. *State v. Green*, 229 Neb. 493, 427 N.W.2d 304 (1988).

Without an implied consent advisement a motorist cannot be cited for a refusal. *Jamros v. Jensen*, 221 Neb. 426, 377 N.W.2d 119 (1985).

In the absence of a valid authorizing statute, the results of a test of blood for alcoholic content are inadmissible where the blood sample is taken involuntarily and requirements of the Fourth Amendment to the United States Constitution have not been satisfied. *State v. Howard*, 193 Neb. 45, 225 N.W.2d 391 (1975).

Implied Consent Law as amended in 1971 does not involve compulsion within Fifth Amendment; is constitutional; and penalties are as provided in section 39-727, 1971 Supp. *State v. Manley*, 189 Neb. 415, 202 N.W.2d 831 (1972).

This section, by its terms, applies to situations where there is no actual consent. *State v. Seager*, 178 Neb. 51, 131 N.W.2d 676 (1964).

This section sets forth the implied consent rule. *State v. Fox*, 177 Neb. 238, 128 N.W.2d 576 (1964).

Any person who operates a motor vehicle upon a public highway thereby gives consent to chemical test of blood or urine. *Prucha v. Department of Motor Vehicles*, 172 Neb. 415, 110 N.W.2d 75 (1961).

Drawing of blood sample by physician who had been directed to act as coroner's physician from body of fatally injured passenger in automobile did not violate prohibition against unreasonable searches and seizures, and result of tests performed by competent chemist using accepted procedures and facilities were admissible. *Gardner v. Meyers*, 491 F.2d 1184 (8th Cir. 1974).

#### 5. Miscellaneous

A sentencing court, as part of its judgment of conviction under the implied consent law, in addition to ordering the convicted person not to drive any vehicle in the state for any purpose for 6 months, shall order that the operator's license of such person be revoked for a like period. The proscription that there can be no revocation of one's driver's license and operating privileges if the refusal to submit to a chemical test is reasonable under the circumstances contained in section 39-669.16 (transferred to section 60-498.02), relates only to administrative license revocations by the Director of Motor Vehicles. In a criminal proceeding, however, the inquiry centers on the existence of reasonable grounds for the arresting officer to believe that an operator was driving while under the influ-

ence of alcohol. *State v. Boyd*, 242 Neb. 144, 493 N.W.2d 344 (1992).

An officer can require a driver to submit to a preliminary breath test without proof of intoxication if the officer has reasonable grounds to believe that such person has committed a moving traffic violation and/or has been involved in a traffic accident. *State v. Lowrey*, 239 Neb. 343, 476 N.W.2d 540 (1991).

Subsection (4)(a) of this section and section 39-669.07(b) (transferred to section 60-6,196) require that the relevant periods of revocation of one's operator's license not run concurrently with any jail term imposed. Revocation of one's operator's license for a period of 180 days does not fulfill the requirement of subsection (4)(a) of this section that revocation be for a period of 6 months. *State v. Contreras*, 236 Neb. 455, 461 N.W.2d 562 (1990).

Where the elements of a crime defined by statute are set out in an information or complaint, it is sufficient; and if words appear in such information or complaint which might be stricken, leaving a crime sufficiently charged, and such words do not tend to negative any of the essential averments, they may be treated as surplusage and be entirely rejected. *State v. Blankenfeld*, 229 Neb. 411, 427 N.W.2d 65 (1988).

Officer had reasonable grounds to believe defendant was under influence of alcohol when operating or in control of vehicle. *Porter v. Jensen*, 223 Neb. 438, 390 N.W.2d 511 (1986).

It is no defense that a licensee asked to submit to a chemical test under the implied consent law does not understand the consequences of refusal or is not able to make a reasoned judgment as to what course of action to take. *Pollard v. Jensen*, 222 Neb. 521, 384 N.W.2d 640 (1986).

A driver is not entitled to consult with an attorney before submitting to a chemical test under the implied consent law, nor is a delay in the test required due to a driver's request to consult with an attorney. *Fulmer v. Jensen*, 221 Neb. 582, 379 N.W.2d 736 (1986).

There is no requirement that Miranda warnings be given prior to a request to submit to a chemical analysis of blood, breath, or urine under the Nebraska implied consent law. *Fulmer v. Jensen*, 221 Neb. 582, 379 N.W.2d 736 (1986).

The trial court must advise a defendant charged with refusal to submit to a chemical test of the penalties for first, second, or third offense. However, when the defendant was charged with, advised of the penalty for, and convicted of first offense refusal, the failure to advise him of the penalties for repeat offenses was not error. *State v. Tichota*, 218 Neb. 444, 356 N.W.2d 85 (1984).

Conviction under this section did not operate to bar trial upon charge under section 39-669.07 (transferred to section 60-6,196), driving while intoxicated. *State v. Stabler*, 209 Neb. 298, 306 N.W.2d 925 (1981).

Accused waives his right to choose the type of test by voluntarily taking either the blood or urine test. *State v. Wahrman*, 199 Neb. 337, 258 N.W.2d 818 (1977).

Single request for chemical test is sufficient, but more than one request may be permissible, and request need not be made at scene of arrest. *Stender v. Sullivan*, 196 Neb. 810, 246 N.W.2d 643 (1976).

On appeal to district court from order of Director of Motor Vehicles under section 39-669.16 (transferred to section 60-498.02) revoking operator's license, the burden is on licensee to establish ground for reversal. *Mackey v. Director of Motor Vehicles*, 194 Neb. 707, 235 N.W.2d 394 (1975).

Procedural due process in connection with hearing as to reasonableness of refusal to submit to test was not violated by fact the notice thereof specified the director's office as the place of hearing but the hearing was held in a different room in the same building and party was advised of the change when he appeared in the director's office. *Atkins v. Department of Motor Vehicles*, 192 Neb. 791, 224 N.W.2d 535 (1974).

Emotional upset due to pending divorce was not good reason for actions indicating intoxication and for refusal to submit to chemical test of body fluids. *Duffack v. Kissack*, 192 Neb. 634, 223 N.W.2d 484 (1974).

It was not necessary to again advise a person of the consequences of refusing to submit to a test after he had been admonished and refused to submit. *State v. Twiss*, 192 Neb. 402, 222 N.W.2d 108 (1974).

Refusal of request to contact attorney affords no reasonable ground for refusing to take alcoholic test. *Stevenson v. Sullivan*, 190 Neb. 295, 207 N.W.2d 680 (1973).

Refusal to submit to test may be shown in prosecution for driving while under influence of intoxicating liquor. *State v. Meints*, 189 Neb. 264, 202 N.W.2d 202 (1972).

A qualified or conditional consent is not sanctioned nor is a dissent on ground party has taken medicine and doesn't know what effect it will have. *Doran v. Johns*, 186 Neb. 321, 182 N.W.2d 900 (1971).

Officer had reason to arrest person who was driving under influence of intoxicating liquor. *Metschke v. Department of Motor Vehicles*, 186 Neb. 197, 181 N.W.2d 843 (1970).

A conditional or qualified refusal to take the test is a refusal to submit to the test within the meaning of the act. *State v. Eckert*, 186 Neb. 134, 181 N.W.2d 264 (1970).

Section does not sanction qualified or conditional consent; such a consent is in fact a refusal. *Preston v. Johns*, 186 Neb. 14, 180 N.W.2d 135 (1970).

Plea of guilty under this section does not establish reasonableness of a refusal to submit to a chemical test under Implied Consent Act. *Ziembra v. Johns*, 183 Neb. 644, 163 N.W.2d 780 (1968).

Conviction of driving while under the influence of intoxicating liquor sustained. *State v. Oleson*, 180 Neb. 546, 143 N.W.2d 917 (1966).

Sentence imposed was within the limits prescribed by this section. *State v. Koziol*, 177 Neb. 648, 130 N.W.2d 557 (1964).

**60-6,197.01 Driving while license has been revoked; driving under influence of alcoholic liquor or drug; second and subsequent violations; restrictions on motor vehicles; additional restrictions authorized.**

(1) Upon conviction for a violation described in section 60-6,197.06 or a second or subsequent violation of section 60-6,196 or 60-6,197, the court shall impose either of the following restrictions:

(a)(i) The court shall order all motor vehicles owned by the person so convicted immobilized at the owner's expense for a period of time not less than five days and not more than eight months and shall notify the Department of Motor Vehicles of the period of immobilization. Any immobilized motor vehicle shall be released to the holder of a bona fide lien on the motor vehicle executed

prior to such immobilization when possession of the motor vehicle is requested as provided by law by such lienholder for purposes of foreclosing and satisfying such lien. If a person tows and stores a motor vehicle pursuant to this subdivision at the direction of a peace officer or the court and has a lien upon such motor vehicle while it is in his or her possession for reasonable towing and storage charges, the person towing the vehicle has the right to retain such motor vehicle until such lien is paid. For purposes of this subdivision, immobilized or immobilization means revocation or suspension, at the discretion of the court, of the registration of such motor vehicle or motor vehicles, including the license plates; and

(ii)(A) Any immobilized motor vehicle shall be released by the court without any legal or physical restraints to any registered owner who is not the registered owner convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 if an affidavit is submitted to the court by such registered owner stating that the affiant is employed, that the motor vehicle subject to immobilization is necessary to continue that employment, that such employment is necessary for the well-being of the affiant's dependent children or parents, that the affiant will not authorize the use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent violation of section 60-6,196 or 60-6,197, that affiant will immediately report to a local law enforcement agency any unauthorized use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent conviction of section 60-6,196 or 60-6,197, and that failure to release the motor vehicle would cause undue hardship to the affiant.

(B) A registered owner who executes an affidavit pursuant to subdivision (1)(a)(ii)(A) of this section which is acted upon by the court and who fails to immediately report an unauthorized use of the motor vehicle which is the subject of the affidavit is guilty of a Class IV misdemeanor and may not file any additional affidavits pursuant to subdivision (1)(a)(ii)(A) of this section.

(C) The department shall adopt and promulgate rules and regulations to implement the provisions of subdivision (1)(a) of this section; or

(b) As an alternative to subdivision (1)(a) of this section, the court shall order the convicted person, in order to operate a motor vehicle, to obtain an ignition interlock permit and install an ignition interlock device on each motor vehicle owned or operated by the convicted person if he or she was sentenced to an operator's license revocation of at least one year. If the person's operator's license has been revoked for at least a one-year period, after a minimum of a forty-five-day no driving period, the person may operate a motor vehicle with an ignition interlock permit and an ignition interlock device pursuant to this subdivision and shall retain the ignition interlock permit and ignition interlock device for not less than the remainder of a one-year period or period of revocation ordered by the court, whichever is longer. No ignition interlock permit may be issued until sufficient evidence is presented to the department that an ignition interlock device is installed on each vehicle and that the applicant is eligible for use of an ignition interlock device.

(2) In addition to the restrictions required by subdivision (1)(b) of this section, the court may require a person convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 to use a continuous alcohol monitoring device and abstain from alcohol use for a period of time not to exceed the maximum term of license revocation ordered by the court. A continuous

alcohol monitoring device shall not be ordered for a person convicted of a second or subsequent violation unless the installation of an ignition interlock device is also required.

**Source:** Laws 1999, LB 585, § 7; Laws 2001, LB 38, § 49; Laws 2006, LB 925, § 10; Laws 2008, LB736, § 7; Laws 2009, LB497, § 5; Laws 2010, LB924, § 3.

**60-6,197.02 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; terms, defined; prior convictions; use; sentencing provisions; when applicable.**

(1) A violation of section 60-6,196 or 60-6,197 shall be punished as provided in section 60-6,197.03. For purposes of sentencing under section 60-6,197.03:

(a) Prior conviction means a conviction for a violation committed within the twelve-year period prior to the offense for which the sentence is being imposed as follows:

(i) For a violation of section 60-6,196:

(A) Any conviction for a violation of section 60-6,196;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196;

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of section 60-6,196; or

(D) Any conviction for a violation of section 60-6,198; or

(ii) For a violation of section 60-6,197:

(A) Any conviction for a violation of section 60-6,197;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of section 60-6,197;

(b) Prior conviction includes any conviction under section 60-6,196, 60-6,197, or 60-6,198, or any city or village ordinance enacted in conformance with any of such sections, as such sections or city or village ordinances existed at the time of such conviction regardless of subsequent amendments to any of such sections or city or village ordinances; and

(c) Twelve-year period means the period computed from the date of the prior offense to the date of the offense which resulted in the conviction for which the sentence is being imposed.

(2) In any case charging a violation of section 60-6,196 or 60-6,197, the prosecutor or investigating agency shall use due diligence to obtain the person's driving record from the Department of Motor Vehicles and the person's driving record from other states where he or she is known to have resided within the last twelve years. The prosecutor shall certify to the court, prior to sentencing, that such action has been taken. The prosecutor shall present as evidence for purposes of sentence enhancement a court-certified copy or an authenticated copy of a prior conviction in another state. The court-certified or authenticated copy shall be prima facie evidence of such prior conviction.

(3) For each conviction for a violation of section 60-6,196 or 60-6,197, the court shall, as part of the judgment of conviction, make a finding on the record as to the number of the convicted person's prior convictions. The convicted person shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

(4) A person arrested for a violation of section 60-6,196 or 60-6,197 before May 14, 2009, but sentenced pursuant to section 60-6,197.03 for such violation on or after May 14, 2009, shall be sentenced according to the provisions of section 60-6,197.03 in effect on the date of arrest.

**Source:** Laws 2004, LB 208, § 12; Laws 2005, LB 594, § 2; Laws 2009, LB497, § 6.

- 1. Enhancement
- 2. Offense
- 3. Sufficiency of the evidence
- 4. Miscellaneous

**1. Enhancement**

This section (formerly subsection (2) of section 60-6,196) authorizes a trial court to consider prior convictions of a defendant for driving under the influence of alcoholic liquor or drug within the 12 years prior to the offense for which a defendant currently stands trial and is not ex post facto as to a conviction prior to its passage, since an offender subject to enhancement of punishment under this statute is not receiving additional punishment for his or her previous convictions but is being penalized for an offense committed after its passage. This section deals with offenses committed after its passage, permits an inquiry into a defendant's previous convictions, and in fixing the penalty, does not punish the defendant for previous offenses but for persistence in violating this section. *State v. Hansen*, 258 Neb. 752, 605 N.W.2d 461 (2000).

The language of this section permits a defendant to challenge the validity of a prior driving under the influence conviction offered for purposes of enhancement on the ground that it was obtained in violation of the defendant's Sixth Amendment right to counsel. *State v. Louthan*, 257 Neb. 174, 595 N.W.2d 917 (1999).

Legislative amendments to the length of the cleansing period provided by this section will not implicate vested due process rights of individuals with prior convictions used for enhancement. *State v. Grant*, 9 Neb. App. 919, 623 N.W.2d 337 (2001).

Prior driving under the influence convictions are not necessary elements of a subsequent driving under the influence charge, but, rather, are used to determine the sentence to be imposed for a later driving under the influence conviction. Thus, the district court did not violate the Double Jeopardy Clause when it remanded a conviction for second-offense driving under the influence to the county court with directions to enter a judgment finding the defendant guilty of third-offense driving

under the influence and to sentence her accordingly. *State v. Werner*, 8 Neb. App. 684, 600 N.W.2d 500 (1999).

**2. Offense**

In a prosecution under this section (formerly subsection (6) of section 60-6,196) for driving when one's operator's license has been revoked pursuant to subdivision (2)(c) of this section, proof of the prior conviction under subdivision (2)(c) is an essential element of the offense, and thus, the State has the burden to prove the prior conviction. A prior third-offense drunk driving conviction may be used as an element of a violation under this section (formerly subsection (6) of section 60-6,196) even though the prior conviction is not subject to a collateral attack. *State v. Lee*, 251 Neb. 661, 558 N.W.2d 571 (1997).

This section is a continuance and affirmation of the previous section 39-669.07. Convictions under section 39-669.07 can be used for the purpose of sentence enhancements under this section. *State v. Sundling*, 248 Neb. 732, 538 N.W.2d 749 (1995).

**3. Sufficiency of the evidence**

Subsection (c) of this section (formerly section 39-669.07 (Reissue 1988)) limits the proof which can be used to establish the defendant's prior driving while under the influence convictions. *State v. Jenson*, 236 Neb. 869, 464 N.W.2d 326 (1991).

**4. Miscellaneous**

The time limitations for the use of prior driving under the influence convictions set forth in this section do not apply to the use of prior driving under the influence convictions to section 28-306. *State v. Tlamka*, 7 Neb. App. 579, 585 N.W.2d 101 (1998).

**60-6,197.03 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.**

Any person convicted of a violation of section 60-6,196 or 60-6,197 shall be punished as follows:

(1) Except as provided in subdivision (2) of this section, if such person has not had a prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked or impounded for a period of six months from the date ordered by the court. If the court orders the person's

operator's license impounded, the court shall also order that the person shall not operate a motor vehicle for a period of six months and shall not order the installation of an ignition interlock device or an ignition interlock permit. If the court orders the person's operator's license revoked, the revocation period shall be for six months. The revocation order shall require that the person not drive for a period of thirty days, after which the court may order that the person apply for an ignition interlock permit for the remainder of the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the remainder of the revocation period. Such revocation or impoundment shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of sixty days from the date ordered by the court. The court may order that during the period of revocation the person apply for an ignition interlock permit and the installation of an ignition interlock device pursuant to section 60-6,211.05. Such order of probation or sentence suspension shall also include, as one of its conditions, the payment of a four-hundred-dollar fine;

(2) If such person has not had a prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of sixty days, after which the court may order that the person apply for an ignition interlock permit pursuant to subdivision (1)(b) of section 60-6,197.01 for the remainder of the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the remainder of the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that the person apply for an ignition interlock permit pursuant to subdivision (1)(b) of section 60-6,197.01 for the remainder of the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the remainder of the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for two days or the imposition of not less than one hundred twenty hours of community service;

(3) Except as provided in subdivision (5) of this section, if such person has had one prior conviction, such person shall be guilty of a Class W misdemeanor

or, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of sixty days, after which the court may order that the person apply for an ignition interlock permit for the remainder of the revocation period and have an ignition interlock device installed on any motor vehicle he or she owns or operates during the remainder of the revocation period and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than two hundred forty hours of community service;

(4) Except as provided in subdivision (6) of this section, if such person has had two prior convictions, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least two years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a six-hundred-dollar fine and confinement in the city or county jail for thirty days;

(5) If such person has had one prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class I misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of at least one year but not more than fifteen years from the date ordered by the court and shall issue an order pursuant to section

60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least ninety days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least one year but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(6) If such person has had two prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least five years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for sixty days;

(7) Except as provided in subdivision (8) of this section, if such person has had three prior convictions, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one

hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for ninety days;

(8) If such person has had three prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred twenty days;

(9) Except as provided in subdivision (10) of this section, if such person has had four or more prior convictions, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person

apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred eighty days; and

(10) If such person has had four or more prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class II felony and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred eighty days.

**Source:** Laws 2004, LB 208, § 13; Laws 2005, LB 594, § 3; Laws 2006, LB 925, § 11; Laws 2007, LB578, § 4; Laws 2008, LB736, § 8; Laws 2009, LB497, § 7; Laws 2010, LB924, § 4.

1. Constitutionality
2. Offense
3. Testing/sufficiency of the evidence
4. Enhancement
5. Miscellaneous

#### 1. Constitutionality

Permanent license revocation upon the third conviction for drunk driving does not deprive a person of equal protection of the law, due process of law, or the right to travel, nor does it constitute cruel and unusual punishment. *State v. Michalski*, 221 Neb. 380, 377 N.W.2d 510 (1985).

A defendant is not entitled to a jury trial under provisions of Sixth Amendment to Constitution of the United States in trial for second offense drunk driving hereunder. *State v. Young*, 194 Neb. 544, 234 N.W.2d 196 (1975).

Imposition of greater penalty for subsequent offense is constitutional. *Poppe v. State*, 155 Neb. 527, 52 N.W.2d 422 (1952).

Legislative amendments to the length of the cleansing period provided by this section will not implicate vested due process rights of individuals with prior convictions used for enhancement. *State v. Grant*, 9 Neb. App. 919, 623 N.W.2d 337 (2001).

Prior driving under the influence convictions are not necessary elements of a subsequent driving under the influence charge, but, rather, are used to determine the sentence to be imposed for a later driving under the influence conviction. Thus,

the district court did not violate the Double Jeopardy Clause when it remanded a conviction for second-offense driving under the influence to the county court with directions to enter a judgment finding the defendant guilty of third-offense driving under the influence and to sentence her accordingly. *State v. Werner*, 8 Neb. App. 684, 600 N.W.2d 500 (1999).

#### 2. Offense

This section is a continuance and affirmation of the previous section 39-669.07. Convictions under section 39-669.07 can be used for the purpose of sentence enhancements under this section. *State v. Sundling*, 248 Neb. 732, 538 N.W.2d 749 (1995).

Revocation for 15 years is not an element of the offense of driving with a revoked license under subsection (c) of former section. *State v. Reichstein*, 233 Neb. 715, 447 N.W.2d 635 (1989).

#### 3. Testing/sufficiency of the evidence

Subsection (c) of this section (formerly section 39-669.07 (Reissue 1988)) limits the proof which can be used to establish

the defendant's prior driving while under the influence convictions. *State v. Jensen*, 236 Neb. 869, 464 N.W.2d 326 (1991).

Under this provision (formerly part of section 60-6,196), a defendant may object to the validity of a prior conviction for enhancement purposes where there is no showing that at the time of the previous conviction he was represented by counsel or knowingly and voluntarily waived the right to counsel. *State v. Fraser*, 222 Neb. 862, 387 N.W.2d 695 (1986).

#### 4. Enhancement

Under the enhancement provisions of this section (formerly subsection (2) of section 60-6,196), a drunk driving offender is not receiving additional punishment for his or her previous convictions, but, rather, the offender is being penalized for persisting in committing the offense of driving while under the influence of liquor. *State v. Neiss*, 260 Neb. 691, 619 N.W.2d 222 (2000).

This section (formerly subsection (2) of section 60-6,196) authorizes a trial court to consider prior convictions of a defendant for driving under the influence of alcoholic liquor or drug within the 12 years prior to the offense for which a defendant currently stands trial and is not *ex post facto* as to a conviction prior to its passage, since an offender subject to enhancement of punishment under this statute is not receiving additional punishment for his or her previous convictions but is being penalized for an offense committed after its passage. This section deals with offenses committed after its passage, permits an inquiry into a defendant's previous convictions, and in fixing the penalty, does not punish the defendant for previous offenses but for persistence in violating this section. *State v. Hansen*, 258 Neb. 752, 605 N.W.2d 461 (2000).

The language of this section permits a defendant to challenge the validity of a prior driving under the influence conviction offered for purposes of enhancement on the ground that it was obtained in violation of the defendant's Sixth Amendment right to counsel. *State v. Louthan*, 257 Neb. 174, 595 N.W.2d 917 (1999).

Pursuant to section 60-6,197.06 (formerly subsection (6) of section 60-6,196), the enhancement rules applicable to offenses committed under subdivision (3) of this section (formerly section 60-6,196(2)(c)) are not applicable to license revocation offenses committed under this section. *State v. Kennedy*, 251 Neb. 337, 557 N.W.2d 33 (1996).

Objections to prior convictions used for enhancement refers only to challenges based on a failure to show that in the prior proceeding defendant had counsel or voluntarily and intelligently waived his or her right to counsel. *State v. Wiltshire*, 241 Neb. 817, 491 N.W.2d 324 (1992).

In proceedings under subdivision (3) of this section (formerly subdivision (2)(c) of section 60-6,196) for multiple violations of this section, convictions rendered the same day, if imposed for separate offenses, may each constitute a prior conviction so as to warrant an enhanced penalty. For purposes of determining the 10-year period required by subdivision (2)(c) of this section, the time shall be computed from the date of the prior offense to that date of the offense which resulted in the current conviction. *State v. Towler*, 240 Neb. 103, 481 N.W.2d 151 (1992).

A previous conviction on appeal at the time the second offense is committed may not be considered a conviction for purposes of the punishment enhancement provisions of this section. *State v. Estes*, 238 Neb. 692, 472 N.W.2d 214 (1991).

This section (formerly part of section 60-6,196) requires only that a violator be properly convicted of two previous violations, whether the prior violation was called first or second offense. *State v. Donaldson*, 234 Neb. 683, 452 N.W.2d 531 (1990).

An erroneous designation in a complaint of the date on which and the county in which a prior conviction occurred will not preclude a defendant from being sentenced as one who has previously been convicted of driving while under the influence of alcohol, if the record discloses that the defendant could not have been misled or confused. *State v. Wakeman*, 231 Neb. 66, 434 N.W.2d 549 (1989).

For enhancement purposes under this section (formerly part of section 60-6,196), the sentencing court shall make a finding on the record concerning the number of defendant's prior convictions for drunk driving. *State v. Snodgrass*, 230 Neb. 119, 430 N.W.2d 55 (1988).

For a prior conviction based on a plea of guilty to be used for enhancement purposes in an action under this section (formerly part of section 60-6,196), the record must show that the defendant entered the guilty plea to the charge. *State v. Slezak*, 226 Neb. 404, 411 N.W.2d 632 (1987).

Checklist evidences defendant's waiver of counsel and satisfies State's burden in proving validity of conviction in an enhancement hearing. *State v. Thompson*, 224 Neb. 922, 402 N.W.2d 271 (1987).

The substantive offense is driving while under the influence of alcohol or with more than .10 percent of alcohol in one's body fluid. The number of times a person has previously been convicted of such a charge is not itself a crime but, rather, is a factor which the trial court is to consider in imposing sentence. *State v. Jameson*, 224 Neb. 38, 395 N.W.2d 744 (1986).

A certified copy of a judgment entered on a prior conviction for drunk driving may be used for enhancement purposes. *State v. Hamblin*, 223 Neb. 469, 390 N.W.2d 533 (1986).

A defendant may not relitigate a former conviction in an enhancement proceeding. *State v. Fraser*, 222 Neb. 862, 387 N.W.2d 695 (1986).

Under this provision (formerly part of section 60-6,196), the trial court is required to advise the defendant of his right to review the record of the prior conviction, bring mitigating facts to the attention of the court prior to sentencing, and object to the validity of the prior conviction. *State v. Fraser*, 222 Neb. 862, 387 N.W.2d 695 (1986).

The state has the burden to show only that defendant had or waived counsel at prior proceedings used for enhancement purposes. *State v. Soe*, 219 Neb. 797, 366 N.W.2d 439 (1985).

A transcript of conviction which fails to show on its face that counsel was afforded or the right waived cannot be used for enhancement purposes. *State v. Baxter*, 218 Neb. 414, 355 N.W.2d 514 (1984).

Record of an enhancement proceeding for second or third offense driving while intoxicated must show that the requirements of the statute were met. A defendant may waive the rights provided by this statute with regard to prior convictions. *State v. Ziemba*, 216 Neb. 612, 346 N.W.2d 208 (1984).

In sentencing under this section (formerly part of section 60-6,196) the record of the trial court must show evidence of prior convictions and whether the defendant was represented by counsel or waived such representation in those prior proceedings. *State v. Prichard*, 215 Neb. 488, 339 N.W.2d 748 (1983).

Where under this section (formerly part of section 60-6,196), proof has been made of a defendant's conviction on a prior misdemeanor violation of that statute, the defendant cannot raise a collateral attack upon that conviction. *State v. Kelly*, 212 Neb. 45, 321 N.W.2d 80 (1982).

A defendant may not collaterally attack a prior conviction when proof of that prior conviction is offered in a proceeding on the issue of enhancement of sentence. *State v. Voight*, 206 Neb. 829, 295 N.W.2d 112 (1980).

Third offender need not have previously been punished as second offender, but must only have been twice previously convicted of driving under the influence. *State v. Orosco*, 199 Neb. 532, 260 N.W.2d 303 (1977).

Proof of prior convictions was properly made. *State v. Ninneman*, 179 Neb. 729, 140 N.W.2d 5 (1966).

Compliance with former sentence is not essential to proof of prior conviction. *Danielson v. State*, 155 Neb. 890, 54 N.W.2d 56 (1952).

Standard waiver forms, once signed by a defendant, are sufficient in an enhancement proceeding to meet the State's burden of proving that defendant knowingly, intelligently, and

voluntarily waived his or her right to counsel. *State v. Werner*, 8 Neb. App. 684, 600 N.W.2d 500 (1999).

The time limitations for the use of prior driving under the influence convictions set forth in this section do not apply to the use of prior driving under the influence convictions to section 28-306. *State v. Tlamka*, 7 Neb. App. 579, 585 N.W.2d 101 (1998).

Prior convictions of driving under the influence of alcohol under former section 39-669.07 or ordinances thereunder may properly be used to enhance convictions under this section (formerly part of section 60-6,196), as this section is a mere affirmation of the original act. *State v. Sundling*, 3 Neb. App. 722, 531 N.W.2d 7 (1995).

A defendant's allegation that the State failed to show that the defendant was present at an enhancement proceeding pursuant to a prior conviction under this section (formerly part of section 60-6,196) constituted a collateral attack, which could only be raised in a separate proceeding. *State v. Jones*, 1 Neb. App. 816, 510 N.W.2d 404 (1993).

#### 5. Miscellaneous

Under subdivision (3) of this section (formerly subdivision 2)(c) of section 60-6,196) a 15-year revocation is part of the overall punishment of a defendant, in conjunction with the fines and jail terms imposed for the offense under Class W misdemeanors. *State v. Bainbridge*, 249 Neb. 260, 543 N.W.2d 154 (1996).

Under subdivision (3) of this section (formerly subdivision 2)(c) of section 60-6,196) an order of probation for a person convicted of third-offense driving while under the influence of alcoholic liquor may include a provision not to operate a motor vehicle for any reason whatsoever during the entire term of probation. *State v. Seaman*, 237 Neb. 916, 468 N.W.2d 121 (1991).

The relevant portion of this section (formerly part of section 60-6,196) directs in clear, plain, simple, and unambiguous words that when one convicted of first-offense driving while intoxicated is placed on probation, he or she shall be ordered not to drive for any purpose for a period of 60 days from the date of the order of probation. *State v. Matthews*, 237 Neb. 300, 465 N.W.2d 763 (1991).

Revocation of one's operator's license for a period of 365 days will not always fulfill the requirement that revocation be for a period of 1 year. *State v. Contreras*, 236 Neb. 455, 461 N.W.2d 562 (1990).

Credit against statutory minimum sentence for inpatient treatment was erroneous, and it was within the district court's power to modify the judgment by striking the illegal credit. *State v. Oliver*, 230 Neb. 864, 434 N.W.2d 293 (1989).

In a case pending appeal when this section was amended, a sentence of lifetime suspension of a driver's license for driving while under the influence should be vacated and in lieu thereof

a sentence of suspension for 15 years imposed. *State v. Painter*, 224 Neb. 905, 402 N.W.2d 677 (1987).

Where the record did not show the defendant knew the penalty for second offense DWI included a mandatory minimum confinement under subsection (2) (of former section 39-669.07) when he entered his plea, the cause was remanded to determine if the defendant had such knowledge in fact. *State v. Stastny*, 223 Neb. 903, 395 N.W.2d 492 (1986).

Upon revocation of probation, the court may impose such punishment as may have been imposed originally for the crime of which such defendant was convicted. Resultingly, defendant who was convicted of third offense driving while intoxicated in 1980 and who violated his probation in 1984 was subject to sentencing under the penal statute in effect at the time of his conviction. *State v. Jacobson*, 221 Neb. 639, 379 N.W.2d 772 (1986).

A defendant's operator's license may not be suspended beyond one year from the judgment of conviction; that is, in this case, one year from the date sentence of probation was imposed. *State v. Schulz*, 221 Neb. 473, 378 N.W.2d 165 (1985).

Under subsection (1) of this section (former section 39-669.07), the court-ordered suspending of driving privileges must be for a continuous period computed from the date the order of probation is entered. *State v. Ramirez*, 218 Neb. 899, 360 N.W.2d 484 (1984).

A trial court does not have the authority under this section to interrupt the period of suspension or permit one convicted of driving under the influence of alcoholic liquor or drug, first or second offense, to drive for limited work-related purposes. On second offense the period of prohibition against driving must be for a period of six continuous months computed from the date the order of probation is entered. *State v. Havorka*, 218 Neb. 367, 355 N.W.2d 343 (1984).

A sentence within the statutory maximum will not be disturbed on appeal absent an abuse of discretion. *State v. Rosenberry*, 209 Neb. 383, 307 N.W.2d 823 (1981).

A sentence validly imposed takes effect from the time it is imposed, and the subsequent order of the same court vacating that sentence was a nullity. *State v. Sliva*, 208 Neb. 647, 305 N.W.2d 10 (1981).

Maximum sentence under this statute not excessive in view of defendant's record. *State v. Phillips*, 197 Neb. 343, 248 N.W.2d 773 (1977).

Sentence of imprisonment for one year and revocation of driver's license was not an abuse of discretion by the trial court. *State v. Frans*, 192 Neb. 641, 223 N.W.2d 490 (1974).

A requirement that one convicted of driving while intoxicated attend and complete and pay for an alcohol abuse course is a valid condition of probation. *State v. Muggins*, 192 Neb. 415, 222 N.W.2d 289 (1974).

### **60-6,197.04 Driving under influence of alcoholic liquor or drugs; preliminary breath test; refusal; penalty.**

Any peace officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city or village may require any person who operates or has in his or her actual physical control a motor vehicle in this state to submit to a preliminary test of his or her breath for alcohol concentration if the officer has reasonable grounds to believe that such person has alcohol in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of section 60-6,196 shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a Class V misdemeanor.

**Source:** Laws 2004, LB 208, § 14.

The preliminary test referred to in this section (formerly subsection (3) of section 60-6,197) is a different procedure and not a chemical test that will satisfy requirements for a conviction under subsection (3) (formerly subsection (4) of section 60-6,197). State v. Howard, 253 Neb. 523, 571 N.W.2d 308 (1997).

**60-6,197.05 Driving under influence of alcoholic liquor or drugs; implied consent to chemical test; revocation; effect.**

Any period of revocation imposed for a violation of section 60-6,196 or 60-6,197 shall be reduced by any period imposed under section 60-498.02. Any period of revocation imposed under subdivision (1) of section 60-6,197.03 for a violation of section 60-6,196 or 60-6,197 or under subdivision (2)(a) of section 60-6,196, as such section existed prior to July 16, 2004, shall not prohibit the operation of a motor vehicle under the terms and conditions of an employment driving permit issued pursuant to subsection (2) of section 60-498.02.

**Source:** Laws 2004, LB 208, § 15; Laws 2009, LB497, § 8.

**60-6,197.06 Operating motor vehicle during revocation period; penalties.**

(1) Unless otherwise provided by law pursuant to an ignition interlock permit, any person operating a motor vehicle on the highways or streets of this state while his or her operator’s license has been revoked pursuant to section 28-306, section 60-698, subdivision (4), (5), (6), (7), (8), (9), or (10) of section 60-6,197.03, or section 60-6,198, or pursuant to subdivision (2)(c) or (2)(d) of section 60-6,196 or subdivision (4)(c) or (4)(d) of section 60-6,197 as such subdivisions existed prior to July 16, 2004, shall be guilty of a Class IV felony, and the court shall, as part of the judgment of conviction, revoke the operator’s license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

(2) If such person has had a conviction under this section or under subsection (6) of section 60-6,196 or subsection (7) of section 60-6,197, as such subsections existed prior to July 16, 2004, prior to the date of the current conviction under this section, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, revoke the operator’s license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

**Source:** Laws 2004, LB 208, § 16; Laws 2006, LB 925, § 12; Laws 2009, LB497, § 9.

- 1. Constitutionality
- 2. Offense
- 3. Testing/sufficiency of the evidence
- 4. Enhancement
- 5. Miscellaneous

**1. Constitutionality**

A subsequent prosecution of driving while the operator’s license was revoked, after defendant had already been convicted of willful reckless driving and operating a motor vehicle while intoxicated, did not violate the double jeopardy clause, because the State did not prove the entire conduct for which defendant had already been convicted. Willful reckless driving and operating a motor vehicle while intoxicated are not lesser-included offenses of operating a motor vehicle while the operator’s license was revoked, and a subsequent conviction of driving while the operator’s license is revoked would not violate the Blockbur-

ger test. State v. Woodfork, 239 Neb. 720, 478 N.W.2d 248 (1991).

**2. Offense**

Starting a vehicle is an act within the meaning of “operating” a motor vehicle under this section (formerly subsection (6) of section 60-6,196). State v. Porsche, 261 Neb. 160, 622 N.W.2d 582 (2001).

Subsection (3) of former section 60-524 does not terminate a court-ordered suspension required as part of a criminal conviction.

tion under this section (formerly subsection (6) of section 60-6,196). State v. Portsche, 261 Neb. 160, 622 N.W.2d 582 (2001).

In a prosecution under this section (formerly subsection (6) of section 60-6,196) for driving when one's operator's license has been revoked pursuant to subdivision (2)(c) of this section, proof of the prior conviction under subdivision (2)(c) is an essential element of the offense, and thus, the State has the burden to prove the prior conviction. A prior third-offense drunk driving conviction may be used as an element of a violation under this section (formerly subsection (6) of section 60-6,196) even though the prior conviction is not subject to a collateral attack. State v. Lee, 251 Neb. 661, 558 N.W.2d 571 (1997).

### 3. Testing/sufficiency of the evidence

A certified copy from the Department of Motor Vehicles which shows that a defendant's operator's license was revoked is insufficient to show that the defendant either had counsel or waived counsel at the time he was convicted of the prior offense and is therefore insufficient to support a conviction under this

section (formerly subsection (6) of section 60-6,196). State v. Watkins, 4 Neb. App. 356, 543 N.W.2d 470 (1996).

### 4. Enhancement

A felony conviction for driving under a suspended license in violation of this section may not be used either to trigger application of the habitual criminal statute or as a prior offense for purposes of penalty enhancement pursuant thereto. State v. Hittle, 257 Neb. 344, 598 N.W.2d 20 (1999).

Pursuant to this section (formerly subsection (6) of section 60-6,196), the enhancement rules applicable to offenses committed under subsection (3) of section 60-6,197.03 (formerly section 60-6,196(2)(c)) are not applicable to license revocation offenses committed under this section. State v. Kennedy, 251 Neb. 337, 557 N.W.2d 33 (1996).

### 5. Miscellaneous

A 15-year revocation must be part of any sentence for a conviction under this section, including a sentence of probation. State v. Hense, 276 Neb. 313, 753 N.W.2d 832 (2008).

## **60-6,197.07 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; city or village ordinances; authorized.**

Any city or village may enact ordinances in conformance with sections 60-6,196 and 60-6,197. Upon conviction of any person of a violation of such a city or village ordinance, the provisions of sections 60-6,197.02 and 60-6,197.03 with respect to the operator's license of such person shall be applicable the same as though it were a violation of section 60-6,196 or 60-6,197.

**Source:** Laws 2004, LB 208, § 17.

## **60-6,197.08 Driving under influence of alcoholic liquor or drugs; presentence evaluation.**

Any person who has been convicted of driving while intoxicated shall, during a presentence evaluation, submit to and participate in an alcohol assessment by a licensed alcohol and drug counselor. The alcohol assessment shall be paid for by the person convicted of driving while intoxicated. At the time of sentencing, the judge, having reviewed the assessment results, may then order the convicted person to follow through on the alcohol assessment results at the convicted person's expense in addition to any penalties deemed necessary.

**Source:** Laws 2004, LB 208, § 18; Laws 2006, LB 925, § 13.

### 1. Constitutionality 2. Miscellaneous

#### 1. Constitutionality

The provision in this section (formerly subsection (8) of section 60-6,196) requiring the convicted person to pay the expense for the treatment which is a portion of the sentencing order is not intended to be a punishment and therefore provides for neither a fine nor a penalty and does not on its face violate the constitutional prohibitions against excessive fines under Neb. Const. art. I, section 9, or disproportionate penalties under Neb. Const. art. I, section 15. State v. Hynek, 263 Neb. 310, 640 N.W.2d 1 (2002).

This section (formerly subsection (8) of section 60-6,196), which authorizes sentencing courts to impose alternative penalties for individuals convicted of certain driving under the influence offenses, when such individuals have undergone an alcohol assessment, does not violate the distribution of powers clause, Neb. Const. art. II, section 1. This section (formerly subsection

(8) of section 60-6,196) is held to be harmonious with other sentencing provisions relating to driving under the influence offenses. State v. Divis, 256 Neb. 328, 589 N.W.2d 537 (1999).

#### 2. Miscellaneous

The purpose of this section (formerly subsection (8) of section 60-6,196) is to provide (1) an alcohol assessment to individuals who have not previously been assessed for alcohol abuse and (2) a tool for courts to review alcohol assessment results prior to sentencing in order to aid in an effective sentencing decision. In those cases where the county court orders an alcohol assessment pursuant to subsection (8) of this section, the court shall follow the mandated statutory procedure and order the convicted offender to participate in the alcohol assessment prior to sentencing. State v. Hansen, 259 Neb. 764, 612 N.W.2d 477 (2000).

## **60-6,197.09 Driving under influence of alcoholic liquor or drugs; not eligible for probation, suspended sentence, or employment driving permit.**

Notwithstanding the provisions of section 60-498.02 or 60-6,197.03, a person who commits a violation punishable under subdivision (3)(b) or (c) of section 28-306 or a violation of section 60-6,196, 60-6,197, or 60-6,198 while participating in criminal proceedings for a violation of section 60-6,196, 60-6,197, or 60-6,198, or a city or village ordinance enacted in accordance with section 60-6,196 or 60-6,197, or a law of another state if, at the time of the violation under the law of such other state, the offense for which the person was charged would have been a violation of section 60-6,197, shall not be eligible to receive a sentence of probation, a suspended sentence, or an employment driving permit authorized under subsection (2) of section 60-498.02 for either violation committed in this state.

**Source:** Laws 2006, LB 925, § 14.

**60-6,198 Driving under influence of alcoholic liquor or drugs; serious bodily injury; violation; penalty.**

(1) Any person who, while operating a motor vehicle in violation of section 60-6,196 or 60-6,197, proximately causes serious bodily injury to another person or an unborn child of a pregnant woman shall be guilty of a Class IIIA felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for the same period.

(2) For purposes of this section, serious bodily injury shall mean bodily injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a temporary or protracted loss or impairment of the function of any part or organ of the body.

(3) For purposes of this section, unborn child shall have the same meaning as in section 28-396.

**Source:** Laws 1986, LB 153, § 6; Laws 1992, LB 291, § 13; R.S.Supp.,1992, § 39-669.39; Laws 1993, LB 370, § 307; Laws 1997, LB 364, § 17; Laws 2001, LB 38, § 50; Laws 2006, LB 57, § 10.

**Cross References**

**Conviction of felony involving use of vehicle**, transmittal of abstract, see section 60-497.02.

The offense of driving under the influence in violation of section 60-6,196 is a lesser-included offense of driving under the influence causing serious bodily injury in violation of this section. *State v. Dragoo*, 277 Neb. 858, 765 N.W.2d 666 (2009).

The material elements of driving under the influence of alcohol and causing serious bodily injury are: (1) the defendant must

have been operating a motor vehicle; (2) the defendant must have been operating the vehicle in violation of section 60-6,196 (driving under the influence of alcohol); and (3) the defendant's act of driving under the influence of alcohol, in violation of section 60-6,196, must proximately cause serious bodily injury. *State v. Bartlett*, 3 Neb. App. 218, 525 N.W.2d 237 (1994).

**60-6,199 Driving under influence of alcoholic liquor or drugs; test; additional test; refusal to permit; effect; results of test; available upon request.**

The peace officer who requires a chemical blood, breath, or urine test or tests pursuant to section 60-6,197 may direct whether the test or tests shall be of blood, breath, or urine. The person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests he or she deems appropriate in addition to and following the test or tests administered at the direction of the officer. If the

officer refuses to permit such additional test to be taken, then the original test or tests shall not be competent as evidence. Upon the request of the person tested, the results of the test or tests taken at the direction of the officer shall be made available to him or her.

**Source:** Laws 1959, c. 168, § 2, p. 613; Laws 1961, c. 187, § 3, p. 578; Laws 1963, c. 227, § 1, p. 712; Laws 1971, LB 948, § 3; Laws 1972, LB 1095, § 3; C.S.Supp.,1972, § 39-669.09; Laws 1990, LB 799, § 3; R.S.Supp.,1992, § 39-669.09; Laws 1993, LB 370, § 294.

1. Required test
2. Refusal to take test
3. Additional test
4. Miscellaneous

#### 1. Required test

An individual required to take a breath test does not have the option of requesting a blood or urine test. *State v. Morse*, 211 Neb. 448, 318 N.W.2d 893 (1982).

This section which provides that if an officer directs that a test shall be of the person's blood or urine such person may choose whether the test shall be of blood or of urine, does not require the officer to notify the person of his option and if the person takes one or the other of these tests then he has waived his right to insist that the test to be made by the state be one of his choice. *State v. Sommers*, 201 Neb. 809, 272 N.W.2d 367 (1978).

An arrest or the taking into custody on a driving offense required before test is administered. *State v. Baker*, 184 Neb. 724, 171 N.W.2d 798 (1969).

Blood test was properly given and made. *State v. Berg*, 177 Neb. 419, 129 N.W.2d 117 (1964).

To render blood test admissible in evidence, there must be a compliance with this section. *Pierce v. State*, 173 Neb. 319, 113 N.W.2d 333 (1962).

Person taken into custody may choose what test shall be given. *Purcha v. Department of Motor Vehicles*, 172 Neb. 415, 110 N.W.2d 75 (1961).

#### 2. Refusal to take test

If an arrested motorist has refused a chemical test to determine the motorist's blood-alcohol level in accordance with section 39-699.08(4), (transferred to section 60-6,197) the motorist has no right to a physician's evaluation of the motorist's condition or chemical tests in addition to that directed by the law enforcement officer. *State v. Clark*, 229 Neb. 103, 425 N.W.2d 347 (1988).

An operator has refused to submit to a test when he conducts himself in a way which would justify a reasonable person in believing that he understood he had been asked to take the test and manifested an unwillingness to take it. *Bauer v. Peterson*, 212 Neb. 174, 322 N.W.2d 389 (1982).

Silence in the face of a direct inquiry as to which test should be administered was equivalent to an express refusal to submit to any test. *Johnson v. Dennis*, 187 Neb. 95, 187 N.W.2d 605 (1971).

#### 3. Additional test

Permitting a requested independent chemical test is foundational to the admission in evidence of the result of the breath test performed by the State. Under this section, the police cannot hamper a motorist's reasonable efforts to obtain independent chemical testing; however, the police have no statutory duty to transport a licensee for the purpose of obtaining such testing. *State v. Dake*, 247 Neb. 579, 529 N.W.2d 46 (1995).

Statute does not require officer to inform person of his or her privilege to request an independent test. *Heusman v. Jensen*, 226 Neb. 666, 414 N.W.2d 247 (1987).

An officer is not required to inform the person to be tested of his privilege to request an independent test. *State v. Klingelhofer*, 222 Neb. 219, 382 N.W.2d 366 (1986).

Statute does not require the officer to inform the person to be tested of his privilege to request an independent test. *State v. Miller*, 213 Neb. 274, 328 N.W.2d 769 (1983).

Lab results of state's blood or urine tests are inadmissible if defendant objects after denial of requests for private physician and tests. *State v. Wahrman*, 199 Neb. 337, 258 N.W.2d 818 (1977).

Failure of officer to advise motorist he could obtain additional test following one directed by officer is not excuse for motorist's failure to submit to test. *Zadina v. Weedlun*, 187 Neb. 361, 190 N.W.2d 857 (1971).

#### 4. Miscellaneous

Result of test should be made available to the defendant but request should be made prior to trial. *State v. Fox*, 177 Neb. 238, 128 N.W.2d 576 (1964).

Registered nurse may withdraw blood for a test only if acting under the direction of a physician. *Otte v. State*, 172 Neb. 110, 108 N.W.2d 737 (1961).

### **60-6,200 Driving under influence of alcoholic liquor or drugs; chemical test; consent of person incapable of refusal not withdrawn.**

Any person who is unconscious or who is otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn the consent provided by section 60-6,197 and the test may be given.

**Source:** Laws 1959, c. 168, § 3, p. 614; R.R.S.1943, § 39-727.05; R.S. 1943, (1988), § 39-669.10; Laws 1993, LB 370, § 295.

Defendant found incapable of refusing taking of blood sample. Therefore, consent was implied under this statute. *State v. Brittain*, 212 Neb. 686, 325 N.W.2d 141 (1982).

A refusal to submit to a chemical test for alcohol occurs when the licensee after being asked to submit to a test so conducts himself as to justify a reasonable person in the requesting officer's position in believing that the licensee understood that he was asked to submit to a test and manifested an unwillingness to do so. *Wohlgemuth v. Pearson*, 204 Neb. 687, 285 N.W.2d 102 (1979).

To constitute a refusal to submit to a chemical test for alcohol requested under this section the only understanding required by the licensee is an understanding that he has been asked to take a test. *Wohlgemuth v. Pearson*, 204 Neb. 687, 285 N.W.2d 102 (1979).

Where a person is incapable of refusal by reason of injuries the same may be taken provided other conditions of section

39-669.08 (transferred to section 60-6,197) are met. *Mackey v. Director of Motor Vehicles*, 194 Neb. 707, 235 N.W.2d 394 (1975).

Blood may be drawn from an unconscious person only upon compliance with the requirements of statutes complimentary hereto. *State v. Howard*, 193 Neb. 45, 225 N.W.2d 391 (1975).

This section authorizes the taking of test for intoxication even when the defendant is unconscious. *State v. Seager*, 178 Neb. 51, 131 N.W.2d 676 (1964).

Drawing of blood sample by physician who had been directed to act as coroner's physician from body of fatally injured passenger in automobile did not violate prohibition against unreasonable searches and seizures, and result of tests performed by competent chemist using accepted procedures and facilities were admissible. *Gardner v. Meyers*, 491 F.2d 1184 (8th Cir. 1974).

**60-6,201 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee.**

(1) Any test made under section 60-6,197, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels.

(2) Any test made under section 60-6,211.02, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution involving operating or being in actual physical control of a motor vehicle in violation of section 60-6,211.01.

(3) To be considered valid, tests of blood, breath, or urine made under section 60-6,197 or tests of blood or breath made under section 60-6,211.02 shall be performed according to methods approved by the Department of Health and Human Services and by an individual possessing a valid permit issued by such department for such purpose, except that a physician, registered nurse, or other trained person employed by a licensed health care facility or health care service which is defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as such act existed on September 1, 2001, or Title XVIII or XIX of the federal Social Security Act, as such act existed on September 1, 2001, to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of a test to determine the alcohol concentration or the presence of drugs and no permit from the department shall be required for such person to withdraw blood pursuant to such an order. The department may approve satisfactory techniques or methods to perform such tests and may ascertain the qualifications and competence of individuals to perform such tests and issue permits which shall be subject to termination or revocation at the discretion of the department.

(4) A permit fee may be established by regulation by the department which shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permitholder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund as a laboratory service fee.

(5) Relevant evidence shall not be excluded in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels on the ground that the evidence existed or was obtained outside of this state.

**Source:** Laws 1959, c. 168, § 4, p. 614; Laws 1963, c. 228, § 2, p. 715; Laws 1963, c. 229, § 2, p. 716; Laws 1971, LB 948, § 4; C.S.Supp.,1972, § 39-727.06; Laws 1986, LB 1047, § 1; Laws 1987, LB 224, § 2; Laws 1990, LB 799, § 4; Laws 1992, LB 291, § 6; Laws 1992, LB 872, § 2; R.S.Supp.,1992, § 39-669.11; Laws 1993, LB 370, § 296; Laws 1993, LB 564, § 9; Laws 1996, LB 1044, § 284; Laws 2000, LB 819, § 76; Laws 2000, LB 1115, § 7; Laws 2001, LB 773, § 17; Laws 2007, LB296, § 234.

#### Cross References

**Health Care Facility Licensure Act**, see section 71-401.

1. Admissibility of test results
2. Error or tolerance in testing
3. Effect of evidence
4. Effect of recodification

#### 1. Admissibility of test results

Pursuant to subsection (3) of this section, a prerequisite to the validity of a breath test made under section 60-6,197(3), and consequently a prerequisite to the validity of an arrest, is that the test must be performed in accordance with the procedures approved by the Department of Health and Human Services Regulation and Licensure and "by an individual possessing a valid permit issued by such department for such purpose". *McGuire v. Department of Motor Vehicles*, 253 Neb. 92, 568 N.W.2d 471 (1997).

It is not necessary for the State to introduce into evidence the actual or a certified copy of an individual's state Department of Health permit to perform a blood, breath, or urine test of a suspect arrested for driving while under the influence of alcoholic liquor. *State v. Obermier*, 241 Neb. 802, 490 N.W.2d 693 (1992).

A test made in compliance with this section is sufficient to make a prima facie case on the issue of blood alcohol concentration. Matters of driving and testing are properly viewed as going to the weight of the breath test results, rather than to the admissibility of the evidence. A valid breath test given within a reasonable time after the accused was stopped is probative of a violation of section 39-669.07 (transferred to section 60-6,196). *State v. Kubik*, 235 Neb. 612, 456 N.W.2d 487 (1990).

Compliance with the requirements of this section in the administration of a breath test may affect the admissibility of the test results but does not go to the question of whether a person was justified in refusing to take the test. *Raymond v. Department of Motor Vehicles*, 219 Neb. 821, 366 N.W.2d 758 (1985).

The requirements of this section are foundational requirements that must be laid before the admission of the test result into evidence; once the court determines that the evidence is to be admitted, weight and credibility are for the jury. *State v. West*, 217 Neb. 389, 350 N.W.2d 512 (1984).

The results of a test made under the provisions of section 39-669.08 (transferred to section 60-6,197) may be received in evidence only if the requirements of section 39-669.11 (transferred to section 60-6,201) are met. In order to show that the requirements have been met it is necessary to show that the method of performing the test was approved by the Nebraska Department of Health and that the person administering the test was qualified and had a valid license from the Department of Health. *State v. Kolar*, 206 Neb. 619, 294 N.W.2d 350 (1980); *State v. Gerber*, 206 Neb. 75, 291 N.W.2d 403 (1980).

Results of chemical tests for alcohol content admissible as evidence under specified conditions. *State v. Jablonski*, 199 Neb. 341, 258 N.W.2d 918 (1977).

Result of test was competent evidence in prosecution for driving motor vehicle while under the influence of intoxicating liquor. *State v. Fox*, 177 Neb. 238, 128 N.W.2d 576 (1964).

To be admissible in evidence, tests made must meet the requirements prescribed by statute. *Otte v. State*, 172 Neb. 110, 108 N.W.2d 737 (1961).

#### 2. Error or tolerance in testing

Evidence of breath or blood alcohol content over the statutory limit is not necessarily insufficient simply because the defendant's expert testimony as to the margin of error is not specifically rebutted by expert testimony from the State. *State v. Kuhl*, 276 Neb. 497, 755 N.W.2d 389 (2008).

In order to support a conviction for the offense of drunk driving based solely on a chemical test the result of the chemical test, when taken together with its tolerance for error, must equal or exceed the statutory percentage. *State v. Bjornsen*, 201 Neb. 709, 271 N.W.2d 839 (1978).

The Legislature having selected a particular percentage of alcohol to be a criminal offense if present in a person operating a motor vehicle, it is not unreasonable to require that a test, designed to show that percent, do so outside of any error or tolerance inherent in the testing process. *State v. Bjornsen*, 201 Neb. 709, 271 N.W.2d 839 (1978).

#### 3. Effect of evidence

While the Legislature has the right to prescribe acceptable methods of testing for alcohol content in the body fluid, and perhaps the right to prescribe that such evidence is admissible in a court of law as competent evidence, it is a judicial function to determine whether the evidence, if believed, is sufficient to sustain a conviction. *State v. Burling*, 224 Neb. 725, 400 N.W.2d 872 (1987).

Evidence admitted pursuant to this section does not create a presumption of guilt but may be sufficient to make out a prima facie case on blood alcohol concentration issue. *State v. Dush*, 214 Neb. 51, 332 N.W.2d 679 (1983).

## 4. Effect of recodification

The substance of section 39-669.11, which requires that driving under the influence of alcohol breath tests be performed

according to the Department of Health and Human Services rules, did not change in any material way when it was recodified in this section. *State v. Engleman*, 5 Neb. App. 485, 560 N.W.2d 851 (1997).

**60-6,202 Driving under influence of alcoholic liquor or drugs; blood test; withdrawing requirements; damages; liability; when.**

(1) Any physician, registered nurse, other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to sections 60-6,197 and 60-6,211.02. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such sections except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-6,197 or 60-6,211.02 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services and such forms shall be made available to the persons listed in subsection (1) of this section.

**Source:** Laws 1959, c. 168, § 5, p. 614; Laws 1971, LB 948, § 5; C.S.Supp.,1972, § 39-727.07; Laws 1974, LB 679, § 1; Laws 1975, LB 140, § 1; Laws 1992, LB 291, § 7; R.S.Supp.,1992, § 39-669.12; Laws 1993, LB 370, § 297; Laws 1993, LB 564, § 10; Laws 1997, LB 210, § 5; Laws 2000, LB 819, § 77; Laws 2000, LB 1115, § 8; Laws 2007, LB296, § 235.

## Cross References

Health Care Facility Licensure Act, see section 71-401.

**60-6,203 Driving under influence of alcoholic liquor or drug; violation of city or village ordinance; fee for test; court costs.**

Upon the conviction of any person for violation of section 60-6,196 or 60-6,211.01 or of driving a motor vehicle while under the influence of alcoholic liquor or of any drug in violation of any city or village ordinance, there shall be assessed as part of the court costs the fee charged by any physician or any agency administering tests pursuant to a permit issued in accordance with section 60-6,201, for the test administered and the analysis thereof under the provisions of sections 60-6,197 and 60-6,211.02, if such test was actually made.

**Source:** Laws 1961, c. 188, § 1, p. 579; Laws 1971, LB 948, § 6; C.S.Supp.,1972, § 39-727.13; Laws 1978, LB 673, § 1; R.S.1943, (1988), § 39-669.13; Laws 1993, LB 370, § 298; Laws 1993, LB 564, § 11.

**60-6,204 Driving under influence of alcoholic liquor or drugs; test without preliminary breath test; when; qualified personnel.**

Any person arrested for any offense involving the operation or actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs shall be required to submit to a chemical test or tests of his or her blood, breath, or urine as provided in section 60-6,197 without the preliminary breath test if the arresting peace officer does not have available the necessary equipment for administering a breath test or if the person is unconscious or is otherwise in a condition rendering him or her incapable of testing by a preliminary breath test. Only a physician, registered nurse, or other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act or a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of determining the concentration of alcohol or the presence of drugs, but this limitation shall not apply to the taking of a urine or breath specimen.

**Source:** Laws 1971, LB 948, § 7; Laws 1972, LB 1095, § 4; C.S.Supp.,1972, § 39-727.15; Laws 1974, LB 679, § 2; Laws 1990, LB 799, § 5; Laws 1992, LB 291, § 8; R.S.Supp.,1992, § 39-669.14; Laws 1993, LB 370, § 299; Laws 2000, LB 819, § 78; Laws 2000, LB 1115, § 9.

**Cross References**

**Health Care Facility Licensure Act**, see section 71-401.

While there is no conditional or qualified refusal, if a refusal was reasonable under the circumstances, such refusal cannot be the basis of a revocation of driving privileges. Fear of needles or AIDS does not in and of itself provide a justifiable basis for refusal. If a licensee questions the qualifications of a technician who is to draw blood, the licensee shall be orally or otherwise informed of the technician's training and experience. A licensee's refusal to allow a blood draw is justified and reasonable in the absence of oral or other information about the technician's training and experience after such qualifications have been questioned. *Ruch v. Conrad*, 247 Neb. 318, 526 N.W.2d 653 (1995).

Certified medical technologist was qualified technician to withdraw blood for purpose of determining alcoholic or drug

content therein. *State v. Stein*, 241 Neb. 225, 486 N.W.2d 921 (1992).

This section is *pari materia* with section 39-727.03 (transferred to section 60-6,197), and other sections mentioned in opinion. *Stevenson v. Sullivan*, 190 Neb. 295, 207 N.W.2d 680 (1973).

Implied Consent Law as amended in 1971 does not involve compulsion within Fifth Amendment; is constitutional; and penalties are as provided in section 39-727 (transferred to section 60-6,196). *State v. Manley*, 189 Neb. 415, 202 N.W.2d 831 (1972).

**60-6,205 Transferred to section 60-498.01.**

**60-6,206 Transferred to section 60-498.02.**

**60-6,207 Transferred to section 60-498.03.**

**60-6,208 Transferred to section 60-498.04.**

**60-6,209 License revocation; reinstatement; conditions; department; Board of Pardons; duties; fee.**

(1) Any person whose operator's license has been revoked pursuant to a conviction for a violation of sections 60-6,196, 60-6,197, and 60-6,199 to 60-6,204 for a third or subsequent time for a period of fifteen years may apply to the Department of Motor Vehicles, on forms prescribed by the department, requesting the department to make a recommendation to the Board of Pardons for reinstatement of his or her eligibility for an operator's license. Upon receipt

of the application, the Director of Motor Vehicles shall review the application if such person has served at least seven years of such revocation and make a recommendation for reinstatement or for denial of reinstatement. The department may recommend reinstatement if such person shows the following:

(a) Such person has completed a state-certified substance abuse program and is recovering or such person has substantially recovered from the dependency on or tendency to abuse alcohol or drugs;

(b) Such person has not been convicted, since the date of the revocation order, of any subsequent violations of section 60-6,196 or 60-6,197 or any comparable city or village ordinance and the applicant has not, since the date of the revocation order, submitted to a chemical test under section 60-6,197 that indicated an alcohol concentration in violation of section 60-6,196 or refused to submit to a chemical test under section 60-6,197;

(c) Such person has not been convicted, since the date of the revocation order, of driving while under suspension, revocation, or impoundment under section 60-4,109;

(d) Such person has abstained from the consumption of alcoholic beverages and the consumption of drugs except at the direction of a licensed physician or pursuant to a valid prescription; and

(e) Such person's operator's license is not currently subject to suspension or revocation for any other reason.

(2) In addition, the department may require other evidence from such person to show that restoring such person's privilege to drive will not present a danger to the health and safety of other persons using the highways.

(3) Upon review of the application, the director shall make the recommendation to the Board of Pardons in writing and shall briefly state the reasons for the recommendations. The recommendation shall include the original application and other evidence submitted by such person. The recommendation shall also include any record of any other applications such person has previously filed under this section.

(4) The department shall adopt and promulgate rules and regulations to govern the procedures for making a recommendation to the Board of Pardons. Such rules and regulations shall include the requirement that the treatment programs and counselors who provide information about such person to the department must be certified or licensed by the state.

(5) If the Board of Pardons reinstates such person's eligibility for an operator's license or orders a reprieve of such person's motor vehicle operator's license revocation, such reinstatement or reprieve may be conditioned for the duration of the original revocation period on such person's continued recovery. If such person is convicted of any subsequent violation of section 60-6,196 or 60-6,197, the reinstatement of the person's eligibility for an operator's license shall be withdrawn and such person's operator's license will be revoked by the Department of Motor Vehicles for the time remaining under the original revocation, independent of any sentence imposed by the court, after thirty days' written notice to the person by first-class mail at his or her last-known mailing address as shown by the records of the department.

(6) If the Board of Pardons reinstates a person's eligibility for an operator's license or orders a reprieve of such person's motor vehicle operator's license revocation, the board shall notify the Department of Motor Vehicles of the

reinstatement or reprieve. Such person may apply for an operator's license upon payment of a fee of one hundred twenty-five dollars and the filing of proof of financial responsibility. The fees paid pursuant to this section shall be collected by the department and remitted to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 1992, LB 291, § 10; R.S.Supp.,1992, § 39-669.19; Laws 1993, LB 370, § 304; Laws 1998, LB 309, § 18; Laws 2001, LB 38, § 54; Laws 2003, LB 209, § 13; Laws 2004, LB 208, § 12; Laws 2004, LB 1083, § 102; Laws 2008, LB736, § 9.

This section (60-6,209 (Reissue 1993)) clearly defines the 15-year revocation as serving as a punishment and is unconstitutional because it permits a judicial commutation of a sentence of punishment. Because this section permits the judicial branch to exercise the power of commutation, a power that clearly belongs to the executive branch, this section is unconstitutional as a violation of the separation of powers clause of the Nebraska Constitution. *State v. Bainbridge*, 249 Neb. 260, 543 N.W.2d 154 (1996).

The law does not grant an absolute right to defendant to a reduction of a term of revocation, but provides that the period of revocation "may" be reduced if the provisions of the statute are shown by the applicant to be satisfied by the preponderance of the evidence. *State v. Packett*, 246 Neb. 888, 523 N.W.2d 695 (1994).

**60-6,210 Blood sample; results of chemical test; admissible in criminal prosecution; disclosure required.**

(1) If the driver of a motor vehicle involved in an accident is transported to a hospital within or outside of Nebraska and a sample of the driver's blood is withdrawn by a physician, registered nurse, qualified technician, or hospital for the purpose of medical treatment, the results of a chemical test of the sample shall be admissible in a criminal prosecution for a violation punishable under subdivision (3)(b) or (c) of section 28-306 or a violation of section 28-305, 60-6,196, or 60-6,198 to show the alcoholic content of or the presence of drugs or both in the blood at the time of the accident regardless of whether (a) a peace officer requested the driver to submit to a test as provided in section 60-6,197 or (b) the driver had refused a chemical test.

(2) Any physician, registered nurse, qualified technician, or hospital in this state performing a chemical test to determine the alcoholic content of or the presence of drugs in such blood for the purpose of medical treatment of the driver of a vehicle involved in a motor vehicle accident shall disclose the results of the test (a) to a prosecuting attorney who requests the results for use in a criminal prosecution under subdivision (3)(b) or (c) of section 28-306 or section 28-305, 60-6,196, or 60-6,198 and (b) to any prosecuting attorney in another state who requests the results for use in a criminal prosecution for driving while intoxicated, driving under the influence, or motor vehicle homicide under the laws of the other state if the other state requires a similar disclosure by any hospital or person in such state to any prosecuting attorney in Nebraska who requests the results for use in such a criminal prosecution under the laws of Nebraska.

**Source:** Laws 1992, LB 872, § 3; R.S.Supp.,1992, § 39-669.20; Laws 1993, LB 370, § 305; Laws 2004, LB 208, § 20; Laws 2006, LB 925, § 15.

Admission of evidence of blood test results in a criminal prosecution for manslaughter under section 28-305 is not au-

thorized under this section. *State v. Brouillette*, 265 Neb. 214, 655 N.W.2d 876 (2003).

**60-6,211 Lifetime revocation of motor vehicle operator's license; reduction; procedure.**

Any person who prior to April 19, 1986, has had his or her motor vehicle operator's license revoked for life pursuant to section 60-6,196 or 60-6,197 may submit an application to the court for a reduction of such lifetime revocation. The court in its discretion may reduce such revocation to a period of fifteen years.

**Source:** Laws 1986, LB 153, § 5; R.S.1943, (1988), § 39-669.38; Laws 1993, LB 370, § 306.

The commutation of a motor vehicle operator's license suspension by the judiciary is an improper use of a power reserved for the executive branch, and since the thrust of this section is toward that end, it is unconstitutional. *State v. Diaz*, 266 Neb. 966, 670 N.W.2d 794 (2003).

Where a criminal statute is amended to mitigate punishment, the sentence is that provided by a statute amended before final

judgment absent a specific contrary legislative mandate. *State v. Thompson*, 224 Neb. 922, 402 N.W.2d 271 (1987).

In a case pending appeal when section 39-669.07 (transferred to section 60-6,196) was amended, a sentence of lifetime suspension of a driver's license for driving while under the influence should be vacated and in lieu thereof a sentence of suspension for 15 years imposed. *State v. Painter*, 224 Neb. 905, 402 N.W.2d 677 (1987).

#### **60-6,211.01 Person under twenty-one years of age; prohibited acts.**

It shall be unlawful for any person under twenty-one years of age to operate or be in the actual physical control of any motor vehicle:

(1) When such person has a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood but less than the concentration prescribed under subdivision (1)(b) of section 60-6,196; or

(2) When such person has a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath but less than the concentration prescribed under subdivision (1)(c) of section 60-6,196.

**Source:** Laws 1993, LB 564, § 2; Laws 1998, LB 309, § 19.

#### **60-6,211.02 Implied consent to submit to chemical test; when test administered; refusal; penalty.**

(1) Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the concentration of alcohol in such blood or breath.

(2) Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person under twenty-one years of age to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the concentration of alcohol in such blood or breath when the officer has probable cause to believe that such person was driving or was in the actual physical control of a motor vehicle in this state in violation of section 60-6,211.01. Such peace officer may require such person to submit to a preliminary breath test. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of section 60-6,211.01 shall be placed under arrest.

(3) Any person arrested as provided in this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood or breath for a determination of the concentration of alcohol. If the chemical test discloses the presence of a concentration of alcohol in violation of section 60-6,211.01, the person shall be found guilty of a traffic infraction as defined in section 60-672 and upon conviction shall have his or her operator's

license impounded by the court for thirty days for each violation of section 60-6,211.01. Any person who refuses to submit to such test or tests required pursuant to this section shall not have the tests taken but shall be found guilty of a traffic infraction as defined in section 60-672 and upon conviction shall have his or her operator's license impounded by the court for ninety days for refusal to submit to such tests required pursuant to this section.

**Source:** Laws 1993, LB 564, § 3; Laws 1998, LB 309, § 20.

**60-6,211.03 Impounded operator's license; operation relating to employment authorized.**

Any person whose operator's license is impounded pursuant to section 60-6,211.02 may be allowed by the court to operate a motor vehicle in order to drive to and from his or her place of employment.

**Source:** Laws 1993, LB 564, § 4; Laws 1998, LB 309, § 21.

**60-6,211.04 Applicability of other laws.**

Sections 60-6,211.01 to 60-6,211.03 shall not operate to prevent any person, regardless of age, from being prosecuted or having any action taken for a violation of section 60-6,196 or 60-6,197 or having his or her operator's license revoked pursuant to sections 60-498.01 to 60-498.04 for a violation of section 60-6,196 or 60-6,197 or from being prosecuted or having any action taken under any other provision of law. If such person is believed to be under the influence of alcoholic liquor pursuant to section 60-6,196 or 60-6,197, sections 60-6,211.01 to 60-6,211.03 shall not operate to prevent prosecution of such person for a violation of section 60-6,196 or 60-6,197 even if sections 60-6,211.01 to 60-6,211.03 apply.

**Source:** Laws 1993, LB 564, § 5; Laws 2003, LB 209, § 14; Laws 2004, LB 208, § 21.

**60-6,211.05 Ignition interlock device; continuous alcohol monitoring device and abstention from alcohol use; orders authorized; prohibited acts; violation; penalty; costs; tampering with device; hearing.**

(1)(a) If an order is granted under section 60-6,196 or 60-6,197, as such sections existed prior to July 16, 2004, or section 60-6,196 or 60-6,197 and sections 60-6,197.02 and 60-6,197.03, as such sections existed on or after July 16, 2004, the court may order that the defendant install an ignition interlock device of a type approved by the Director of Motor Vehicles on each motor vehicle operated by the defendant during the period of probation. Upon sufficient evidence of installation, the defendant may apply to the director for an ignition interlock permit pursuant to section 60-4,118.06. The device shall, without tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than three-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or three-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(b) If the court orders an ignition interlock permit and installation of an ignition interlock device as part of the judgment of conviction pursuant to section 60-6,197.03, the device shall be of a type approved by the director and shall be installed on each motor vehicle operated by the defendant. The device shall, without tampering or the intervention of another person, prevent the

defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than three-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or three-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(2) If the court orders installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to subsection (1) of this section, the court may also order the use of a continuous alcohol monitoring device and abstention from alcohol use at all times. The device shall, without tampering or the intervention of another person, test and record the alcohol consumption level of the defendant on a periodic basis and transmit such information to probation authorities.

(3) Any order issued by the court pursuant to this section shall not take effect until the defendant is eligible to operate a motor vehicle pursuant to subsection (3) of section 60-498.02.

(4)(a) If the court orders an ignition interlock device or the Board of Pardons orders an ignition interlock device under section 83-1,127.02, the court or the Board of Pardons shall order the defendant to apply for an ignition interlock permit as provided in section 60-4,118.06 which indicates that the defendant is only allowed to operate a motor vehicle equipped with an ignition interlock device.

(b) Such court order shall remain in effect for a period of time as determined by the court not to exceed the maximum term of revocation which the court could have imposed according to the nature of the violation and shall allow operation of an ignition-interlock-equipped motor vehicle only to and from the defendant's residence, the defendant's place of employment, the defendant's school, an alcohol treatment program, or an ignition interlock service facility.

(c) Such Board of Pardons order shall remain in effect for a period of time not to exceed any period of revocation the applicant is subject to at the time the application for a reprieve is made.

(5) A person who tampers with or circumvents an ignition interlock device installed under a court order while the order is in effect, who operates a motor vehicle which is not equipped with an ignition interlock device in violation of a court order made pursuant to this section, or who otherwise operates a motor vehicle equipped with an ignition interlock device in violation of the requirements of the court order under which the device was installed shall be guilty of a Class II misdemeanor.

(6) Any person restricted to operating a motor vehicle equipped with an ignition interlock device, pursuant to a Board of Pardons order, who operates upon the highways of this state a motor vehicle without such device or if the device has been disabled, bypassed, or altered in any way, shall be punished as provided in subsection (3) of section 83-1,127.02.

(7) If a person ordered to use a continuous alcohol monitoring device and abstain from alcohol use pursuant to a court order as provided in subsection (2) of this section violates the provisions of such court order by removing, tampering with, or otherwise bypassing the continuous alcohol monitoring device or by consuming alcohol while required to use such device, he or she shall have his or her ignition interlock permit revoked and be unable to apply for reinstatement for the duration of the revocation period imposed by the court.

(8) The director shall adopt and promulgate rules and regulations regarding the approval of ignition interlock devices, the means of installing ignition interlock devices, and the means of administering the ignition interlock permit program.

(9) The costs incurred in order to comply with the ignition interlock requirements of this section shall be paid by the person complying with an order for an ignition interlock permit and installation of an ignition interlock device unless the court or the Board of Pardons has determined the person to be incapable of paying for the cost of installation, removal, or maintenance of the ignition interlock device in accordance with this subsection.

(10)(a) An ignition interlock service facility shall notify the appropriate district probation office, if the order is made pursuant to subdivision (1)(a) of this section, or notify the appropriate court if the order is made pursuant to subdivision (1)(b) of this section, of any evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, when the facility becomes aware of such evidence.

(b) If a district probation office receives evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, from an ignition interlock service facility, the district probation office shall notify the appropriate court of such violation. The court shall immediately schedule an evidentiary hearing to be held within fourteen days after receiving such evidence, either from the district probation office or an ignition interlock service facility, and the court shall cause notice of the hearing to be given to the person operating a motor vehicle pursuant to an order under subsection (1) of this section. If the person who is the subject of such evidence does not appear at the hearing and show cause why the order made pursuant to subsection (1) of this section should remain in effect, the court shall rescind the original order. Nothing in this subsection shall apply to an order made by the Board of Pardons pursuant to section 83-1,127.02.

(11) Notwithstanding any other provision of law, the costs associated with the installation, maintenance, and removal of a court-ordered ignition interlock device by the Office of Probation Administration shall not be construed so as to create an order of probation when an order for the installation of an ignition interlock device and ignition interlock permit was made pursuant to subdivision (1)(b) of this section as part of a conviction.

**Source:** Laws 1993, LB 564, § 6; Laws 1998, LB 309, § 24; Laws 2001, LB 38, § 55; Laws 2003, LB 209, § 15; Laws 2004, LB 208, § 22; Laws 2006, LB 925, § 16; Laws 2008, LB736, § 10; Laws 2009, LB497, § 10; Laws 2010, LB924, § 5.

**60-6,211.06 Implied consent to submit to chemical test violation; court and department records; expungement; when authorized.**

(1) An abstract of the court record of every person whose license has been impounded pursuant to section 60-6,211.02 shall be transmitted to the Department of Motor Vehicles. This violation shall become part of the person's record maintained by the department for a period of not longer than ninety days. After ninety days, the department shall expunge the violation from the person's record.

(2) Any person whose license has been impounded pursuant to section 60-6,211.02 and who refused to submit to a chemical test or tests required

pursuant to such section shall have the violation become part of the person's record maintained by the department for a period of not longer than one hundred twenty days. After one hundred twenty days, the department shall expunge the violation from the person's record.

**Source:** Laws 1998, LB 309, § 22.

**60-6,211.07 Implied consent to submit to chemical test violation; impounded license; return; prohibited act; effect.**

(1) At the end of the impoundment period under section 60-6,211.02, the operator's license shall be returned by the court to the licensee.

(2) Any person who unlawfully operates a motor vehicle during the period of impoundment shall be subject to section 60-4,108.

**Source:** Laws 1998, LB 309, § 23; Laws 2001, LB 38, § 56.

**60-6,211.08 Open alcoholic beverage container; consumption of alcoholic beverages; prohibited acts.**

(1) For purposes of this section:

(a) Alcoholic beverage means (i) beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, (ii) wine of not less than one-half of one percent of alcohol by volume, or (iii) distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Alcoholic beverage does not include trace amounts not readily consumable as a beverage;

(b) Highway means a road or street including the entire area within the right-of-way;

(c) Open alcoholic beverage container, except as provided in subsection (3) of section 53-123.04 and subdivision (1)(c) of section 53-123.11, means any bottle, can, or other receptacle:

(i) That contains any amount of alcoholic beverage; and

(ii)(A) That is open or has a broken seal or (B) the contents of which are partially removed; and

(d) Passenger area means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. Passenger area does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(2) It is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this state.

(3) Except as provided in section 53-186, it is unlawful for any person to consume an alcoholic beverage (a) in a public parking area or on any highway in this state or (b) inside a motor vehicle while in a public parking area or on any highway in this state.

**Source:** Laws 1999, LB 585, § 4; Laws 2006, LB 562, § 6.

**60-6,211.09 Continuous alcohol monitoring devices; Office of Probation Administration; duties.**

The Office of Probation Administration shall adopt and promulgate rules and regulations to approve the use of continuous alcohol monitoring devices by individuals sentenced to probation for violating section 60-6,196 or 60-6,197.

**Source:** Laws 2006, LB 925, § 17.

**60-6,211.10 Repealed. Laws 2009, LB497, § 12.**

## (p) OTHER SERIOUS TRAFFIC OFFENSES

**60-6,212 Careless driving, defined.**

Any person who drives any motor vehicle in this state carelessly or without due caution so as to endanger a person or property shall be guilty of careless driving.

**Source:** Laws 1979, LB 575, § 1; R.S.1943, (1988), § 39-669; Laws 1993, LB 370, § 308.

**Cross References**

**Applicability of statute to private property,** see section 60-6,108.

**Operator's license,** assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

Careless driving is a lesser-included offense of reckless driving. *State v. Howard*, 253 Neb. 523, 571 N.W.2d 308 (1997).

The failure of this section to limit the proscription as to careless driving to the public roads is not an impermissible, unconstitutional overbreadth. The statutory language, carelessly or without due caution, is not unconstitutionally vague. *State v. Merithew*, 220 Neb. 530, 371 N.W.2d 110 (1985).

This section, which provides that any person who operates a motor vehicle in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of careless driving, is vague and indefinite, and is thus unconstitutional. *State v. Huffman*, 202 Neb. 434, 275 N.W.2d 838 (1979). This case applies to section 39-669 as it existed prior to being repealed by Laws 1979, LB 575, section 3.

**60-6,213 Reckless driving, defined.**

Any person who drives any motor vehicle in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property shall be guilty of reckless driving.

**Source:** Laws 1935, c. 134, § 3, p. 485; C.S.Supp.,1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(1), p. 410; R.R.S.1943, § 39-7,107; R.S.1943, (1988), § 39-669.01; Laws 1993, LB 370, § 309.

**Cross References**

**Applicability of statute to private property,** see section 60-6,108.

**Motor vehicle homicide,** penalty, see section 28-306.

**Operator's license,** assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

Speed alone does not support a conviction for reckless driving, but it does have a bearing on whether one was driving dangerously under the surroundings and attendant circumstances of the particular case. *State v. Howard*, 253 Neb. 523, 571 N.W.2d 308 (1997).

Prosecution for traffic infraction is a criminal action. *State v. Knoles*, 199 Neb. 211, 256 N.W.2d 873 (1977).

Improper turn by defendant while overtaking complainant's auto, held to be reckless driving. *State v. Kufeldt*, 197 Neb. 377, 248 N.W.2d 781 (1977).

History of statute reviewed in considering municipal ordinance. *State v. Green*, 182 Neb. 615, 156 N.W.2d 724 (1968).

Upon conviction, suspension of driver's license is authorized. *Kroger v. State*, 158 Neb. 73, 62 N.W.2d 312 (1954).

Under certain circumstances, careless driving under section 60-6,212 should be instructed as a lesser-included offense of reckless driving. *State v. Howard*, 5 Neb. App. 596, 560 N.W.2d 516 (1997).

**60-6,214 Willful reckless driving, defined.**

Any person who drives any motor vehicle in such a manner as to indicate a willful disregard for the safety of persons or property shall be guilty of willful reckless driving.

**Source:** Laws 1935, c. 134, § 3, p. 485; C.S.Supp.,1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(3), p. 410; R.R.S.1943, § 39-7,107.02; R.S.1943, (1988), § 39-669.03; Laws 1993, LB 370, § 310.

#### Cross References

**Applicability of statute to private property**, see section 60-6,108.

**Motor vehicle homicide**, penalty, see section 28-306.

**Operator's license**, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

Willful reckless driving is characterized by a deliberate disregard for the safety of others or their property. For there to be willful reckless driving it is not necessary that there be property damage or injury inflicted. Here, intentional or deliberate disregard for the safety or property of others was lacking, since there was no evidence of the presence of any persons or property subjected to danger in the area, and the defendant was only driving 36 m.p.h. in a 25-m.p.h. zone. *State v. Douglas*, 239 Neb. 891, 479 N.W.2d 457 (1992).

History of statute reviewed in considering municipal ordinance. *State v. Green*, 182 Neb. 615, 156 N.W.2d 724 (1968).

The conscious and intentional driving which the driver knows, or should know, creates an unreasonable risk of harm is sufficient to sustain a conviction. *State v. DiLorenzo*, 181 Neb. 59, 146 N.W.2d 791 (1966).

### 60-6,215 Reckless driving; first offense; penalty.

Every person convicted of reckless driving shall, upon a first conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1935, c. 134, § 3, p. 485; C.S.Supp.,1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(2), p. 410; Laws 1955, c. 154, § 1, p. 455; R.R.S.1943, § 39-7,107.01; R.S.1943, (1988), § 39-669.02; Laws 1993, LB 370, § 311; Laws 1993, LB 575, § 11.

#### Cross References

**Applicability of statute to private property**, see section 60-6,108.

### 60-6,216 Willful reckless driving; first offense; penalty.

Every person convicted of willful reckless driving shall, upon a first conviction, be guilty of a Class III misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of not less than thirty days nor more than one year from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

**Source:** Laws 1935, c. 134, § 3, p. 485; C.S.Supp.,1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(4), p. 410; Laws 1953, c. 214, § 3, p. 757; R.R.S.1943, § 39-7,107.03; R.S.1943, (1988), § 39-669.04; Laws 1993, LB 370, § 312; Laws 1993, LB 575, § 12; Laws 2001, LB 38, § 57.

#### Cross References

**Applicability of statute to private property**, see section 60-6,108.

Evidence that a motorist ran at least one stop sign, exceeded the speed limit, and crossed over the road median during a chase by a police officer, was sufficient to sustain his conviction for willful reckless driving even though no property damage was

done to other cars and no injuries were sustained. *Goodloe v. Parratt*, 453 F.Supp. 1380 (D. Neb. 1978).

The imposition of concurrent terms of ten years imposed upon a defendant who was convicted of willful reckless driving and operating a motor vehicle to avoid arrest, and who had been

adjudged to be an habitual criminal, does not constitute cruel and unusual punishment. *Goodloe v. Parratt*, 453 F.Supp. 1380 (D. Neb. 1978).

**60-6,217 Reckless driving or willful reckless driving; second offense; penalty.**

Upon a second conviction of any person for either reckless driving or willful reckless driving, the person shall be guilty of a Class II misdemeanor, and the court shall order the person so convicted, as part of the judgment of conviction, not to drive a motor vehicle for any purpose for a period of not less than sixty days nor more than two years from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the motor vehicle which such person was operating in such reckless or willful reckless manner is registered in the name of such person, the motor vehicle shall be impounded in a reputable garage by the court for a period of not less than two months nor more than one year at the expense and risk of the owner thereof, except that any motor vehicle so impounded shall be released to the holder of a bona fide lien thereon, executed prior to such impounding, when possession of such motor vehicle is requested in writing by such lienholder for the purpose of foreclosing and satisfying the lien.

**Source:** Laws 1935, c. 134, § 3, p. 485; C.S.Supp.,1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(5), p. 410; Laws 1953, c. 214, § 4, p. 758; R.R.S.1943, § 39-7,107.04; R.S.1943, (1988), § 39-669.05; Laws 1993, LB 370, § 313; Laws 1993, LB 575, § 13; Laws 2001, LB 38, § 58.

**Cross References**

Applicability of statute to private property, see section 60-6,108.

**60-6,218 Reckless driving or willful reckless driving; third and subsequent offenses; penalty.**

Upon a third or subsequent conviction of any person for either reckless driving or willful reckless driving, the person shall be guilty of a Class I misdemeanor. The court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of one year from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

**Source:** Laws 1935, c. 134, § 3, p. 485; C.S.Supp.,1941, § 39-11,100; Laws 1943, c. 99, § 1, p. 339; R.S.1943, § 39-7,107; Laws 1947, c. 148, § 3(6), p. 411; Laws 1953, c. 214, § 5, p. 758; Laws 1957, c. 366, § 21, p. 1258; R.R.S.1943, § 39-7,107.05; Laws 1991, LB 420, § 1; R.S.Supp.,1992, § 39-669.06; Laws 1993, LB 370, § 314; Laws 1993, LB 31, § 16; Laws 1993, LB 575, § 14; Laws 2001, LB 38, § 59.

**Cross References**

Applicability of statute to private property, see section 60-6,108.

Defendant found guilty of third offense willful reckless driving, avoiding arrest, and habitual criminal charge received two concurrent ten-year sentences. *State v. Goodloe*, 197 Neb. 632, 250 N.W.2d 606 (1977).

## (q) LIGHTING AND WARNING EQUIPMENT

**60-6,219 Motor vehicle; motorcycle; lights; requirements; prohibited acts.**

(1) Every motor vehicle upon a highway within this state during the period from sunset to sunrise and at any other time when there is not sufficient light to render clearly discernible persons or vehicles upon the highway at a distance of five hundred feet ahead shall be equipped with lighted headlights and taillights as respectively required in this section for different classes of vehicles.

(2) Every motor vehicle, other than a motorcycle, a road roller, or road machinery, shall be equipped with two or more headlights, at the front of and on opposite sides of the motor vehicle. The headlights shall comply with the requirements and limitations set forth in sections 60-6,221 and 60-6,223.

(3) Every motor vehicle and trailer, other than a motorcycle, a road roller, or road machinery, shall be equipped with one or more taillights, at the rear of the motor vehicle or trailer, exhibiting a red light visible from a distance of at least five hundred feet to the rear of such vehicle.

(4) Every motorcycle shall be equipped with at least one and not more than two headlights and with a taillight exhibiting a red light visible from a distance of at least five hundred feet to the rear of such motorcycle. The headlights shall comply with the requirements and limitations set forth in sections 60-6,221 and 60-6,223.

(5) The requirement in this section as to the distance from which lights must render obstructions visible or within which lights must be visible shall apply during the time stated in this section upon a straight, level, unlighted highway under normal atmospheric conditions.

(6) It shall be unlawful for any owner or operator of any motor vehicle to operate such vehicle upon a highway unless:

(a) The condition of the lights and electric circuit is such as to give substantially normal light output;

(b) Each taillight shows red directly to the rear, the lens covering each taillight is unbroken, each taillight is securely fastened, and the electric circuit is free from grounds or shorts;

(c) There is no more than one spotlight except for law enforcement personnel, government employees, and public utility employees;

(d) There are no more than two auxiliary driving lights and every such auxiliary light meets the requirements for auxiliary driving lights provided in section 60-6,225;

(e) If equipped with any lighting device, other than headlights, spotlights, or auxiliary driving lights, which projects a beam of light of an intensity greater than twenty-five candlepower, such lighting device meets the requirements of subsection (4) of section 60-6,225; and

(f) If equipped with side cowl or fender lights, there are no more than two such lights and each such side cowl or fender light emits an amber or white light.

**Source:** Laws 1931, c. 110, § 43, p. 319; Laws 1935, c. 134, § 8, p. 488; Laws 1939, c. 78, § 4, p. 319; C.S.Supp.,1941, § 39-1174; R.S. 1943, § 39-778; Laws 1955, c. 152, § 1, p. 450; Laws 1957, c. 366, § 6, p. 1249; R.R.S.1943, § 39-778; Laws 1975, LB 11, § 2;

Laws 1981, LB 544, § 2; Laws 1987, LB 224, § 6; Laws 1989, LB 283, § 2; R.S.Supp.,1992, § 39-6,138; Laws 1993, LB 370, § 315; Laws 1993, LB 575, § 32; Laws 1995, LB 59, § 2.

**Cross References**

**Motor-driven cycles**, light requirements, see section 60-6,187.

1. Violations
2. Not violations
3. Miscellaneous

**1. Violations**

Statute applied as to driving in fog in daytime. *Becker v. Hasebroock*, 157 Neb. 353, 59 N.W.2d 560 (1953).

If truck had no lights burning, it violated this section. *Davis v. Spindler*, 156 Neb. 276, 56 N.W.2d 107 (1952).

It is unlawful to operate automobile on highway at night without appropriate lights. *Segebart v. Gregory*, 156 Neb. 261, 55 N.W.2d 678 (1952).

Where truck was involuntarily stopped on highway and driver left same without lights more than one-half hour after sunset, there was evidence of negligence. *Plumb v. Burnham*, 151 Neb. 129, 36 N.W.2d 612 (1949).

Leaving car standing on highway at night without lights constitutes violation of this section. *Remmenga v. Selk*, 150 Neb. 401, 34 N.W.2d 757 (1948).

**2. Not violations**

This section did not apply where automobile was disabled because of reasons beyond control of operator. *Haight v. Nelson*, 157 Neb. 341, 59 N.W.2d 576 (1953).

Road rollers and road machinery are specifically exempted from displaying red lights. *Miller v. Abel Construction Co.*, 140 Neb. 482, 300 N.W. 405 (1941).

Act does not require display of red tail light on parked automobile. *McGaffey v. Blosser*, 129 Neb. 371, 261 N.W. 565 (1935).

**3. Miscellaneous**

Evidence of violation of this section is evidence of negligence or contributory negligence. *Horst v. Johnson*, 237 Neb. 155, 465 N.W.2d 461 (1991).

Trial court did not err in failing to give instruction upon effect of this section. *Clark v. Smith*, 181 Neb. 461, 149 N.W.2d 425 (1967).

Violation of statute is evidence of negligence. *Guerin v. Forburger*, 161 Neb. 824, 74 N.W.2d 870 (1956).

Instruction on particular requirements of this section was not required. *Segebart v. Gregory*, 160 Neb. 64, 69 N.W.2d 315 (1955).

Death arising from violation of this section may constitute manslaughter. *Vaca v. State*, 150 Neb. 516, 34 N.W.2d 873 (1948).

Failure to display clearance lights and a tail light on rear of truck was not a contributory cause of accident when truck was seen by driver of other car in ample time to avoid collision. *Hief v. Roberts Dairy Co.*, 138 Neb. 885, 296 N.W. 331 (1941).

**60-6,220 Lights; vehicle being driven; vehicle parked on freeway.**

Whenever a motor vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the times mentioned in section 60-6,219, such vehicle shall be equipped with one or more lights which shall exhibit a light in such color as designated by the Department of Motor Vehicles on the roadway side visible from a distance of five hundred feet to the front of such vehicle and a red light visible from a distance of five hundred feet to the rear, except that a local authority may provide by ordinance that no lights need be displayed upon any such vehicle when stopped or parked in accordance with local parking regulations upon a highway where there is sufficient light to reveal any person or obstruction within a distance of five hundred feet upon such highway.

Any lighted headlights upon a parked vehicle shall be depressed or dimmed and turnsignals shall not be flashed on one side only. On a freeway, the operator of any parked vehicle shall also turn on its interior lights if operable and vehicles equipped with an emergency switch for flashing all directional turnsignals simultaneously shall exhibit such turnsignals.

**Source:** Laws 1935, c. 134, § 9, p. 489; C.S.Supp.,1941, § 39-11,105; R.S.1943, § 39-7,112; Laws 1961, c. 184, § 32, p. 564; Laws 1961, c. 192, § 2, p. 590; R.R.S.1943, § 39-7,112; R.S.1943, (1988), § 39-670.01; Laws 1993, LB 370, § 316.

Evidence of violation of this section is evidence of negligence or contributory negligence. *Horst v. Johnson*, 237 Neb. 155, 465 N.W.2d 461 (1991).

Instruction on requirements of this section covered parking and lights. *Segebart v. Gregory*, 160 Neb. 64, 69 N.W.2d 315 (1955).

Prohibition against parking without lights did not apply to motor vehicle temporarily disabled. *Haight v. Nelson*, 157 Neb. 341, 59 N.W.2d 576 (1953).

It is unlawful to park automobile on highway at night without appropriate lights. *Segebart v. Gregory*, 156 Neb. 261, 55 N.W.2d 678 (1952).

Violation of this section is not negligence per se but evidence of negligence. *Anderson v. Robbins Incubator Co.*, 143 Neb. 40, 8 N.W.2d 446 (1943).

**60-6,221 Headlights; construction; adjustment; requirements.**

(1) The headlights of motor vehicles shall be so constructed, arranged, and adjusted that, except as provided in subsection (2) of this section, they will at all times mentioned in section 60-6,219 produce a driving light sufficient to render clearly discernible a person two hundred feet ahead, but the headlights shall not project a glaring or dazzling light to persons in front of such headlights.

(2) Headlights shall be deemed to comply with the provisions prohibiting glaring and dazzling lights if none of the main bright portion of the headlight beam rises above a horizontal plane passing through the light centers parallel to the level road upon which the loaded vehicle stands and in no case higher than forty-two inches, seventy-five feet ahead of the vehicle.

**Source:** Laws 1931, c. 110, § 45, p. 320; Laws 1939, c. 78, § 5, p. 321; C.S.Supp.,1941, § 39-1176; R.S.1943, § 39-780; R.S.1943, (1988), § 39-6,140; Laws 1993, LB 370, § 317.

This section requires a driving light sufficient to render a pedestrian two hundred feet away clearly discernible. *Beck v. Trustin*, 177 Neb. 788, 131 N.W.2d 425 (1964).

Motorist has duty to have headlights throwing a beam at least two hundred feet ahead. *Bailey v. Spindler*, 161 Neb. 563, 74 N.W.2d 344 (1956).

Instruction on particular requirements of this section was not required. *Segebart v. Gregory*, 160 Neb. 64, 69 N.W.2d 315 (1955).

If truck had no lights burning, it violated this section. *Davis v. Spindler*, 156 Neb. 276, 56 N.W.2d 107 (1952).

Where headlights substantially fail to conform to requirements of this section, the presence of the vehicle on highway is

unlawful. *Nichols v. Havlat*, 140 Neb. 723, 1 N.W.2d 829 (1942), reversed on rehearing, 142 Neb. 534, 7 N.W.2d 84 (1942).

Where driver's lights are on high beam as he approaches an unlighted truck with bulk of its body above the high beam, the failure of driver to see the truck does not necessarily constitute gross negligence. *Holberg v. McDonald*, 137 Neb. 405, 289 N.W. 542 (1940).

Failure to have head lamps complying with this section is evidence of negligence, but does not necessarily preclude recovery by guest riding in car having defective lights. *Gleason v. Baack*, 137 Neb. 272, 289 N.W. 349 (1939).

A red rear light or tail light formed no part of equipment prescribed by statute. *McGaffey v. Blosser*, 129 Neb. 371, 261 N.W. 565 (1935).

**60-6,222 Violations; penalty.**

Any person who violates any provision of section 60-6,219 or 60-6,221 shall be guilty of a Class III misdemeanor. In the event of such conviction, as a part of the judgment of conviction, the trial judge shall direct the person to produce in court or submit to the prosecuting attorney, before such person again operates the motor vehicle upon a highway, satisfactory proof showing that the light equipment involved in such person's conviction has been made to conform with the requirements of such sections. The failure, refusal, or neglect of such convicted person to abide by such direction in the judgment of conviction shall be deemed an additional offense for which such person shall be prosecuted.

**Source:** Laws 1939, c. 78, § 9, p. 322; C.S.Supp.,1941, § 39-11,120; R.S.1943, § 39-7,126; Laws 1977, LB 41, § 13; R.S.1943, (1988), § 39-669.21; Laws 1993, LB 370, § 318.

**60-6,223 Acetylene headlights; number; construction; requirements.**

Motor vehicles may be equipped with two acetylene headlights of approximately equal candlepower when equipped with clear, plain glass fronts, bright

six-inch spherical mirrors, and standard acetylene five-eighths-foot burners, no more and no less.

**Source:** Laws 1931, c. 110, § 46, p. 320; C.S.Supp.,1941, § 39-1177; R.S.1943, § 39-781; R.S.1943, (1988), § 39-6,142; Laws 1993, LB 370, § 319.

**60-6,224 Headlights; glare; duty of operator; penalty.**

Notwithstanding any other provision of the Nebraska Rules of the Road:

(1) Whenever any person operating a motor vehicle on any highway in this state meets another person operating a motor vehicle, proceeding in the opposite direction and equipped with headlights constructed and adjusted to project glaring or dazzling light to persons in front of such headlights, upon signal of either person, the other shall dim the headlights of his or her motor vehicle or tilt the beams of glaring or dazzling light projecting therefrom downward so as not to blind or confuse the vision of the operator in front of such headlights; and

(2) Whenever any person operating a motor vehicle on any highway in this state follows another vehicle within two hundred feet to the rear, he or she shall dim the headlights of his or her motor vehicle or tilt the beams of glaring or dazzling light projecting therefrom downward.

Any person who violates any provision of this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1931, c. 106, § 1, p. 279; C.S.Supp.,1941, § 39-1121; R.S.1943, § 39-733; Laws 1963, c. 231, § 1, p. 720; R.R.S.1943, § 39-733; Laws 1974, LB 593, § 6; Laws 1977, LB 41, § 10; R.S.1943, (1988), § 39-628.01; Laws 1993, LB 370, § 320.

**60-6,225 Spotlights; auxiliary driving lights; signal lights; other devices; intensity and direction.**

(1) Any motor vehicle may be equipped with spotlights as specified in section 60-6,219, and every lighted spotlight shall be so aimed and used upon approaching another vehicle that no part of the beam will be directed to the left of the center of the highway nor more than one hundred feet ahead of the vehicle.

(2) Any motor vehicle may be equipped with not to exceed two auxiliary driving lights mounted on the front at a height not less than twelve inches nor more than forty-two inches above the level surface on which the vehicle stands, and every such auxiliary driving light shall meet the requirements and limitations set forth in section 60-6,221. The restrictions on mounting height provided in this subsection shall not apply to any motor vehicle equipped with a blade, plow, or any other device designed for the movement of snow. Auxiliary driving lights shall be turned off at the same time the motor vehicle's headlights are required to be dimmed when approaching another vehicle from either the front or the rear.

(3) Whenever a motor vehicle is equipped with a signal light, the signal light shall be so constructed and located on the vehicle as to give a signal which shall be plainly visible in normal sunlight from a distance of one hundred feet to the rear of the vehicle but shall not project a glaring or dazzling light.

(4) Any device, other than headlights, spotlights, or auxiliary driving lights, which projects a beam of light of an intensity greater than twenty-five candle-

power shall be so directed that no part of the beam will strike the level of the surface on which the vehicle stands at a distance of more than fifty feet from the vehicle.

**Source:** Laws 1931, c. 110, § 44, p. 319; C.S.Supp.,1941, § 39-1175; R.S.1943, § 39-779; Laws 1957, c. 366, § 7, p. 1251; Laws 1961, c. 192, § 1, p. 589; R.R.S.1943, § 39-779; Laws 1978, LB 816, § 1; Laws 1981, LB 544, § 3; Laws 1987, LB 224, § 7; R.S.1943, (1988), § 39-6,139; Laws 1993, LB 370, § 321; Laws 1995, LB 59, § 3.

**60-6,226 Brake and turnsignal light requirements; exceptions; signaling requirements.**

(1) Any motor vehicle having four or more wheels which is manufactured or assembled, whether from a kit or otherwise, after January 1, 1954, designed or used for the purpose of carrying passengers or freight, or any trailer, in use on a highway, shall be equipped with brake and turnsignal lights in good working order.

(2) Motorcycles, motor-driven cycles, motor scooters, bicycles, electric personal assistive mobility devices, vehicles used solely for agricultural purposes, vehicles not designed and intended primarily for use on a highway, and, during daylight hours, fertilizer trailers as defined in section 60-326 and implements of husbandry designed primarily or exclusively for use in agricultural operations shall not be required to have or maintain in working order signal lights required by this section, but they may be so equipped. The operator thereof shall comply with the requirements for utilizing hand and arm signals or for utilizing such signal lights if the vehicle is so equipped.

**Source:** Laws 1993, LB 370, § 322; Laws 1995, LB 59, § 4; Laws 2002, LB 1105, § 458; Laws 2003, LB 238, § 6; Laws 2005, LB 274, § 243.

**Cross References**

Hand and arm signals, see sections 60-6,162 and 60-6,163.

**60-6,227 Repealed. Laws 2008, LB 756, § 34.**

**60-6,228 Vehicle proceeding in forward motion; backup lights on; prohibited; violation; penalty.**

No vehicle shall be operated while proceeding in a forward motion with the backup lights on when the vehicle is being operated on the highways. Any person who violates this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1969, c. 327, § 8, p. 1172; C.S.Supp.,1972, § 39-788.07; R.S.1943, (1988), § 39-6,154; Laws 1993, LB 370, § 324.

**60-6,229 Lights, red or green, in front of vehicle prohibited; exceptions.**

Except as provided in sections 60-6,230 to 60-6,233, it shall be unlawful for any person to drive or move any vehicle upon a highway with any red or green light thereon visible from directly in front thereof. This section shall not apply to police or fire department or fire patrol vehicles or school buses.

**Source:** Laws 1931, c. 110, § 49, p. 323; C.S.Supp.,1941, § 39-1180; R.S.1943, § 39-788; Laws 1969, c. 327, § 1, p. 1170; C.S.Supp.,1972, § 39-788; R.S.1943, (1988), § 39-6,147; Laws 1993, LB 370, § 325.

**60-6,230 Lights; rotating or flashing; colored lights; when permitted.**

(1) Except as provided in sections 60-6,231 to 60-6,233 and subsections (4) and (5) of this section, no person shall operate any motor vehicle or any equipment of any description on any highway in this state with any rotating or flashing light.

(2) Except for stop lights and directional signals, which may be red, yellow, or amber, no person shall display any color of light other than red on the rear of any motor vehicle or any equipment of any kind on any highway within this state.

(3) Amber rotating or flashing lights shall be displayed on vehicles of the Military Department for purpose of convoy control when on any state emergency mission.

(4) A single flashing white light may be displayed on the roof of school transportation vehicles during extremely adverse weather conditions.

(5) Blue and amber rotating or flashing lights may be displayed on vehicles used for the movement of snow when operated by the Department of Roads or any local authority.

**Source:** Laws 1969, c. 327, § 2, p. 1170; C.S.Supp.,1972, § 39-788.01; Laws 1979, LB 127, § 1; R.S.1943, (1988), § 39-6,148; Laws 1993, LB 370, § 326; Laws 1995, LB 59, § 6; Laws 2008, LB196, § 3.

The use of hazard lights while driving is proscribed by the plain language of subsection (1) of this section. *State v. Warren*, 267 Neb. 424, 675 N.W.2d 112 (2004).

**60-6,231 Flashing or rotating lights; authorized emergency vehicles; colors permitted.**

A flashing or rotating red light or red and white light shall be displayed on any authorized emergency vehicle whenever operated in this state. A blue light may also be displayed with such flashing or rotating red light or red and white light. For purposes of this section, an authorized emergency vehicle shall include funeral escort vehicles.

**Source:** Laws 1969, c. 327, § 3, p. 1171; C.S.Supp.,1972, § 39-788.02; Laws 1989, LB 416, § 1; R.S.Supp.,1992, § 39-6,149; Laws 1993, LB 370, § 327; Laws 2008, LB196, § 4.

**60-6,232 Rotating or flashing amber light; when permitted.**

A rotating or flashing amber light or lights shall be displayed on the roof of any motor vehicle being operated by any rural mail carrier outside the corporate limits of any municipality in this state on or near any highway in the process of delivering mail.

A rotating or flashing amber light or lights may be displayed on (1) any vehicle of the Military Department while on any state emergency mission, (2) any motor vehicle being operated by any public utility, vehicle service, or towing service or any publicly or privately owned construction or maintenance vehicle while performing its duties on or near any highway, (3) any motor vehicle being operated by any member of the Civil Air Patrol, (4) any pilot vehicle escorting an overdimensional load, (5) any vehicle while actually engaged in the moving of houses, buildings, or other objects of extraordinary

bulk, including unbaled livestock forage as authorized by subdivision (2)(f) of section 60-6,288, or (6) any motor vehicle owned by or operated on behalf of a railroad carrier that is stopped to load or unload passengers.

**Source:** Laws 1969, c. 327, § 4, p. 1171; Laws 1971, LB 365, § 1; R.S.Supp.,1972, § 39-788.03; Laws 1977, LB 427, § 1; R.S.1943, (1988), § 39-6,150; Laws 1993, LB 370, § 328; Laws 1995, LB 59, § 7; Laws 2000, LB 1361, § 4; Laws 2005, LB 471, § 1.

**60-6,233 Rotating or flashing red light or red and blue lights; when permitted; application; permit; expiration.**

(1)(a) A rotating or flashing red light or lights or such light or lights in combination with a blue light or lights may be displayed on any motor vehicle operated by any volunteer firefighter or peace officer anywhere in this state while actually en route to the scene of a fire or other emergency requiring his or her services as a volunteer firefighter or peace officer but only after its use has been authorized in writing by the county sheriff.

(b) Application for a permit to display such light shall be made in writing to the sheriff on forms to be prescribed and furnished by the Superintendent of Law Enforcement and Public Safety. The application shall be accompanied by a statement that the applicant is a volunteer firefighter or peace officer and is requesting issuance of the permit. The statement shall be signed by the applicant's superior.

(c) The permit shall be carried at all times in the vehicle named in the permit. Each such permit shall expire on December 31 of each year and shall be renewed in the same manner as it was originally issued.

(d) The sheriff may at any time revoke such permit upon a showing of abuse thereof or upon receipt of notice from the applicant's superior that the holder thereof is no longer an active volunteer firefighter or peace officer. Any person whose permit has been so revoked shall upon demand surrender it to the sheriff or his or her authorized agent.

(2) A rotating or flashing red light or lights or such light or lights in combination with a blue light or lights may be displayed on any motor vehicle being used by rescue squads actually en route to, at, or returning from any emergency requiring their services, or by any privately owned wrecker when engaged in emergency services at the scene of an accident, or at a disabled vehicle, located outside the city limits of a city of the metropolitan or primary class, but only after its use has been authorized in writing by the county sheriff. Applications shall be made and may be revoked in the same manner as for volunteer firefighters as provided in subsection (1) of this section.

**Source:** Laws 1969, c. 327, § 5, p. 1171; Laws 1971, LB 365, § 2; R.S.Supp.,1972, § 39-788.04; Laws 1981, LB 64, § 2; Laws 1989, LB 416, § 2; R.S.Supp.,1992, § 39-6,151; Laws 1993, LB 370, § 329.

**60-6,234 Rotating or flashing lights; violation; penalty.**

Any person who violates any provision of sections 60-6,230 to 60-6,233 shall be guilty of a Class III misdemeanor and shall also be ordered to remove from any vehicle or equipment any light found to be in violation of such sections.

**Source:** Laws 1969, c. 327, § 6, p. 1172; R.S.Supp.,1972, § 39-788.05; Laws 1977, LB 41, § 23; R.S.1943, (1988), § 39-6,152; Laws 1993, LB 370, § 330.

**60-6,235 Clearance lights; requirements; substitution; violations; penalty.**

Every vehicle, including road rollers, road machinery, combines, farm machinery, wagons, racks, and farm tractors, (1) having a width, including load, of eighty inches or more or (2) having any part thereof or having any load thereupon which extends forty inches or more to the left of the center of the chassis shall display, when driven, pulled, operated, or propelled upon any highway during the period from sunset to sunrise and at all other times when there is not sufficient light to render such vehicle clearly discernible, two clearance lights on the left side of such vehicle.

One clearance light shall be located at the front and display an amber light which is visible, under normal atmospheric conditions, from a distance of three hundred feet to the front of such vehicle. The other clearance light shall be located at the rear and display a red light which is visible, under normal atmospheric conditions, from a distance of three hundred feet to the rear of the vehicle. The light at the rear shall be so located as not to be confused with the taillight by those approaching from the rear.

Such lights shall be located on a line with the extreme outer point of such vehicle or the load on the vehicle. The installation of the lights shall be made in such a manner that no hazard will be created by their use on the highway.

Suitable reflectors of like color and equal visibility may be substituted for such clearance lights.

Any person who violates any provision of this section shall be guilty of a Class III misdemeanor. In the event of such a conviction, as part of the judgment of conviction, the trial judge shall direct the person to produce in court or submit to the prosecuting attorney, before such person again operates the vehicle upon a highway, satisfactory proof showing that the light equipment involved in the person's conviction has been made to conform with the requirements of this section. The failure, refusal, or neglect of the convicted person to abide by such direction in the judgment of conviction shall be deemed an additional offense for which the person shall be prosecuted.

**Source:** Laws 1931, c. 106, § 2, p. 280; Laws 1939, c. 78, § 3, p. 319; C.S.Supp.,1941, § 39-1122; R.S.1943, § 39-735; Laws 1945, c. 92, § 1, p. 314; Laws 1949, c. 117, § 1, p. 313; Laws 1953, c. 131, § 13, p. 409; Laws 1955, c. 152, § 2, p. 452; Laws 1957, c. 366, § 3, p. 1246; R.R.S.1943, § 39-735; Laws 1977, LB 211, § 2; Laws 1977, LB 393, § 1; Laws 1987, LB 224, § 4; R.S.1943, (1988), § 39-6,127; Laws 1993, LB 370, § 331; Laws 1993, LB 575, § 27.

Clearance lights are required at both front and rear of vehicle. *Egenberger v. National Alfalfa Dehydrating & Milling Co.*, 164 Neb. 704, 83 N.W.2d 523 (1957).

Truck was required to have clearance lights turned on and operating. *Guerin v. Forburger*, 161 Neb. 824, 74 N.W.2d 870 (1956).

Where headlights on motor vehicle are insufficient to make highway signals of a railroad crossing visible from cab of truck

before running into it, guest riding in motor vehicle without protest cannot recover from railroad company. *Fischer v. Megan*, 138 Neb. 420, 293 N.W. 287 (1940).

Failure to comply with statutory requirements is not actionable negligence as matter of law, but may be considered with other facts tending to establish negligence. *LaFleur v. Poesch*, 126 Neb. 263, 252 N.W. 902 (1934).

**60-6,236 Vehicles required to have clearance lights; flares; reflectors; when required as equipment.**

Any vehicle required by section 60-6,235 to have clearance lights, while operating on the highways during the period from sunset to sunrise, shall at all

times be equipped with at least three portable flares, or red emergency reflectors referred to in section 60-6,237, which may be plainly visible for a distance of five hundred feet.

**Source:** Laws 1935, c. 129, § 1, p. 460; C.S.Supp.,1941, § 39-11,112; R.S.1943, § 39-7,118; Laws 1949, c. 121, § 1(1), p. 318; Laws 1961, c. 193, § 1, p. 591; R.R.S.1943, § 39-7,118; R.S.1943, (1988), § 39-6,162; Laws 1993, LB 370, § 332; Laws 1993, LB 575, § 33.

Where truck was left on highway after dark without flares, there was evidence of negligence. *Plumb v. Burnham*, 151 Neb. 129, 36 N.W.2d 612 (1949).

Violation of this section may constitute manslaughter. *Vaca v. State*, 150 Neb. 516, 34 N.W.2d 873 (1948).

Passenger car, with trailer attached, does not come within class of vehicles required to be equipped with flares. *Anderson v. Robbins Incubator Co.*, 143 Neb. 40, 8 N.W.2d 446 (1943).

Charges of negligence of bus company in blocking highway should have been submitted to jury, together with question of whether under such circumstances agent was negligent in the manner of giving signals. *McClelland v. Interstate Transit Lines*, 142 Neb. 439, 6 N.W.2d 384 (1942).

Evidence of failure to set up flares, together with other acts of negligence, was sufficient to make case for jury. *Grantham v. Watson Bros. Transp. Co.*, 142 Neb. 362, 6 N.W.2d 372 (1942).

### **60-6,237 Vehicles required to have clearance lights; flares; reflectors; how and when displayed.**

The operator of any vehicle required by section 60-6,235 to have clearance lights shall, immediately upon bringing his or her vehicle to a stop upon or immediately adjacent to the traveled portion of the highway at any time during the period from sunset to sunrise, (1) place one lighted flare or one red emergency reflector at the side of such vehicle just inside the white line marking the center of paved highways and near the center of dirt or gravel highways, (2) place one lighted flare or one red emergency reflector approximately one hundred feet to the rear of such vehicle, and (3) place one lighted flare or one red emergency reflector approximately one hundred feet to the front of such vehicle. The operator shall maintain such lighted flares or red emergency reflectors in such positions during the time such vehicle remains parked, except that motor vehicles transporting flammables shall be required to use two flares or two red emergency reflectors to be placed as described in this section to the front and rear but shall not be permitted to place open flame flares adjacent to such vehicles.

**Source:** Laws 1935, c. 129, § 1, p. 460; C.S.Supp.,1941, § 39-11,112; R.S.1943, § 39-7,118; Laws 1949, c. 121, § 1(2), p. 319; Laws 1957, c. 366, § 23, p. 1259; Laws 1961, c. 189, § 4, p. 581; Laws 1961, c. 193, § 2, p. 592; Laws 1961, c. 181, § 5, p. 538; R.R.S.1943, § 39-7,118.01; Laws 1987, LB 224, § 11; R.S.1943, (1988), § 39-6,163; Laws 1993, LB 370, § 333; Laws 1993, LB 575, § 34.

The term immediately, as used in this section, means with reasonable and prompt diligence, under all of the facts and circumstances shown. *Gleason v. Baack*, 137 Neb. 272, 289 N.W. 349 (1939).

### **60-6,238 Vehicles; red flags; red emergency reflectors; when required as equipment; how and when displayed.**

(1) Except as provided in subsection (2) of this section, between one-half hour before sunrise and one-half hour after sunset, any vehicle described in section 60-6,236 shall be equipped with two red flags, and when the vehicle is parked, one flag shall be placed one hundred feet behind and the other one hundred feet ahead of such vehicle and in such position as to be visible to all approaching traffic during the daylight hours.

(2) In lieu of the requirements of subsection (1) of this section, such a vehicle may be equipped with three red emergency reflectors. One of the reflectors shall be placed alongside the vehicle on the traffic side and within ten feet of the front or rear of the vehicle. When there is two-way traffic, one reflector shall be placed one hundred feet ahead of the vehicle and one shall be placed one hundred feet behind the vehicle. When there is only one-way traffic, one reflector shall be placed one hundred feet and one two hundred feet behind the vehicle.

**Source:** Laws 1935, c. 129, § 2, p. 460; Laws 1941, c. 77, § 1, p. 313; C.S.Supp.,1941, § 39-11,113; R.S.1943, § 39-7,119; Laws 1977, LB 393, § 2; Laws 1987, LB 224, § 12; R.S.1943, (1988), § 39-6,164; Laws 1993, LB 370, § 334.

Where truck was left parked on highway in daytime without flags, there was evidence of negligence. *Plumb v. Burnham*, 151 Neb. 129, 36 N.W.2d 612 (1949).

**60-6,239 Clearance lights, flares, and reflector requirements; violations; penalty.**

Any person who violates any provision of sections 60-6,236 to 60-6,238 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1935, c. 129, § 5, p. 461; C.S.Supp.,1941, § 39-11,116; R.S.1943, § 39-7,120; Laws 1977, LB 41, § 26; R.S.1943, (1988), § 39-6,165; Laws 1993, LB 370, § 335.

**60-6,240 Removing flares or flags; penalty.**

Any person who willfully removes any flares or red flags placed upon the highways under the provisions of sections 60-6,236 to 60-6,238 before the driver of such vehicle is ready to proceed immediately on the highway shall be guilty of a Class V misdemeanor.

**Source:** Laws 1935, c. 129, § 6, p. 461; C.S.Supp.,1941, § 39-11,117; R.S.1943, § 39-7,121; Laws 1977, LB 41, § 27; R.S.1943, (1988), § 39-6,166; Laws 1993, LB 370, § 336.

**60-6,241 Vehicles; slow moving; emblem required; when used.**

(1) It shall be unlawful for any person to operate on the roadway of any highway any slow-moving vehicle or equipment, any animal-drawn vehicle, or any other machinery, designed for use at speeds less than twenty-five miles per hour, including all road construction or maintenance machinery except when engaged in actual construction or maintenance work either guarded by a flagperson or clearly visible warning signs, which normally travels or is normally used at a speed of less than twenty-five miles per hour unless there is displayed on the rear thereof an emblem as described in and displayed as provided in subsection (2) of this section. The requirement of such emblem shall be in addition to any lighting devices required by law. The emblem shall not be displayed on objects which are customarily stationary in use except while being transported on the roadway of any highway.

(2) The emblem shall be of substantial construction and shall be a base-down equilateral triangle of fluorescent yellow-orange film with a base of fourteen inches and an altitude of twelve inches. Such triangle shall be bordered with reflective red strips having a minimum width of one and three-fourths inches,

with the vertices of the overall triangle truncated such that the remaining altitude shall be a minimum of fourteen inches. The emblem shall comply with the current standards and specifications for slow-moving vehicle emblems of the American Society of Agricultural Engineers. Such emblem shall be mounted on the rear of such vehicle at a height of two to six feet above the roadway and shall be maintained in a clean, reflective condition. This section shall not apply to an electric personal assistive mobility device.

**Source:** Laws 1965, c. 210, § 1, p. 618; Laws 1967, c. 230, § 1, p. 607; R.R.S.1943, § 39-723.10; Laws 1977, LB 211, § 1; R.S.1943, (1988), § 39-6,125; Laws 1993, LB 370, § 337; Laws 1993, LB 575, § 26; Laws 2002, LB 1105, § 462.

**60-6,242 Vehicles; slow moving; equipped with bracket.**

All vehicles, equipment, or machinery sold in this state and required to display the emblem provided for in section 60-6,241 shall be equipped with a bracket on which such emblem may be mounted.

**Source:** Laws 1967, c. 230, § 2, p. 607; R.R.S.1943, § 39-723.11; R.S. 1943, (1988), § 39-6,126; Laws 1993, LB 370, § 338.

**60-6,243 Load projecting to rear; red flag or red light required.**

Whenever the load on any vehicle extends more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load in such position as to be clearly visible at all times from the rear of such load a red flag not less than twelve inches both in length and width, except that between sunset and sunrise, there shall be displayed at the end of any such load a red light plainly visible under normal atmospheric conditions at least two hundred feet from the rear of such vehicle.

**Source:** Laws 1931, c. 110, § 34, p. 316; C.S.Supp.,1941, § 39-1165; R.S.1943, § 39-769; R.S.1943, (1988), § 39-6,130; Laws 1993, LB 370, § 339; Laws 1993, LB 575, § 29.

Failure of driver to display lights on overhanging load when it is dark, as required by law, is evidence of negligence. *Moore v. Nisley*, 133 Neb. 474, 275 N.W. 827 (1937).

A failure to comply with requirements of this section is not negligence per se, but is evidence of negligence. *LaFleur v. Poesch*, 126 Neb. 263, 252 N.W. 902 (1934).

(r) BRAKES

**60-6,244 Motor vehicles; brakes; requirements.**

(1) Every motor vehicle when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels and so constructed that no part which is liable to failure shall be common to the two, except that a motorcycle shall be required to be equipped with only one brake. All such brakes shall be maintained at all times in good working order.

(2) It shall be unlawful for any owner or operator of any motor vehicle, other than a motorcycle, to operate such motor vehicle upon a highway unless the brake equipment thereon qualifies with regard to maximum stopping distances from a speed of twenty miles per hour on dry asphalt or concrete pavement free from loose materials as follows:

(a) Two-wheel brakes, maximum stopping distance, forty feet;

(b) Four or more wheel brakes, vehicles up to seven thousand pounds gross weight, maximum stopping distance, thirty feet;

(c) Four or more wheel brakes, vehicles seven thousand pounds or more gross weight, maximum stopping distance, thirty-five feet;

(d) All hand, parking, or emergency brakes, vehicles up to seven thousand pounds gross weight, maximum stopping distance, fifty-five feet; and

(e) All hand, parking, or emergency brakes, vehicles seven thousand pounds or more gross weight, maximum stopping distance, sixty-five feet.

(3) All braking distances specified in this section shall apply to all vehicles whether unloaded or loaded to the maximum capacity permitted by law.

(4) The retarding force of one side of the vehicle shall not exceed the retarding force on the opposite side so as to prevent the vehicle stopping in a straight line.

**Source:** Laws 1931, c. 110, § 38, p. 317; Laws 1939, c. 78, § 2, p. 318; C.S.Supp.,1941, § 39-1169; R.S.1943, § 39-773; Laws 1977, LB 314, § 2; R.S.1943, (1988), § 39-6,133; Laws 1993, LB 370, § 340.

Under circumstances in this case, defendant was guilty of negligence as a matter of law for failure to utilize second braking system when first failed. *Ritchie v. Davidson*, 183 Neb. 94, 158 N.W.2d 275 (1968).

Condition of brakes, even if defective, was not a proximate cause of accident. *Odom v. Willms*, 177 Neb. 699, 131 N.W.2d 140 (1964).

Violation of this section was not negligence as matter of law and plaintiff had burden of proving negligence and proximate cause. *Starns v. Jones*, 500 F.2d 1233 (8th Cir. 1974).

#### **60-6,245 Violations; penalties.**

Any person who violates any provision of section 60-6,244 shall be guilty of a Class III misdemeanor. In the event of such conviction, as a part of the judgment of conviction, the trial judge shall direct the person so convicted to produce in court or submit to the prosecuting attorney, before such person again operates the motor vehicle upon a highway, satisfactory proof showing that the brake equipment involved in the person's conviction has been made to conform with the requirements of such section. The failure, refusal, or neglect of the convicted person to abide by such direction in the judgment of conviction shall be deemed an additional offense for which the person shall be prosecuted.

**Source:** Laws 1993, LB 370, § 341.

#### **60-6,246 Trailers; brake requirements; safety chains; when required.**

(1) All commercial trailers with a carrying capacity of more than ten thousand pounds and semitrailers shall be equipped on each wheel with brakes that can be operated from the driving position of the towing vehicle.

(2) Cabin trailers and recreational trailers having a gross loaded weight of three thousand pounds or more but less than six thousand five hundred pounds shall be equipped with brakes on at least two wheels, and such trailers with a gross loaded weight of six thousand five hundred pounds or more shall be equipped with brakes on each wheel. The brakes shall be operable from the driving position of the towing vehicle. Such trailers shall also be equipped with a breakaway, surge, or impulse switch on the trailer so that the trailer brakes are activated if the trailer becomes disengaged from the towing vehicle.

(3) Cabin trailers, recreational trailers, and utility trailers, when being towed upon a highway, shall be securely connected to the towing vehicle by means of

two safety chains or safety cables in addition to the hitch or other primary connecting device. Such safety chains or safety cables shall be so attached and shall be of sufficient breaking load strength so as to prevent any portion of such trailer drawbar from touching the roadway if the hitch or other primary connecting device becomes disengaged from the towing vehicle.

(4) For purposes of this section:

(a) Recreational trailer means a vehicular unit without motive power primarily designed for transporting a motorboat as defined in section 37-1204 or a vessel as defined in section 37-1203; and

(b) Utility trailer has the same meaning as in section 60-358.

**Source:** Laws 1959, c. 165, § 2, p. 604; Laws 1972, LB 1164, § 1; Laws 1973, LB 368, § 1; R.S.Supp.,1972, § 39-773.01; Laws 1989, LB 695, § 2; R.S.Supp.,1992, § 39-6,134; Laws 1993, LB 370, § 342; Laws 1993, LB 575, § 30; Laws 1995, LB 6, § 1; Laws 2005, LB 274, § 244.

**60-6,247 Trucks and buses; brake requirements; violation; penalty.**

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

**Source:** Laws 1935, c. 134, § 10, p. 489; C.S.Supp.,1941, § 39-11,106; R.S.1943, § 39-7,113; Laws 1974, LB 593, § 8; Laws 1977, LB 41, § 25; R.S.1943, (1988), § 39-6,161; Laws 1993, LB 370, § 343; Laws 1993, LB 121, § 206; Laws 1994, LB 884, § 80.

In order to constitute evidence of negligence, failure to have auxiliary brake equipment must have some causal relation between violation of this section and an accident. *Herman v. Firestone*, 146 Neb. 730, 21 N.W.2d 444 (1946).

When petition charges negligence in that defendant failed to have truck equipped with proper brakes, the evidence must sustain such allegations. *Knoche v. Pease Grain & Seed Co.*, 134 Neb. 130, 277 N.W. 798 (1938).

**60-6,248 Hydraulic brake fluids; requirements; violation; penalty.**

In order to promote highway safety by providing the public with safe and efficient hydraulic fluids for motor vehicle braking systems, it shall be unlawful for any person to sell, offer to sell, or display for sale any hydraulic fluids for use in motor vehicle braking systems that do not equal or exceed the specifications for types SAE 70R1 or SAE 70R3 brake fluids as set forth in 49 C.F.R. 571.116.

Any person who violates this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1963, c. 217, § 1, p. 689; R.R.S.1943, § 39-7,123.06; R.S. 1943, (1988), § 39-6,172; Laws 1993, LB 370, § 344.

(s) TIRES

**60-6,249 Pneumatic tires; when required.**

The wheels of all vehicles, including trailers, except vehicles operated at twenty miles per hour or less, shall be equipped with pneumatic tires.

**Source:** Laws 1993, LB 370, § 345.

**60-6,250 Tires; requirements; cleats or projections prohibited; exceptions; permissive uses; special permits; exceptions.**

(1) Every solid rubber tire on a vehicle moved on any highway shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

(2) No tire on a vehicle moved on a highway shall have on its periphery any clock, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that:

(a) This prohibition shall not apply to pneumatic tires with metal or metal-type studs not exceeding five-sixteenths of an inch in diameter inclusive of the stud-casing with an average protrusion beyond the tread surface of not more than seven sixty-fourths of an inch between November 1 and April 1, except that school buses, mail carrier vehicles, and emergency vehicles shall be permitted to use metal or metal-type studs at any time during the year;

(b) It shall be permissible to use farm machinery with tires having protuberances which will not injure the highway; and

(c) It shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide or skid.

(3) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer (a) having any metal tire in contact with the roadway or (b) equipped with solid rubber tires, except that this subsection shall not apply to farm vehicles having a gross weight of ten thousand pounds or less or to implements of husbandry.

(4) The Department of Roads and local authorities in their respective jurisdictions may, in their discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery.

**Source:** Laws 1931, c. 110, § 36, p. 317; C.S.Supp.,1941, § 39-1167; R.S.1943, § 39-771; Laws 1965, c. 217, § 1, p. 633; Laws 1971, LB 678, § 2; R.S.Supp.,1972, § 39-771; Laws 1980, LB 619, § 3; Laws 1983, LB 50, § 1; Laws 1987, LB 504, § 3; R.S.1943, (1988), § 39-6,131; Laws 1993, LB 370, § 346.

**60-6,251 Pneumatic tires; regrooving prohibited; exception.**

(1) No person shall alter the traction surface of pneumatic tires by regrooving.

(2) No person shall knowingly operate on any highway in this state any motor vehicle on which the traction surface of any pneumatic tire thereof has been regrooved. No person shall sell, exchange, or offer for sale or exchange such a tire.

(3) This section shall not apply to regrooved commercial vehicle tires which are designed and constructed in such a manner that any regrooving complies

with the parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted pursuant to section 75-363.

**Source:** Laws 1987, LB 504, § 4; R.S.1943, (1988), § 39-6,131.08; Laws 1993, LB 370, § 347; Laws 2006, LB 1007, § 10.

**60-6,252 Tire condition; requirements.**

(1) No person shall drive or move a motor vehicle on any highway unless such vehicle is equipped with tires in safe operating condition in accordance with subsection (2) of this section.

(2) A tire shall be considered unsafe if it has:

(a) Any bump, bulge, or knot affecting the tire structure;

(b) A break which exposes a tire body cord or is repaired with a boot or patch;

(c) A tread depth of less than two thirty-seconds of an inch measured in any two tread grooves at three locations equally spaced around the circumference of the tire or, on those tires with tread wear indicators, been worn to the point that the tread wear indicators contact the road in any two tread grooves at three locations equally spaced around the circumference of the tire, except that this subdivision shall not apply to truck tires with ten or more cord plies which are mounted on dual wheels; or

(d) Such other conditions as may be reasonably demonstrated to render the tire unsafe.

(3) No tire shall be used on any motor vehicle which is driven or moved on any highway in this state if such tire was designed or manufactured for nonhighway use.

(4) No person shall destroy, alter, or deface any marking on a new or usable tire which indicates whether the tire has been manufactured for highway or nonhighway use.

(5) No person shall sell any motor vehicle for highway use unless the vehicle is equipped with tires that are in compliance with this section.

**Source:** Laws 1987, LB 504, § 5; R.S.1943, (1988), § 39-6,131.09; Laws 1993, LB 370, § 348.

(t) WINDSHIELDS, WINDOWS, AND MIRRORS

**60-6,253 Trucks; rearview mirror.**

Each truck shall be equipped with a rearview mirror which shall be kept clean, repaired, and installed.

**Source:** Laws 1933, c. 105, § 5, p. 426; Laws 1939, c. 47, § 1, p. 208; Laws 1941, c. 125, § 2, p. 481; C.S.Supp.,1941, § 39-1193; R.S. 1943, § 39-723; Laws 1947, c. 147, § 2(5), p. 406; R.R.S.1943, § 39-723.04; R.S.1943, (1988), § 39-6,123; Laws 1993, LB 370, § 349; Laws 1993, LB 575, § 25.

**60-6,254 Operator; view to rear required; outside mirrors authorized.**

No person shall drive a motor vehicle, other than a motorcycle, on a highway when the motor vehicle is so constructed or loaded as to prevent the driver from obtaining a view of the highway to the rear by looking backward from the

driver's position unless such vehicle is equipped with a right-side and a left-side outside mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle. Temporary outside mirrors and attachments used when towing a vehicle shall be removed from such motor vehicle or retracted within the outside dimensions thereof when it is operated upon the highway without such trailer.

**Source:** Laws 1931, c. 110, § 40, p. 318; C.S.Supp.,1941, § 39-1171; R.S.1943, § 39-775; Laws 1971, LB 396, § 3; R.S.Supp.,1972, § 39-775; Laws 1977, LB 314, § 1; R.S.1943, (1988), § 39-6,124; Laws 1993, LB 370, § 350.

**60-6,255 Windshield and windows; nontransparent material prohibited; windshield equipment; requirements.**

(1) Every motor vehicle registered pursuant to the Motor Vehicle Registration Act, except motorcycles, shall be equipped with a front windshield.

(2) It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster, or other nontransparent material upon the front windshield, side wing vents, or side or rear windows of such motor vehicle other than a certificate or other paper required to be so displayed by law. The front windshield, side wing vents, and side or rear windows may have a visor or other shade device which is easily moved aside or removable, is normally used by a motor vehicle operator during daylight hours, and does not impair the driver's field of vision.

(3) Every windshield on a motor vehicle, other than a motorcycle, shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

**Source:** Laws 1931, c. 110, § 41, p. 318; C.S.Supp.,1941, § 39-1172; R.S.1943, § 39-776; Laws 1977, LB 314, § 3; Laws 1987, LB 504, § 7; Laws 1989, LB 155, § 1; R.S.Supp.,1992, § 39-6,136; Laws 1993, LB 370, § 351; Laws 2005, LB 274, § 245.

**Cross References**

**Motor Vehicle Registration Act**, see section 60-301.

Officer properly stopped vehicle bearing both Missouri plates and intransit sticker, and when driver failed to produce identification, and upon noticing scratches around vehicle identification number checked to determine whether vehicle was stolen, upon learning it was, was justified in making arrest. *United States v. Harris*, 528 F.2d 1327 (8th Cir. 1975).

**60-6,256 Objects placed or hung to obstruct or interfere with view of operator; unlawful; penalty.**

It shall be unlawful for any person to operate a motor vehicle with any object placed or hung in or upon such vehicle, except required or permitted equipment of the vehicle, in such a manner as to obstruct or interfere with the view of the operator through the windshield or to prevent the operator from having a clear and full view of the road and condition of traffic behind such vehicle. Any sticker or identification authorized or required by the federal government or any agency thereof or the State of Nebraska or any political subdivision thereof may be placed upon the windshield without violating the provisions of this section. Any person violating the provisions of this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1959, c. 173, § 1, p. 624; R.R.S.1943, § 39-7,123.04; Laws 1977, LB 41, § 30; R.S.1943, (1988), § 39-6,170; Laws 1993, LB 370, § 352.

## Cross References

Interference with view of driver by passengers or load prohibited, see section 60-6,179.

**60-6,257 Windshield and windows; tinting; sunscreening; prohibited acts; terms, defined.**

(1) It shall be unlawful for a person to drive a motor vehicle required to be registered in this state upon a highway:

(a) If the windows in such motor vehicle are tinted so that the driver's clear view through the windshield or side or rear windows is reduced or the ability to see into the motor vehicle is substantially impaired;

(b) If the windshield has any sunscreening material that is not clear and transparent below the AS-1 line or if it has a sunscreening material that is red, yellow, or amber in color above the AS-1 line;

(c) If the front side windows have any sunscreening or other transparent material that has a luminous reflectance of more than thirty-five percent or has light transmission of less than thirty-five percent;

(d) If the rear window or side windows behind the front seat have sunscreening or other transparent material that has a luminous reflectance of more than thirty-five percent or has light transmission of less than twenty percent except for the rear window or side windows behind the front seat on a multipurpose vehicle, van, or bus; or

(e) If the windows of a camper, motor home, pickup cover, slide-in camper, or other motor vehicle do not meet the standards for safety glazing material specified by federal law in 49 C.F.R. 571.205.

(2) For purposes of this section and sections 60-6,258 and 60-6,259:

(a) AS-1 line shall mean a line extending from the letters AS-1, found on most motor vehicle windshields, running parallel to the top of the windshield or shall mean a line five inches below and parallel to the top of the windshield, whichever is closer to the top of the windshield;

(b) Camper shall mean a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle with motive power for the purpose of providing shelter for persons;

(c) Glass-plastic glazing material shall mean a laminate of one or more layers of glass and one or more layers of plastic in which a plastic surface of the glazing faces inward when the glazing is installed in a vehicle;

(d) Light transmission shall mean the ratio of the amount of total light, expressed in percentages, which is allowed to pass through the sunscreening or transparent material to the amount of total light falling on the motor vehicle window;

(e) Luminous reflectance shall mean the ratio of the amount of total light, expressed in percentages, which is reflected outward by the sunscreening or transparent material to the amount of total light falling on the motor vehicle window;

(f) Motor home shall mean a multipurpose passenger vehicle that provides living accommodations;

(g) Multipurpose vehicle shall mean a motor vehicle designed to carry ten or fewer passengers that is constructed on a truck chassis or with special features for occasional off-road use;

(h) Pickup cover shall mean a camper having a roof and sides but without a floor designated to be mounted on and removable from the cargo area of a truck by the user;

(i) Slide-in camper shall mean a camper having a roof, floor, and sides designed to be mounted on and removable from the cargo area of a truck by the user; and

(j) Sunscreening material shall mean a film, material, tint, or device applied to motor vehicle windows for the purpose of reducing the effects of the sun.

**Source:** Laws 1989, LB 155, § 2; Laws 1990, LB 1119, § 1; R.S.Supp.,1992, § 39-6,136.01; Laws 1993, LB 370, § 353.

**60-6,258 Windshield and windows; violations; penalty.**

Any person owning or operating a motor vehicle in violation of section 60-6,257 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1989, LB 155, § 3; R.S.Supp.,1992, § 39-6,136.02; Laws 1993, LB 370, § 354.

**60-6,259 Windshield and windows; applicator; prohibited acts; penalty.**

Any person who applies a sunscreening material or a glass-plastic glazing material in a manner which results in a motor vehicle having a window which violates the requirements prescribed in subsection (1) of section 60-6,257 shall be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 155, § 4; R.S.Supp.,1992, § 39-6,136.03; Laws 1993, LB 370, § 355.

**60-6,260 Windshield and windows; waiver of standards; conditions.**

The Nebraska State Patrol or local law enforcement agency may grant a waiver of the standards in section 60-6,257 for reasons of safety or security or for medical reasons based on an affidavit signed by a licensed physician. Such waiver shall be in writing and shall include the date issued, the vehicle identification number, the registration number, or other description to clearly identify the motor vehicle to which the waiver applies, the name of the owner of the vehicle, the reason for granting the waiver, the dates the waiver will be effective, and the signature of the head of the law enforcement agency granting the waiver. Such agency shall keep a copy of the waiver until the waiver expires.

**Source:** Laws 1989, LB 155, § 5; R.S.Supp.,1992, § 39-6,136.04; Laws 1993, LB 370, § 356.

**60-6,261 Windshield and windows; funeral vehicles; exception.**

Sections 60-6,257 to 60-6,259 shall not apply to the side or rear windows of funeral coaches, hearses, or other vehicles operated in the normal course of business by a funeral establishment licensed under section 38-1419.

**Source:** Laws 1989, LB 155, § 6; R.S.Supp.,1992, § 39-6,136.05; Laws 1993, LB 370, § 357; Laws 2007, LB463, § 1175.

**60-6,262 Safety glass, defined.**

For purposes of section 60-6,263, safety glass shall mean any product composed of glass or such other or similar products as will successfully withstand discoloration due to exposure to sunlight or abnormal temperatures over an extended period of time and is so manufactured, fabricated, or treated as substantially to prevent or reduce in comparison with ordinary sheet glass or plate glass, when struck or broken, the likelihood of injury to persons.

**Source:** Laws 1933, c. 101, § 3, p. 413; Laws 1937, c. 145, § 3, p. 554; C.S.Supp.,1941, § 39-1196; R.S.1943, § 39-7,102; Laws 1972, LB 1058, § 3; R.S.Supp.,1972, § 39-7,102; Laws 1987, LB 224, § 8; R.S.1943, (1988), § 39-6,156; Laws 1993, LB 370, § 358.

The enactment of this section did not abrogate existing municipal ordinances on the same subject and did not deprive municipalities of the power to legislate thereon in the future. State v. Hauser, 137 Neb. 138, 288 N.W. 518 (1939).

**60-6,263 Safety glass; requirements; vehicles built after January 1, 1935; motorcycle windshield; requirements; violation; penalty.**

It shall be unlawful to operate on any highway in this state any motor vehicle, other than a motorcycle, manufactured or assembled, whether from a kit or otherwise, after January 1, 1935, which is designed or used for the purpose of carrying passengers unless such vehicle is equipped in all doors, windows, and windshields with safety glass. Any windshield attached to a motorcycle shall be manufactured of products which will successfully withstand discoloration due to exposure to sunlight or abnormal temperatures over an extended period of time.

The owner or operator of any motor vehicle operated in violation of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1933, c. 101, § 2, p. 413; Laws 1937, c. 145, § 2, p. 554; C.S.Supp.,1941, § 39-1195; R.S.1943, § 39-7,101; Laws 1977, LB 314, § 4; R.S.1943, (1988), § 39-6,155; Laws 1993, LB 370, § 359; Laws 2003, LB 238, § 7.

**60-6,264 Violation by common carrier; permit revoked or suspended.**

In case of any violation of section 60-6,263 by any common carrier or person operating a motor vehicle under a permit issued by the Director of Motor Vehicles, the Public Service Commission, or any other authorized body or officer, such permit shall be revoked or, in the discretion of such authorized department, commission, body, or officer, suspended until the provisions of such section are satisfactorily complied with.

**Source:** Laws 1933, c. 101, § 6, p. 414; Laws 1937, c. 145, § 6, p. 556; C.S.Supp.,1941, § 39-1199; R.S.1943, § 39-7,106; Laws 1957, c. 366, § 20, p. 1258; Laws 1972, LB 1058, § 7; R.S.Supp.,1972, § 39-7,106; Laws 1987, LB 224, § 10; R.S.1943, (1988), § 39-6,160; Laws 1993, LB 370, § 360.

(u) OCCUPANT PROTECTION SYSTEMS

**60-6,265 Occupant protection system, defined.**

For purposes of sections 60-6,266 to 60-6,273, occupant protection system means a system utilizing a lap belt, a shoulder belt, or any combination of belts installed in a motor vehicle which (1) restrains drivers and passengers and (2) conforms to Federal Motor Vehicle Safety Standards, 49 C.F.R. 571.207,

571.208, 571.209, and 571.210, as such standards existed on January 1, 2009, or to the federal motor vehicle safety standards for passenger restraint systems applicable for the motor vehicle's model year.

**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.

**60-6,266 Occupant protection system; 1973 year model and later motor vehicles; requirements; violation; penalty.**

Every motor vehicle designated by the manufacturer as 1973 year model or later operated on any highway, road, or street in this state, except farm tractors and implements of husbandry designed primarily or exclusively for use in agricultural operations, motorcycles, motor-driven cycles, mopeds, and buses, shall be equipped with an occupant protection system of a type which:

(1) Meets the requirements of 49 C.F.R. 571.208, 571.209, and 571.210 as such regulations currently exist or as the regulations existed when the occupant protection system was originally installed by the manufacturer; or

(2) If the occupant protection system has been replaced, meets the requirements of 49 C.F.R. 571.208, 571.209, and 571.210 that applied to the originally installed occupant protection system or of a more recently issued version of such regulations. The purchaser of any such vehicle may designate the make or brand of or furnish such occupant protection system to be installed.

Any person selling a motor vehicle in this state not in compliance with this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1963, c. 214, § 1, p. 687; R.R.S.1943, § 39-7,123.05; Laws 1977, LB 41, § 31; Laws 1985, LB 496, § 3; Laws 1992, LB 958, § 8; R.S.Supp.,1992, § 39-6,171; Laws 1993, LB 370, § 362.

**60-6,267 Use of restraint system or occupant protection system; when; information and education program.**

(1) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system shall ensure that:

(a) All children up to six years of age being transported by such vehicle use a child passenger restraint system of a type which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on January 1, 2009, and which is correctly installed in such vehicle; and

(b) All children six years of age and less than eighteen years of age being transported by such vehicle use an occupant protection system.

This subsection shall apply to every motor vehicle which is equipped with an occupant protection system or is required to be equipped with restraint systems pursuant to Federal Motor Vehicle Safety Standard 208, as such standard existed on January 1, 2009, except taxicabs, mopeds, motorcycles, and any motor vehicle designated by the manufacturer as a 1963 year model or earlier which is not equipped with an occupant protection system.

(2) Whenever any licensed physician determines, through accepted medical procedures, that use of a child passenger restraint system by a particular child would be harmful by reason of the child's weight, physical condition, or other medical reason, the provisions of subsection (1) of this section shall be waived.

The driver of any vehicle transporting such a child shall carry on his or her person or in the vehicle a signed written statement of the physician identifying the child and stating the grounds for such waiver.

(3) The drivers of authorized emergency vehicles shall not be subject to the requirements of subsection (1) of this section when operating such authorized emergency vehicles pursuant to their employment.

(4) A driver of a motor vehicle shall not be subject to the requirements of subsection (1) of this section if the motor vehicle is being operated in a parade or exhibition and the parade or exhibition is being conducted in accordance with applicable state law and local ordinances and resolutions.

(5) The Department of Roads shall develop and implement an ongoing statewide public information and education program regarding the use of child passenger restraint systems and occupant protection systems and the availability of distribution and discount programs for child passenger restraint systems.

(6) All persons being transported by a motor vehicle operated by a holder of a provisional operator's permit or a school permit shall use such motor vehicle's occupant protection system.

**Source:** Laws 1983, LB 306, § 2; Laws 1985, LB 259, § 1; Laws 1990, LB 958, § 1; Laws 1992, LB 958, § 3; R.S.Supp.,1992, § 39-6,103.01; Laws 1993, LB 370, § 363; Laws 2000, LB 410, § 1; Laws 2002, LB 1073, § 1; Laws 2004, LB 227, § 2; Laws 2006, LB 853, § 20; Laws 2007, LB239, § 7; Laws 2008, LB756, § 22; Laws 2009, LB219, § 1; Laws 2009, LB331, § 12.

**60-6,268 Use of restraint system or occupant protection system; violations; penalty; enforcement; when.**

(1) A person violating any provision of subsection (1) of section 60-6,267 shall be guilty of an infraction as defined in section 29-431 and shall be fined twenty-five dollars for each violation. The failure to provide a child restraint system for more than one child in the same vehicle at the same time, as required in such subsection, shall not be treated as a separate offense.

(2) Enforcement of subdivision (1)(b) and subsection (6) of section 60-6,267 shall be accomplished only as a secondary action when an operator of a motor vehicle has been cited or charged with a violation or some other offense unless the violation involves a person under the age of eighteen years riding in or on any portion of the vehicle not designed or intended for the use of passengers when the vehicle is in motion.

**Source:** Laws 1983, LB 306, § 3; R.S.1943, (1988), § 39-6,103.02; Laws 1993, LB 370, § 364; Laws 2000, LB 410, § 2; Laws 2002, LB 1073, § 2; Laws 2004, LB 227, § 3.

**60-6,269 Violation of child passenger restraint requirements; how construed.**

Violations of the provisions of sections 60-6,267 and 60-6,268 shall not constitute prima facie evidence of negligence nor shall compliance with such sections constitute a defense to any claim for personal injuries to a child or recovery of medical expenses for injuries sustained in any motor vehicle accident. Violation of such sections by a driver shall not constitute a defense for

another person to any claim for personal injuries to a child or recovery of medical expenses for injuries sustained in any motor vehicle accident.

**Source:** Laws 1983, LB 306, § 4; R.S.1943, (1988), § 39-6,103.03; Laws 1993, LB 370, § 365.

**60-6,270 Occupant protection system; use required; when; exceptions.**

(1) Except as provided in subsection (2) of this section, no driver shall operate a motor vehicle upon a highway or street in this state unless the driver and each front-seat occupant in the vehicle are wearing occupant protection systems and all occupant protection systems worn are properly adjusted and fastened.

(2) The following persons shall not be required to wear an occupant protection system:

(a) A person who possesses written verification from a physician that the person is unable to wear an occupant protection system for medical reasons;

(b) A rural letter carrier of the United States Postal Service while performing his or her duties as a rural letter carrier between the first and last delivery points; and

(c) A member of an emergency medical service while involved in patient care.

(3) For purposes of this section, motor vehicle shall mean a vehicle required by section 60-6,266 to be equipped with an occupant protection system.

**Source:** Laws 1985, LB 496, § 6; Laws 1992, LB 958, § 6; R.S.Supp.,1992, § 39-6,103.07; Laws 1993, LB 370, § 366; Laws 1993, LB 575, § 23; Laws 1997, LB 138, § 41.

**60-6,271 Enforcement of occupant protection system requirements; when.**

Enforcement of section 60-6,270 by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a violation or some other offense.

**Source:** Laws 1985, LB 496, § 4; Laws 1992, LB 958, § 4; R.S.Supp.,1992, § 39-6,103.05; Laws 1993, LB 370, § 367.

**60-6,272 Occupant protection system; violation; penalty.**

Any person who violates section 60-6,270 shall be guilty of a traffic infraction and shall be fined twenty-five dollars, but no court costs shall be assessed against him or her nor shall any points be assessed against the driving record of such person. Regardless of the number of persons in such vehicle not wearing an occupant protection system pursuant to such section, only one violation shall be assessed against the driver of such motor vehicle for each time the motor vehicle is stopped and a violation of such section is found.

**Source:** Laws 1985, LB 496, § 5; Laws 1992, LB 958, § 5; R.S.Supp.,1992, § 39-6,103.06; Laws 1993, LB 370, § 368; Laws 1993, LB 575, § 22.

**60-6,273 Occupant protection system violation; evidence; when admissible.**

Evidence that a person was not wearing an occupant protection system at the time he or she was injured shall not be admissible in regard to the issue of liability or proximate cause but may be admissible as evidence concerning

mitigation of damages, except that it shall not reduce recovery for damages by more than five percent.

**Source:** Laws 1985, LB 496, § 7; Laws 1992, LB 958, § 7; R.S.Supp.,1992, § 39-6,103.08; Laws 1993, LB 370, § 369.

Under this section, evidence that a person was not wearing a seatbelt is admissible only as evidence concerning the mitigation of damages and cannot be used with respect to the issue of liability or proximate cause. *Fickle v. State*, 273 Neb. 990, 735 N.W.2d 754 (2007).

Evidence of seatbelt misuse or nonuse was not admissible under this section where the plaintiff had dropped her claim that the seatbelt was faulty and stipulated before trial to a 5-percent reduction in the judgment. The trial court's reduction of the jury's award by 5 percent represented the full mitigation of damages available. *Shipler v. General Motors Corp.*, 271 Neb. 194, 710 N.W.2d 807 (2006).

Evidence of plaintiff's failure to wear a seatbelt may be introduced for mitigation of damages if defendant has demonstrated a causal connection between plaintiff's failure to wear an available seatbelt and the damages sustained by plaintiff. Jury instruction on plaintiff's failure to wear a seatbelt is proper to reduce damages by 5 percent or less, but only when defendant has demonstrated a causal connection between plaintiff's failure to wear an available seatbelt and the damages sustained by plaintiff. *Vredeveld v. Clark*, 244 Neb. 46, 504 N.W.2d 292 (1993).

#### (v) RADAR TRANSMISSION DEVICES

##### **60-6,274 Terms, defined.**

For purposes of sections 60-6,274 to 60-6,277:

(1) Radar transmission device shall mean any mechanism designed to interfere with the reception of radio microwaves in the electromagnetic spectrum, which microwaves, commonly referred to as radar, are employed by law enforcement officials to measure the speed of motor vehicles;

(2) Possession shall mean to have a radar transmission device in a motor vehicle if such device is not (a) disconnected from all power sources and (b) in the rear trunk, which shall include the spare tire compartment, or any other compartment which is not accessible to the driver or any other person in the vehicle while such vehicle is in operation. If no such compartment exists in a vehicle, then such device must be disconnected from all power sources and be placed in a position not readily accessible to the driver or any other person in the vehicle; and

(3) Transceiver shall mean an apparatus contained in a single housing, functioning alternately as a radio transmitter and receiver.

**Source:** Laws 1982, LB 32, § 2; R.S.1943, (1988), § 39-6,206; Laws 1993, LB 370, § 370.

##### **60-6,275 Radar transmission device; operation; possession; unlawful; violation; penalty.**

It shall be unlawful for any person to operate or possess any radar transmission device while operating a motor vehicle on any highway in this state. Any person who violates this section shall be guilty of a Class IIIA misdemeanor.

**Source:** Laws 1982, LB 32, § 1; R.S.1943, (1988), § 39-6,205; Laws 1993, LB 370, § 371.

##### **60-6,276 Authorized devices.**

Section 60-6,275 shall not apply to (1) any transmitter, transceiver, or receiver of radio waves which has been lawfully licensed by the Federal Communications Commission or (2) any device being used by law enforcement officials in their official duties.

**Source:** Laws 1982, LB 32, § 3; R.S.1943, (1988), § 39-6,207; Laws 1993, LB 370, § 372.

**60-6,277 Prohibited device; seizure; disposal.**

Any device prohibited by sections 60-6,275 and 60-6,276 found as the result of an arrest made under such sections shall be seized, and when no longer needed as evidence, such device shall, if the owner was convicted of an offense under such sections, be considered as contraband and disposed of pursuant to section 29-820.

**Source:** Laws 1982, LB 32, § 5; R.S.1943, (1988), § 39-6,209; Laws 1993, LB 370, § 373.

## (w) HELMETS

**60-6,278 Legislative findings.**

The Legislature hereby finds and declares that head injuries that occur to motorcyclists and moped operators which could be prevented or lessened by the wearing of helmets are a societal problem and that the financial and emotional costs of such injuries cannot be viewed solely on a personal level. It is the intent of the Legislature to prevent injuries and fatalities which occur due to motorcycle and moped accidents and to prevent the subsequent damage to society which results due to the cost of caring for injured people, the pain and suffering which accompanies such injuries and fatalities, and the loss of productive members of society from such injuries.

**Source:** Laws 1988, LB 428, § 1; R.S.1943, (1988), § 39-6,210; Laws 1993, LB 370, § 374.

**60-6,279 Protective helmets; required; when.**

A person shall not operate or be a passenger on a motorcycle or moped on any highway in this state unless such person is wearing a protective helmet of the type and design manufactured for use by operators of such vehicles and unless such helmet is secured properly on his or her head with a chin strap while the vehicle is in motion. All such protective helmets shall be designed to reduce injuries to the user resulting from head impacts and shall be designed to protect the user by remaining on the user's head, deflecting blows, resisting penetration, and spreading the force of impact. Each such helmet shall consist of lining, padding, and chin strap and shall meet or exceed the standards established in the United States Department of Transportation's Federal Motor Vehicle Safety Standard No. 218, 49 C.F.R. 571.218, for motorcycle helmets.

**Source:** Laws 1988, LB 428, § 2; R.S.1943, (1988), § 39-6,211; Laws 1993, LB 370, § 375.

The list required by section 39-6,212 (transferred to section 60-6,280) acts as a limiting construction of this section by enumerating some of those helmets which meet the criteria of this section; when taken together, the helmet law and list are not vague. Claims that this section violates constitutional rights to due process and equal protection are without merit, since the helmet law implicates neither a fundamental right nor a suspect

classification and is rationally related to a legitimate legislative aim. Although the State may promulgate and enforce motorcycle helmet standards only if the state standards are identical to those promulgated by the federal Department of Transportation, the helmet law is constitutional, since the visor requirement is properly severable from the remainder of this section. *Robertham v. State*, 241 Neb. 379, 488 N.W.2d 533 (1992).

**60-6,280 Approved protective helmets.**

The Department of Motor Vehicles shall publish a list of approved protective helmets which meet the requirements of section 60-6,279. Such list shall not be inclusive. Any person wearing a protective helmet which meets the require-

ments established pursuant to such section shall be deemed to be in compliance with such section.

**Source:** Laws 1988, LB 428, § 3; R.S.1943, (1988), § 39-6,212; Laws 1993, LB 370, § 376.

Since the list required by this section is noninclusive, it does not improperly delegate to the Department of Motor Vehicles the authority to define the essential elements of a crime. *Robot-ham v. State*, 241 Neb. 379, 488 N.W.2d 533 (1992).

**60-6,281 Protective helmets; conformance with federal standards; effect.**

Any person using a protective helmet purchased prior to July 9, 1988, which is labeled to show that it conforms with applicable federal motor vehicle safety standards shall be deemed to be in compliance with section 60-6,279.

**Source:** Laws 1988, LB 428, § 4; R.S.1943, (1988), § 39-6,213; Laws 1993, LB 370, § 377.

**60-6,282 Violation; penalty.**

Any person who violates section 60-6,279 shall be guilty of a traffic infraction and shall be fined fifty dollars.

**Source:** Laws 1988, LB 428, § 5; R.S.1943, (1988), § 39-6,214; Laws 1993, LB 370, § 378.

(x) MISCELLANEOUS EQUIPMENT PROVISIONS

**60-6,283 Splash aprons; requirements.**

Every new motor vehicle or semitrailer purchased after January 1, 1956, and operated on any highway in this state shall be equipped with fenders, covers, or devices, including flaps or splash aprons, unless the body of the vehicle affords adequate protection to effectively minimize the spray or splash of water or mud to the rear of the motor vehicle or semitrailer.

**Source:** Laws 1955, c. 160, § 1, p. 464; R.R.S.1943, § 39-735.01; R.S. 1943, (1988), § 39-6,128; Laws 1993, LB 370, § 379.

**60-6,284 Towing; drawbars or other connections; length; red flag required, when.**

The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, shall not exceed fifteen feet in length from one vehicle to the other, except a vehicle being towed with a connection device that is an integral component of the vehicle and is designed to attach to a lead unit with construction in such a manner as to allow articulation at the attachment point on the chassis of the towed vehicle but not to allow lateral or side-to-side movement. Such connecting device shall meet the safety standards for towbar failure or disconnection in the parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted pursuant to section 75-363 and shall have displayed at approximately the halfway point between the towing vehicle and the towed vehicle on the connecting mechanism a red flag or other signal or cloth not less than twelve inches both in length and width that shall be at least five feet and not more than ten feet from the level of the paving and shall be displayed along the outside line on both sides of the towing and towed vehicles. Whenever such connection consists of a

chain, rope, or cable, there shall be displayed upon such connection a red flag or other signal or cloth not less than twelve inches both in length and width.

**Source:** Laws 1931, c. 110, § 37, p. 317; C.S.Supp.,1941, § 39-1168; R.S.1943, § 39-772; Laws 1980, LB 785, § 1; R.S.1943, (1988), § 39-6,132; Laws 1993, LB 370, § 380; Laws 2006, LB 1007, § 11.

**60-6,285 Horn; requirements; prohibited acts.**

Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet. Except as otherwise provided in this section, it shall be unlawful for any vehicle to be equipped with or for any person to use upon a vehicle any siren, exhaust, compression, or spark plug whistle or for any person at any time to use a horn, otherwise than as a reasonable warning, or to make any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device. Every police and fire department and fire patrol vehicle and every ambulance used for emergency calls shall be equipped with a bell, siren, or exhaust whistle.

**Source:** Laws 1931, c. 110, § 39, p. 318; C.S.Supp.,1941, § 39-1170; R.S.1943, § 39-774; Laws 1957, c. 366, § 5, p. 1248; R.R.S.1943, § 39-774; Laws 1987, LB 224, § 5; R.S.1943, (1988), § 39-6,135; Laws 1993, LB 370, § 381.

Where evidence is not sufficient to support finding there was a duty to sound a horn, court could not properly submit that issue. *Merritt v. Reed*, 186 Neb. 561, 185 N.W.2d 261 (1971).

The duty to sound a signal, warning of the approach of a motor vehicle, depends largely on the circumstances of the particular case. *Tews v. Bamrick and Carroll*, 148 Neb. 59, 26 N.W.2d 499 (1947).

Before backing a motor vehicle, operator must give signal of intention. *Chew v. Coffin*, 144 Neb. 170, 12 N.W.2d 839 (1944).

Failure of trial court to supplement its instructions to include provisions of this section was not erroneous. *Bern v. Evans*, 349 F.2d 282 (8th Cir. 1965).

**60-6,286 Muffler or noise-suppressing system; prevention of fumes and smoke; requirements.**

Every vehicle shall be equipped, maintained, and operated so as to prevent excessive or unusual noise. No person shall drive a motor vehicle on a highway unless such motor vehicle is equipped with a muffler or other effective noise-suppressing system in good working order and in constant operation. It shall be unlawful to use a muffler cutout, bypass, or similar device on any motor vehicle upon a highway.

The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

**Source:** Laws 1931, c. 110, § 42, p. 318; C.S.Supp.,1941, § 39-1173; R.S.1943, § 39-777; Laws 1967, c. 232, § 1, p. 617; R.R.S.1943, § 39-777; R.S.1943, (1988), § 39-6,137; Laws 1993, LB 370, § 382; Laws 1993, LB 575, § 31.

**60-6,287 Television set; equipping motor vehicle with screen visible to driver; unlawful; penalty.**

It shall be unlawful to operate upon any public highway in this state a motor vehicle which is equipped with or in which is located a television set so placed

that the viewing screen is visible to the driver while operating such vehicle. Any person violating this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1951, c. 113, § 1, p. 522; R.R.S.1943, § 39-7,123.01; Laws 1977, LB 41, § 29; R.S.1943, (1988), § 39-6,169; Laws 1993, LB 370, § 383.

**60-6,287.01 Nitrous oxide use prohibited.**

It is unlawful to use nitrous oxide in any motor vehicle operated on any highway in this state.

**Source:** Laws 2002, LB 1303, § 11.

(y) SIZE, WEIGHT, AND LOAD

**60-6,288 Vehicles; width limit; exceptions; conditions; Director-State Engineer; powers.**

(1) No vehicle which exceeds a total outside width of one hundred two inches, including any load but excluding designated safety devices, shall be permitted on any portion of the National System of Interstate and Defense Highways. The Director-State Engineer shall adopt and promulgate rules and regulations, consistent with federal requirements, designating safety devices which shall be excluded in determining vehicle width.

(2) No vehicle which exceeds a total outside width of one hundred two inches, including any load but excluding designated safety devices, shall be permitted on any highway which is not a portion of the National System of Interstate and Defense Highways, except that such prohibition shall not apply to:

(a) Farm equipment in temporary movement, during daylight hours or during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with, in the normal course of farm operations;

(b) Combines eighteen feet or less in width, while in the normal course of farm operations and while being driven during daylight hours or during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with;

(c) Combines in excess of eighteen feet in width, while in the normal course of farm operations, while being driven during daylight hours for distances of twenty-five miles or less on highways and while preceded by a well-lighted pilot vehicle or flagperson, except that such combines may be driven on highways while in the normal course of farm operations for distances of twenty-five miles or less and while preceded by a well-lighted pilot vehicle or flagperson during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with;

(d) Combines and vehicles used in transporting combines or other implements of husbandry, and only when transporting combines or other implements of husbandry, to be engaged in harvesting or other agricultural work, while being transported into or through the state during daylight hours, when the total width including the width of the combine or other implement of husbandry being transported does not exceed fifteen feet, except that vehicles used in transporting combines or other implements of husbandry may, when necessary to the harvesting operation or other agricultural work, travel unloaded for

distances not to exceed twenty-five miles, while the combine or other implement of husbandry to be transported is engaged in a harvesting operation or other agricultural work;

(e) Farm equipment dealers hauling, driving, delivering, or picking up farm equipment, including portable livestock buildings not exceeding fourteen feet in width, or implements of husbandry during daylight hours;

(f) Livestock forage vehicles loaded or unloaded that comply with subsection (2) of section 60-6,305;

(g) During daylight hours only, vehicles en route to pick up, delivering, or returning unloaded from delivery of baled livestock forage which, including the load if any, may be twelve feet in width;

(h) Mobile homes or prefabricated livestock buildings not exceeding sixteen feet in width and with an outside tire width dimension not exceeding one hundred twenty inches moving during daylight hours;

(i) Self-propelled specialized mobile equipment with a fixed load when:

(i) The self-propelled specialized mobile equipment will be transported on a state highway, excluding any portion of the National System of Interstate and Defense Highways, on a city street, or on a road within the corporate limits of a city;

(ii) The city in which the self-propelled specialized mobile equipment is intended to be transported has authorized a permit pursuant to section 60-6,298 for the transportation of the self-propelled specialized mobile equipment, specifying the route to be used and the hours during which the self-propelled specialized mobile equipment can be transported, except that no permit shall be issued by a city for travel on a state highway containing a bridge or structure which is structurally inadequate to carry the self-propelled specialized mobile equipment as determined by the Department of Roads;

(iii) The self-propelled specialized mobile equipment's gross weight does not exceed ninety-four thousand pounds if the self-propelled specialized mobile equipment has four axles or seventy-two thousand pounds if the self-propelled specialized mobile equipment has three axles; and

(iv) If the self-propelled specialized mobile equipment has four axles, the maximum weight on each set of tandem axles does not exceed forty-seven thousand pounds, or if the self-propelled specialized mobile equipment has three axles, the maximum weight on the front axle does not exceed twenty-five thousand pounds and the total maximum weight on the rear tandem axles does not exceed forty-seven thousand pounds;

(j) Vehicles which have been issued a permit pursuant to section 60-6,299; or

(k) A motor home or travel trailer, as those terms are defined in section 71-4603, which may exceed one hundred and two inches if such excess width is attributable to an appurtenance that extends no more than six inches beyond the body of the vehicle. For purposes of this subdivision, the term appurtenance includes (i) an awning and its support hardware and (ii) any appendage that is intended to be an integral part of a motor home or travel trailer and that is installed by the manufacturer or dealer. The term appurtenance does not include any item that is temporarily affixed or attached to the exterior of the motor home or travel trailer for purposes of transporting the vehicular unit from one location to another. Appurtenances shall not be considered in calculating the gross trailer area as defined in section 71-4603.

(3) The Director-State Engineer, with respect to highways under his or her jurisdiction, may designate certain highways upon which vehicles of no more than ninety-six inches in width may be permitted to travel. Highways so designated shall be limited to one or more of the following:

- (a) Highways with traffic lanes of ten feet or less;
- (b) Highways upon which are located narrow bridges; and
- (c) Highways which because of sight distance, surfacing, unusual curves, topographic conditions, or other unusual circumstances would not in the opinion of the Director-State Engineer safely accommodate vehicles of more than ninety-six inches in width.

**Source:** Laws 1933, c. 105, § 1, p. 425; C.S.Supp.,1941, § 39-1032; R.S.1943, § 39-719; Laws 1957, c. 156, § 1, p. 563; Laws 1961, c. 182, § 1, p. 544; Laws 1963, c. 219, § 1, p. 691; Laws 1963, c. 220, § 1, p. 693; Laws 1963, c. 221, § 1, p. 697; Laws 1965, c. 212, § 1, p. 621; Laws 1969, c. 308, § 2, p. 1101; Laws 1973, LB 491, § 1; R.S.Supp.,1973, § 39-719; Laws 1974, LB 593, § 1; Laws 1975, LB 306, § 1; Laws 1977, LB 427, § 2; Laws 1978, LB 576, § 1; Laws 1978, LB 750, § 2; Laws 1980, LB 284, § 1; Laws 1981, LB 285, § 2; Laws 1982, LB 417, § 1; Laws 1983, LB 244, § 1; Laws 1985, LB 553, § 3; Laws 1990, LB 369, § 3; R.S.Supp.,1992, § 39-6,177; Laws 1993, LB 370, § 384; Laws 1993, LB 413, § 1; Laws 1993, LB 575, § 35; Laws 1997, LB 226, § 1; Laws 1999, LB 704, § 47; Laws 2000, LB 1361, § 5; Laws 2001, LB 376, § 3; Laws 2008, LB756, § 23.

#### Cross References

**Weighing stations**, see sections 60-1301 to 60-1309.

Under the exemption to the width limitations prescribed by subdivision (2)(f) of this section, the language "access to points on (dustless-surfaced) highways" means that if there is no other route available, one may move the qualified equipment over a dustless-surfaced highway. *State v. Quandt*, 234 Neb. 402, 451 N.W.2d 272 (1990).

Violation of a statute is evidence of negligence, but not negligence per se. *Clark Bilt, Inc. v. Wells Dairy Co.*, 200 Neb. 20, 261 N.W.2d 772 (1978).

Exception in this section for unbaled livestock forage applied to load only and not to vehicle. *State v. Sabin*, 184 Neb. 784, 172 N.W.2d 89 (1969).

Width of vehicle may not exceed eight feet unless special permit is obtained. *Frasier v. Gilchrist*, 165 Neb. 450, 86 N.W.2d 65 (1957).

Where truck loaded with combine exceeded statutory permissible width and was over centerline of the highway, it was evidence of negligence. *Novak v. Laptad*, 152 Neb. 87, 40 N.W.2d 331 (1949).

#### **60-6,289 Vehicles; height; limit; height of structure; damages.**

(1) No vehicle unladen or with load shall exceed a height of fourteen feet, six inches, except:

(a) Combines or vehicles used in transporting combines, to be engaged in harvesting within or without the state, moving into or through the state during daylight hours when the overall height does not exceed fifteen feet, six inches;

(b) Livestock forage vehicles with or without load that comply with subsection (2) of section 60-6,305;

(c) Farm equipment or implements of husbandry being driven, picked up, or delivered during daylight hours by farm equipment dealers shall not exceed fifteen feet, six inches;

(d) Self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met;

(e) Vehicles which have been issued a permit pursuant to section 60-6,299; or  
(f) Vehicles with a baled livestock forage load that comply with subsection (4) of section 60-6,305 when the overall height does not exceed fifteen feet, six inches.

(2) No person shall be required to raise, alter, construct, or reconstruct any underpass, bridge, wire, or other structure to permit the passage of any vehicle having a height, unladen or with load, in excess of twelve feet, six inches. The owners, lessees, and operators, jointly and severally, of vehicles exceeding twelve feet, six inches, in height shall assume the risk of loss to the vehicle or its load and shall be liable for any damages that result to overhead obstructions from operation of a vehicle exceeding twelve feet, six inches, in height.

**Source:** Laws 1933, c. 105, § 2, p. 425; C.S.Supp.,1941, § 39-1033; Laws 1943, c. 133, § 1, p. 446; R.S.1943, § 39-720; Laws 1951, c. 117, § 1, p. 526; Laws 1957, c. 156, § 2, p. 563; Laws 1969, c. 308, § 3, p. 1102; Laws 1973, LB 491, § 2; R.S.Supp.,1973, § 39-720; Laws 1974, LB 593, § 2; Laws 1977, LB 211, § 3; Laws 1978, LB 750, § 3; Laws 1980, LB 284, § 2; Laws 1985, LB 553, § 4; R.S.1943, (1988), § 39-6,178; Laws 1993, LB 370, § 385; Laws 2000, LB 1361, § 6; Laws 2008, LB756, § 24; Laws 2010, LB820, § 1.

**60-6,290 Vehicles; length; limit; exceptions.**

(1)(a) No vehicle shall exceed a length of forty feet, extreme overall dimensions, inclusive of front and rear bumpers including load, except that:

(i) A bus or a motor home, as defined in section 71-4603, may exceed the forty-foot limitation but shall not exceed a length of forty-five feet;

(ii) A truck-tractor may exceed the forty-foot limitation;

(iii) A semitrailer operating in a truck-tractor single semitrailer combination, which semitrailer was actually and lawfully operating in the State of Nebraska on December 1, 1982, may exceed the forty-foot limitation; and

(iv) A semitrailer operating in a truck-tractor single semitrailer combination, which semitrailer was not actually and lawfully operating in the State of Nebraska on December 1, 1982, may exceed the forty-foot limitation but shall not exceed a length of fifty-three feet including load.

(b) No combination of vehicles shall exceed a length of sixty-five feet, extreme overall dimensions, inclusive of front and rear bumpers and including load, except:

(i) One truck and one trailer, loaded or unloaded, used in transporting implements of husbandry to be engaged in harvesting, while being transported into or through the state during daylight hours if the total length does not exceed seventy-five feet including load;

(ii) A truck-tractor single semitrailer combination;

(iii) A truck-tractor semitrailer trailer combination, but the semitrailer trailer portion of such combination shall not exceed sixty-five feet inclusive of connective devices; and

(iv) A driveaway saddlemount vehicle transporter combination and driveaway saddlemount with fullmount vehicle transporter combination, but the total overall length shall not exceed ninety-seven feet.

(c) A truck shall be construed to be one vehicle for the purpose of determining length.

(d) A trailer shall be construed to be one vehicle for the purpose of determining length.

(2) Subsection (1) of this section shall not apply to:

(a) Extra-long vehicles which have been issued a permit pursuant to section 60-6,292;

(b) Vehicles which have been issued a permit pursuant to section 60-6,299;

(c) The temporary moving of farm machinery during daylight hours in the normal course of farm operations;

(d) The movement of unbaled livestock forage vehicles, loaded or unloaded;

(e) The movement of public utility or other construction and maintenance material and equipment at any time;

(f) Farm equipment dealers hauling, driving, delivering, or picking up farm equipment or implements of husbandry within the county in which the dealer maintains his or her place of business, or in any adjoining county or counties, and return;

(g) The overhang of any motor vehicle being hauled upon any lawful combination of vehicles, but such overhang shall not exceed the distance from the rear axle of the hauled motor vehicle to the closest bumper thereof;

(h) The overhang of a combine to be engaged in harvesting, while being transported into or through the state driven during daylight hours by a truck-tractor semitrailer combination, but the length of the semitrailer, including overhang, shall not exceed sixty-three feet and the maximum semitrailer length shall not exceed fifty-three feet;

(i) Any self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met; or

(j) One truck-tractor two trailer combination or one truck-tractor semitrailer trailer combination used in transporting equipment utilized by custom harvesters under contract to agricultural producers to harvest wheat, soybeans, or milo during the months of April through November but the length of the property-carrying units, excluding load, shall not exceed eighty-one feet six inches.

(3) The length limitations of this section shall be exclusive of safety and energy conservation devices such as rearview mirrors, turnsignal lights, marker lights, steps and handholds for entry and egress, flexible fender extensions, mudflaps and splash and spray suppressant devices, load-induced tire bulge, refrigeration units or air compressors, and other devices necessary for safe and efficient operation of commercial motor vehicles, except that no device excluded from the limitations of this section shall have by its design or use the capability to carry cargo.

**Source:** Laws 1933, c. 102, § 1, p. 414; Laws 1933, c. 105, § 3, p. 425; Laws 1935, c. 86, § 1, p. 277; Laws 1939, c. 50, § 1, p. 217; C.S.Supp.,1941, § 39-1034; R.S.1943, § 39-721; Laws 1947, c. 146, § 1, p. 402; Laws 1951, c. 117, § 2, p. 527; Laws 1953, c. 133, § 1, p. 413; Laws 1957, c. 156, § 3, p. 564; Laws 1959, c. 164, § 1, p. 599; Laws 1959, c. 165, § 1, p. 603; Laws 1961, c. 309, § 1, p. 980; Laws 1963, c. 220, § 2, p. 694; Laws 1963, c.

222, § 1, p. 699; Laws 1963, c. 223, § 1, p. 701; Laws 1965, c. 213, § 1, p. 625; Laws 1971, LB 530, § 1; C.S.Supp., 1972, § 39-721; Laws 1974, LB 920, § 2; Laws 1979, LB 112, § 1; Laws 1980, LB 284, § 3; Laws 1980, LB 785, § 2; Laws 1982, LB 383, § 1; Laws 1983, LB 411, § 1; Laws 1984, LB 983, § 3; Laws 1985, LB 553, § 5; Laws 1987, LB 224, § 13; R.S.1943, (1988), § 39-6,179; Laws 1993, LB 370, § 386; Laws 1993, LB 575, § 36; Laws 1996, LB 1104, § 3; Laws 1997, LB 720, § 18; Laws 2000, LB 1361, § 7; Laws 2001, LB 376, § 4; Laws 2006, LB 853, § 21; Laws 2008, LB756, § 25.

Reception in evidence of special trip permit was not error. *Frasier v. Gilchrist*, 165 Neb. 450, 86 N.W.2d 65 (1957).

Legislative definition of vehicle or trailer, made for purposes of classification for licensing or taxing, does not change the common meaning of words used in matters disconnected there-

with. *Moffitt v. State Automobile Ins. Assn.*, 140 Neb. 578, 300 N.W. 837 (1941), vacating on rehearing, 139 Neb. 512, 297 N.W. 918 (1941).

If a driver does not display lights on a projecting load when it is dark, it is evidence of negligence. *Moore v. Nisley*, 133 Neb. 474, 275 N.W. 827 (1937).

### 60-6,291 Violations; penalty.

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

**Source:** Laws 1933, c. 105, § 8, p. 431; Laws 1941, c. 76, § 1, p. 312; C.S.Supp., 1941, § 39-1037; R.S.1943, § 39-725; Laws 1949, c. 115, § 1, p. 309; Laws 1953, c. 134, § 6, p. 421; Laws 1955, c. 151, § 2, p. 449; R.R.S.1943, § 39-725; Laws 1974, LB 593, § 4; Laws 1977, LB 41, § 35; R.S.1943, (1988), § 39-6,188; Laws 1993, LB 370, § 387; Laws 1993, LB 121, § 207; Laws 1994, LB 884, § 81.

Omission of reference to section on speed did not preclude general penalty. *Hyslop v. State*, 159 Neb. 802, 68 N.W.2d 698 (1955).

In addition to punishment under this section, driver's license may be suspended. *Kroger v. State*, 158 Neb. 73, 62 N.W.2d 312 (1954).

### 60-6,292 Extra-long vehicle combinations; permit; conditions; fee; rules and regulations; violation; penalty.

(1) The Department of Roads may issue permits for the use of extra-long vehicle combinations. Such permits shall allow the extra-long vehicle combinations to operate only on the National System of Interstate and Defense Highways and only if such vehicles are empty and are being delivered for the manufacturer or retailer, except that a highway located not more than six miles from the National System of Interstate and Defense Highways may also be designated in such permits if it is determined by the Director-State Engineer that such designation is necessary for the permit holder to have access to the National System of Interstate and Defense Highways. An annual permit for such use may be issued to each qualified carrier company or individual. The carrier company or individual shall maintain a copy of such annual permit in each truck-tractor operating as a part of an extra-long vehicle combination. The fee for such permit shall be two hundred fifty dollars per year.

(2) The permit shall allow operation of the following extra-long vehicle combinations of not more than three cargo units and not fewer than six axles nor more than nine axles:

(a) A truck-tractor, a semitrailer, and two trailers having an overall combination length of not more than one hundred five feet. Semitrailers and trailers shall be of approximately equal lengths;

(b) A truck-tractor, semitrailer, and single trailer having an overall length of not more than one hundred five feet. Semitrailers and trailers shall be of approximately equal lengths; and

(c) A truck-tractor, semitrailer, or single trailer, one trailer of which is not more than forty-eight feet long, the other trailer of which is not more than twenty-eight feet long nor less than twenty-six feet long, and the entire combination of which is not more than ninety-five feet long. The shorter trailer shall be operated as the rear trailer.

For purposes of this subsection, a semitrailer used with a converter dolly shall be considered a trailer.

(3) The department shall adopt and promulgate rules and regulations governing the issuance of the permits, including, but not limited to, selection of carriers, driver qualifications, equipment selection, hours of operations, weather conditions, road conditions, and safety considerations.

(4) Any person who violates this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1984, LB 983, § 1; R.S.1943, (1988), § 39-6,179.01; Laws 1993, LB 370, § 388.

**60-6,293 Truck-trailer combination; warning decal, when.**

A warning decal shall be attached to every truck-trailer combination, except trailers subject to section 60-6,243, having a connection device between such vehicles which is more than twelve feet in length. Such decal shall be made of red reflectorized material and contain the words:

LONG VEHICLE  
PASS WITH CARE

The letters shall be of white reflectorized material and shall be not less than three inches in height.

The decal shall be affixed to the sides and rear parts of the trailer at a height of not less than forty-eight inches nor more than seventy-four inches from the ground level.

**Source:** Laws 1974, LB 806, § 1; R.S.1943, (1988), § 39-6,130.01; Laws 1993, LB 370, § 389.

**60-6,294 Vehicles; weight limit; further restrictions by department, when authorized; axle load; load limit on bridges; overloading; liability.**

(1) Every vehicle, whether operated singly or in a combination of vehicles, and every combination of vehicles shall comply with subsections (2) and (3) of this section except as provided in sections 60-6,294.01 and 60-6,297. The limitations imposed by this section shall be supplemental to all other provisions imposing limitations upon the size and weight of vehicles.

(2) No wheel of a vehicle or trailer equipped with pneumatic or solid rubber tires shall carry a gross load in excess of ten thousand pounds on any highway nor shall any axle carry a gross load in excess of twenty thousand pounds on any highway. An axle load shall be defined as the total load transmitted to the

highway by all wheels the centers of which may be included between two parallel transverse vertical planes forty inches apart extending across the full width of the vehicle.

(3) No group of two or more consecutive axles shall carry a load in pounds in excess of the value given in the following table corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot, except that the maximum load carried on any group of two or more axles shall not exceed eighty thousand pounds on the National System of Interstate and Defense Highways unless the Director-State Engineer pursuant to section 60-6,295 authorizes a greater weight.

Distance in feet between the extremes of any group of two or more consecutive axles	Maximum load in pounds carried on any group of two or more consecutive axles					
	Two Axles	Three Axles	Four Axles	Five Axles	Six Axles	Seven Axles
4	34,000					
5	34,000					
6	34,000					
7	34,000					
8	34,000	42,000				
9	39,000	42,500				
10	40,000	43,500				
11		44,000				
12		45,000	50,000			
13		45,500	50,500			
14		46,500	51,500			
15		47,000	52,000			
16		48,000	52,500	58,000		
17		48,500	53,500	58,500		
18		49,500	54,000	59,000		
19		50,000	54,500	60,000		
20		51,000	55,500	60,500		
21		51,500	56,000	61,000		
22		52,500	56,500	61,500		
23		53,000	57,500	62,500		
24		54,000	58,000	63,000		
25		54,500	58,500	63,500	69,000	
26		55,500	59,500	64,000	69,500	
27		56,000	60,000	65,000	70,000	
28		57,000	60,500	65,500	71,000	
29		57,500	61,500	66,000	71,500	
30		58,500	62,000	66,500	72,000	
31		59,000	62,500	67,500	72,500	
32		60,000	63,500	68,000	73,000	
33			64,000	68,500	74,000	
34			64,500	69,000	74,500	
35			65,500	70,000	75,000	
36			66,000	70,500	75,500	
37			66,500	71,000	76,000	81,500
38			67,500	72,000	77,000	82,000
39			68,000	72,500	77,500	82,500
40			68,500	73,000	78,000	83,500

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41	69,500	73,500	78,500	84,000
42	70,000	74,000	79,000	84,500
43	70,500	75,000	80,000	85,000
44	71,500	75,500	80,500	85,500
45	72,000	76,000	81,000	86,000
46	72,500	76,500	81,500	87,000
47	73,500	77,500	82,000	87,500
48	74,000	78,000	83,000	88,000
49	74,500	78,500	83,500	88,500
50	75,500	79,000	84,000	89,000
51	76,000	80,000	84,500	89,500
52	76,500	80,500	85,000	90,500
53	77,500	81,000	86,000	91,000
54	78,000	81,500	86,500	91,500
55	78,500	82,500	87,000	92,000
56	79,500	83,000	87,500	92,500
57	80,000	83,500	88,000	93,000
58		84,000	89,000	94,000
59		85,000	89,500	94,500
60		85,500	90,000	95,000

(4) The distance between axles shall be measured to the nearest foot. When a fraction is exactly one-half foot, the next larger whole number shall be used, except that:

(a) Any group of three axles shall be restricted to a maximum load of thirty-four thousand pounds unless the distance between the extremes of the first and third axles is at least ninety-six inches in fact; and

(b) The maximum gross load on any group of two axles, the distance between the extremes of which is more than eight feet but less than eight feet six inches, shall be thirty-eight thousand pounds.

(5) The limitations of subsections (2) through (4) of this section shall apply as stated to all main, rural, and intercity highways but shall not be construed as inhibiting heavier axle loads in metropolitan areas, except on the National System of Interstate and Defense Highways, if such loads are not prohibited by city ordinance.

(6) The weight limitations of wheel and axle loads as defined in subsections (2) through (4) of this section shall be restricted to the extent deemed necessary by the Department of Roads for a reasonable period when road subgrades or pavements are weak or are materially weakened by climatic conditions.

(7) Two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each when the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six, thirty-seven, or thirty-eight feet except as provided in section 60-6,297. Such vehicles shall be subject to section 60-6,301.

(8) If any vehicle crosses a bridge with a total gross load in excess of the posted capacity of such bridge and as a result of such crossing any damage results to the bridge, the owner of such vehicle shall be responsible for all of such damage.

(9) Vehicles equipped with a greater number of axles than provided in the tables in subsection (3) of this section shall be legal if they do not exceed the maximum load upon any wheel or axle, the maximum load upon any group of

two or more consecutive axles, and the total gross weight, or any of such weights as provided in subsections (2) and (3) of this section.

(10) Subsections (1) through (9) of this section shall not apply to a vehicle which has been issued a permit pursuant to section 60-6,299, self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met, or an emergency vehicle when the requirements of subdivision (1)(a)(v) of section 60-6,298 are met.

(11) Any two consecutive axles the centers of which are more than forty inches and not more than ninety-six inches apart, measured to the nearest inch between any two adjacent axles in the series, shall be defined as tandem axles, and the gross weight transmitted to the road surface through such series shall not exceed thirty-four thousand pounds. No axle of the series shall exceed the maximum weight permitted under this section for a single axle.

(12) Dummy axles shall be disregarded in determining the lawful weight of a vehicle or vehicle combination for operation on the highway. Dummy axle shall mean an axle attached to a vehicle or vehicle combination in a manner so that it does not articulate or substantially equalize the load and does not carry at least the lesser of eight thousand pounds or eight percent of the gross weight of the vehicle or vehicle combination.

(13) The maximum gross weight limit and the axle weight limit for any vehicle or combination of vehicles equipped with idle reduction technology may be increased by an amount necessary to compensate for the additional weight of the idle reduction technology as provided in 23 U.S.C. 127(a)(12), as such section existed on July 18, 2008. The additional amount of weight allowed by this subsection shall not exceed four hundred pounds and shall not be construed to be in addition to the five-percent-in-excess-of-maximum-load provision of subdivision (1) of section 60-6,301.

**Source:** Laws 1933, c. 105, § 4, p. 426; Laws 1939, c. 50, § 2, p. 218; C.S.Supp.,1941, § 39-1035; Laws 1943, c. 133, § 2, p. 446; R.S. 1943, § 39-722; Laws 1945, c. 91, § 1, p. 312; Laws 1947, c. 147, § 1, p. 403; Laws 1953, c. 131, § 9, p. 404; Laws 1953, c. 134, § 1, p. 416; Laws 1959, c. 164, § 2, p. 600; Laws 1969, c. 318, § 1, p. 1150; C.S.Supp.,1972, § 39-722; Laws 1980, LB 284, § 4; Laws 1982, LB 383, § 2; Laws 1984, LB 726, § 1; Laws 1985, LB 553, § 6; Laws 1987, LB 132, § 1; Laws 1990, LB 369, § 4; R.S.Supp.,1992, § 39-6,180; Laws 1993, LB 370, § 390; Laws 1995, LB 186, § 1; Laws 1996, LB 1104, § 4; Laws 2000, LB 1361, § 8; Laws 2005, LB 82, § 3; Laws 2008, LB756, § 26.

#### Cross References

**Special load restrictions**, rules and regulations of Department of Roads, adoption, penalty, see sections 39-102 and 39-103.

**Weighing stations**, see sections 60-1301 to 60-1309.

Complaint charging violation of this section was within jurisdiction of justice of the peace. *Conkling v. DeLany*, 167 Neb. 4, 91 N.W.2d 250 (1958).

Limitation of weight on group of axles was proper exercise of police power. *State v. Luttrell*, 159 Neb. 641, 68 N.W.2d 332 (1955).

An absolute liability arises when truck in excess of posted weight causes bridge to collapse. *Central Neb. Public Power & Irrigation Dist. v. Boettcher*, 154 Neb. 815, 49 N.W.2d 690 (1951).

### **60-6,294.01 Agricultural floater-spreader implements; weight limit; exception; speed limit.**

(1) The Legislature finds that highway and roadway travel by agricultural floater-spreader implements is incidental to their designed purpose and use and that their use is essential to the agricultural industry of the State of Nebraska.

(2) Agricultural floater-spreader implement means self-propelled equipment which is designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops and which has a gross laden weight of forty-eight thousand pounds or less and is equipped with floatation tires.

(3) Subsections (2) and (3) of section 60-6,294 shall not apply to agricultural floater-spreader implements. This exemption does not include travel upon the National System of Interstate and Defense Highways.

(4) When operated upon any highway, an agricultural floater-spreader implement shall not be operated at a speed in excess of forty miles per hour.

**Source:** Laws 1996, LB 1104, § 5; Laws 2003, LB 103, § 1.

**60-6,295 National System of Interstate and Defense Highways; Director-State Engineer; authorize weight limits.**

Upon finding that no loss to the state of federal highway-user funds would result therefrom, the Director-State Engineer may authorize the carrying on the National System of Interstate and Defense Highways of the weights set forth in the table of weights in section 60-6,294 or such part thereof as would result in no loss to the state of such funds.

**Source:** Laws 1973, LB 463, § 1; R.S.Supp.,1973, § 39-722.02; Laws 1980, LB 785, § 3; Laws 1984, LB 726, § 2; R.S.1943, (1988), § 39-6,180.01; Laws 1993, LB 370, § 391.

**60-6,296 Motor vehicles; trailers; overloading; violation; penalty.**

(1) Any person operating any motor vehicle, semitrailer, or trailer, when the weight of the vehicle and load is in violation of the provisions of section 60-6,294 and the vehicle and load do not qualify for the exceptions permitted by section 60-6,301, shall be guilty of a traffic infraction and shall, upon conviction thereof, be fined:

(a) Twenty-five dollars for carrying a gross load of five percent or less over the maximum;

(b) One hundred dollars for carrying a gross load of more than five percent but not more than ten percent over the maximum;

(c) Two hundred dollars for carrying a gross load of more than ten percent but not more than fifteen percent over the maximum;

(d) Three hundred fifty dollars for carrying a gross load of more than fifteen percent but not more than twenty percent over the maximum;

(e) Six hundred dollars for carrying a gross load of more than twenty percent but not more than twenty-five percent over the maximum;

(f) One thousand dollars for carrying a gross load of more than twenty-five percent over the maximum;

(g) Twenty-five dollars for carrying a load on a single axle or a group of axles of five percent or less over the maximum;

(h) Seventy-five dollars for carrying a load on a single axle or a group of axles of more than five percent but not more than ten percent over the maximum;

(i) One hundred fifty dollars for carrying a load on a single axle or a group of axles of more than ten percent but not more than fifteen percent over the maximum;

(j) Three hundred twenty-five dollars for carrying a load on a single axle or a group of axles of more than fifteen percent but not more than twenty percent over the maximum;

(k) Five hundred dollars for carrying a load on a single axle or a group of axles of more than twenty percent but not more than twenty-five percent over the maximum;

(l) Seven hundred fifty dollars for carrying a load on a single axle or group of axles of more than twenty-five percent but not more than thirty percent over the maximum;

(m) Nine hundred fifty dollars for carrying a load on a single axle or group of axles of more than thirty percent but not more than thirty-five percent over the maximum;

(n) One thousand one hundred fifty dollars for carrying a load on a single axle or group of axles of more than thirty-five percent but not more than forty percent over the maximum;

(o) Fifteen hundred fifty dollars for carrying a load on a single axle or group of axles of more than forty percent but not more than forty-five percent over the maximum;

(p) Two thousand dollars for carrying a load on a single axle or group of axles of more than forty-five percent but not more than fifty percent over the maximum; and

(q) Twenty-five hundred dollars for carrying a load on a single axle or group of axles of more than fifty percent over the maximum.

(2) No person shall be guilty of multiple offenses when the violations (a) involve the excess weight of an axle or a group of axles and the excess weight of the gross load of a single vehicle or (b) occur on the National System of Interstate and Defense Highways.

**Source:** Laws 1953, c. 134, § 4, p. 420; Laws 1963, c. 226, § 2, p. 710; Laws 1969, c. 318, § 3, p. 1155; Laws 1973, LB 491, § 4; R.S.Supp.,1973, § 39-723.06; Laws 1974, LB 920, § 4; Laws 1977, LB 41, § 33; Laws 1979, LB 112, § 2; Laws 1984, LB 726, § 5; Laws 1985, LB 553, § 7; R.S.1943, (1988), § 39-6,184; Laws 1993, LB 370, § 392.

Complaints filed were within jurisdiction of the justice court.  
Conkling v. DeLany, 167 Neb. 4, 91 N.W.2d 250 (1958).

#### **60-6,297 Disabled vehicles; length and load limitations; exception.**

The provisions of subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294 shall not apply when a disabled combination of vehicles is towed if the combination of vehicles, together with the wrecker or tow truck, does not exceed one hundred fifty feet, inclusive of front and rear bumpers including load. Such exception shall apply only if the disabled combination of vehicles is being towed directly to the nearest place of secure safekeeping. The towing vehicle shall be connected with the air brakes and brake lights of the towed vehicle. For purposes of this section, place of secure safekeeping means a place off the traveled portion of the highway that can accommodate the parking of such vehicles in order for the vehicles to be (1)

repaired or (2) dismantled and operated in compliance with subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294.

**Source:** Laws 1982, LB 383, § 3; R.S.1943, (1988), § 39-6,180.02; Laws 1993, LB 370, § 393; Laws 2003, LB 137, § 1; Laws 2005, LB 82, § 4.

**60-6,298 Vehicles; size; weight; load; overweight; special, continuing, or continuous permit; issuance discretionary; conditions; penalty; continuing permit; fees.**

(1)(a) The Department of Roads or the Nebraska State Patrol, with respect to highways under its jurisdiction including the National System of Interstate and Defense Highways, and local authorities, with respect to highways under their jurisdiction, may in their discretion upon application and good cause being shown therefor issue a special, continuing, or continuous permit in writing authorizing the applicant or his or her designee:

(i) To operate or move a vehicle, a combination of vehicles, or objects of a size or weight of vehicle or load exceeding the maximum specified by law when such permit is necessary:

(A) To further the national defense or the general welfare;

(B) To permit movement of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment; or

(C) Because of an emergency, an unusual circumstance, or a very special situation;

(ii) To operate vehicles, for a distance up to one hundred twenty miles, loaded up to fifteen percent greater than the maximum weight specified by law, up to ten percent greater than the maximum length specified by law, except that for a truck-tractor semitrailer trailer combination utilized to transport sugar beets which may be up to twenty-five percent greater than the maximum length specified by law, or both, when carrying grain or other seasonally harvested products from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory when failure to move such grain or products in abundant quantities would cause an economic loss to the person or persons whose grain or products are being transported or when failure to move such grain or products in as large quantities as possible would not be in the best interests of the national defense or general welfare. The distance limitation may be waived for vehicles when carrying dry beans from the field where harvested to storage or market when dry beans are not normally stored, purchased, or used within the permittee's local area and must be transported more than one hundred twenty miles to an available marketing or storage destination. No permit shall authorize a weight greater than twenty thousand pounds on any single axle;

(iii) To transport an implement of husbandry which does not exceed twelve and one-half feet in width during daylight hours, except that the permit shall not allow transport on holidays;

(iv) To operate one or more recreational vehicles, as defined in section 71-4603, exceeding the maximum width specified by law if movement of the recreational vehicles is prior to retail sale and the recreational vehicles comply with subdivision (2)(k) of section 60-6,288; or

(v) To operate an emergency vehicle for purposes of sale, demonstration, exhibit, or delivery, if the applicant or his or her designee is a manufacturer or sales agent of the emergency vehicle. No permit shall be issued for an emergency vehicle which weighs over sixty thousand pounds on the tandem axle.

(b) No permit shall be issued under subdivision (a)(i) of this subsection for a vehicle carrying a load unless such vehicle is loaded with an object which exceeds the size or weight limitations, which cannot be dismantled or reduced in size or weight without great difficulty, and which of necessity must be moved over the highways to reach its intended destination. No permit shall be required for the temporary movement on highways other than dustless-surfaced state highways and for necessary access to points on such highways during daylight hours of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment when such temporary movement is necessary and for a reasonable distance.

(2) The application for any such permit shall specifically describe the vehicle, the load to be operated or moved, whenever possible the particular highways for which permit to operate is requested, and whether such permit is requested for a single trip or for continuous or continuing operation.

(3) The department or local authority is authorized to issue or withhold such permit at its discretion or, if such permit is issued, to limit the number of days during which the permit is valid, to limit the number of trips, to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or to issue a continuous or continuing permit for use on all highways, including the National System of Interstate and Defense Highways. The permits are subject to reasonable conditions as to periodic renewal of such permit and as to operation or movement of such vehicles. The department or local authority may otherwise limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces, or structures or undue danger to the public safety. The department or local authority may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(4) Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer, carrier enforcement officer, or authorized agent of any authority granting such permit. Each such permit shall state the maximum weight permissible on a single axle or combination of axles and the total gross weight allowed. No person shall violate any of the terms or conditions of such special permit. In case of any violation, the permit shall be deemed automatically revoked and the penalty of the original limitations shall be applied unless:

(a) The violation consists solely of exceeding the size or weight specified by the permit, in which case only the penalty of the original size or weight limitation exceeded shall be applied; or

(b) The total gross load is within the maximum authorized by the permit, no axle is more than ten percent in excess of the maximum load for such axle or group of axles authorized by the permit, and such load can be shifted to meet the weight limitations of wheel and axle loads authorized by such permit. Such shift may be made without penalty if it is made at the state or commercial scale designated in the permit. The vehicle may travel from its point of origin to such designated scale without penalty, and a scale ticket from such scale, showing

the vehicle to be properly loaded and within the gross and axle weights authorized by the permit, shall be reasonable evidence of compliance with the terms of the permit.

(5) The department or local authority issuing a permit as provided in this section may adopt and promulgate rules and regulations with respect to the issuance of permits provided for in this section.

(6) The department shall make available applications for permits authorized pursuant to subdivisions (1)(a)(ii) and (1)(a)(iii) of this section in the office of each county treasurer. The department may make available applications for all other permits authorized by this section to the office of the county treasurer and may make available applications for all permits authorized by this section to any other location chosen by the department.

(7) The department or local authority issuing a permit may require a permit fee of not to exceed twenty-five dollars, except that:

(a) The fee for a continuous or continuing permit may not exceed twenty-five dollars for a ninety-day period, fifty dollars for a one-hundred-eighty-day period, or one hundred dollars for a one-year period; and

(b) The fee for permits issued pursuant to subdivision (1)(a)(ii) of this section shall be twenty-five dollars for a thirty-day permit and fifty dollars for a sixty-day permit. Permits issued pursuant to such subdivision shall be valid for thirty days or sixty days and shall be renewable for a total number of days not to exceed one hundred and twenty days per year.

A vehicle or combination of vehicles for which an application for a permit is requested pursuant to this section shall be registered under section 60-3,147 or 60-3,198 for the maximum gross vehicle weight that is permitted pursuant to section 60-6,294 before a permit shall be issued.

**Source:** Laws 1957, c. 156, § 4, p. 565; Laws 1961, c. 183, § 1, p. 546; Laws 1963, c. 220, § 3, p. 695; Laws 1963, c. 226, § 1, p. 708; Laws 1965, c. 214, § 1, p. 627; Laws 1967, c. 235, § 1, p. 627; Laws 1972, LB 1337, § 1; Laws 1973, LB 152, § 1; R.S.Supp.,1973, § 39-722.01; Laws 1975, LB 306, § 2; Laws 1979, LB 287, § 1; Laws 1980, LB 842, § 1; Laws 1981, LB 285, § 3; Laws 1986, LB 122, § 1; Laws 1986, LB 833, § 1; R.S.1943, (1988), § 39-6,181; Laws 1993, LB 370, § 394; Laws 1993, LB 176, § 1; Laws 1994, LB 1061, § 4; Laws 1995, LB 467, § 15; Laws 1996, LB 1306, § 2; Laws 1997, LB 122, § 1; Laws 1997, LB 261, § 1; Laws 2000, LB 1361, § 9; Laws 2001, LB 376, § 5; Laws 2003, LB 563, § 33; Laws 2005, LB 82, § 5; Laws 2005, LB 274, § 246; Laws 2010, LB820, § 2.

#### Cross References

**Rules and regulations of Department of Roads**, adoption, penalty, see sections 39-102 and 39-103.

Under the permit exemption contained in subsection (1) of this section, the language "access to points on (dustless-surfaced) highways" means that if there is no other route available, one may move the qualified equipment over a dustless-surfaced highway. *State v. Quandt*, 234 Neb. 402, 451 N.W.2d 272 (1990).

#### **60-6,299 Permit to move building; limitations; application; Department of Roads; rules and regulations; violation; penalty.**

(1) The Department of Roads may issue permits for vehicles moving a building or objects requiring specialized moving dollies. Such permits shall

allow the vehicles transporting buildings or objects requiring specialized dollies to operate on highways under the jurisdiction of the department, excluding any portion of the National System of Interstate and Defense Highways. Such permit shall specify the maximum allowable width, length, height, and weight of the building to be transported, the route to be used, and the hours during which such building or object may be transported. Any vehicle moving a building or object requiring specialized moving dollies shall be escorted by another vehicle or vehicles in the manner determined by the department. Such vehicles shall travel at a speed which is not in excess of five miles per hour when carrying loads which are in excess of the maximum gross weight specified by law by more than twenty-five percent. The permit shall not be issued for travel on a state highway containing a bridge or structure which is structurally inadequate to carry such building or object as determined by the department. The department may prescribe conditions of operation of such vehicle when necessary to assure against damage to the road foundations, surfaces, or structures and require such security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(2) The application for any such permit shall specifically describe the vehicle, the load to be moved, and whenever possible the particular highways for which the permit is requested. The company or individual shall maintain a copy of the permit in each vehicle moving a building or object requiring specialized moving dollies which shall be open to inspection by any peace officer, carrier enforcement officer, or authorized agent of any authority granting such permit. The fee for such permit shall be ten dollars.

(3) The department shall adopt and promulgate rules and regulations governing the issuance of the permits. Such rules and regulations shall include, but not be limited to, driver qualifications, equipment selection, hours of operation, weather conditions, road conditions, determination of any damage caused to highways or bridges, cutting or trimming of trees, removal or relocation of signs or other property of the state, raising or lowering of electric supply and communication lines, and such other safety considerations as the department deems necessary.

(4) Any person who violates the terms of a permit issued pursuant to this section or otherwise violates this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1985, LB 553, § 1; R.S.1943, (1988), § 39-6,181.01; Laws 1993, LB 370, § 395.

**60-6,300 Vehicles; excess load prohibited; exception; violation; penalty.**

It shall be unlawful to operate upon the public highways of this state any truck, truck-tractor, or trailer that weighs in excess of the gross weight for which the registration fee on such vehicle has been paid plus one thousand pounds, but this section shall not apply to any truck, truck-tractor, or trailer being operated under a special permit issued pursuant to section 60-6,298.

Any owner of such a vehicle who permits operation of the vehicle in violation of this section shall be guilty of a traffic infraction and shall, upon conviction, be fined twenty-five dollars for each one thousand pounds or fraction thereof in excess of the weight allowed to be carried under this section with tolerance.

**Source:** Laws 1933, c. 105, § 5, p. 426; Laws 1939, c. 47, § 1, p. 208; Laws 1941, c. 125, § 2, p. 481; C.S.Supp.,1941, § 39-1193; R.S.

1943, § 39-723; Laws 1947, c. 147, § 2(4), p. 406; Laws 1953, c. 134, § 2, p. 418; Laws 1969, c. 318, § 2, p. 1155; C.S.Supp., 1972, § 39-723.03; Laws 1979, LB 287, § 2; Laws 1984, LB 726, § 3; Laws 1986, LB 783, § 1; R.S.1943, (1988), § 39-6,182; Laws 1993, LB 370, § 396.

Section applies to any motor truck carrying a load. Aulner v. State, 160 Neb. 741, 71 N.W.2d 305 (1955).

Where load exceeds maximum allowed plus tolerance, penalty is based on overload. State v. Luttrell, 159 Neb. 641, 68 N.W.2d 332 (1955).

**60-6,301 Vehicles; overload; reduce or shift load; exceptions; permit fee; warning citation; when.**

When any motor vehicle, semitrailer, or trailer is operated upon the highways of this state carrying a load in excess of the maximum weight permitted by section 60-6,294, the load shall be reduced or shifted to within such maximum tolerance before being permitted to operate on any public highway of this state, except that:

(1) If any motor vehicle, semitrailer, or trailer exceeds the maximum load on only one axle, only one tandem axle, or only one group of axles when (a) the distance between the first and last axle of such group of axles is twelve feet or less, (b) the excess axle load is no more than five percent in excess of the maximum load for such axle, tandem axle, or group of axles permitted by such section, while the vehicle or combination of vehicles is within the maximum gross load, and (c) the load on such vehicle is such that it can be shifted or the configuration of the vehicle can be changed so that all axles, tandem axle, or groups of axles are within the maximum permissible limit for such axle, tandem axle, or group of axles, such shift or change of configuration may be made without penalty;

(2) Any motor vehicle, semitrailer, or trailer carrying only a load of livestock may exceed the maximum load as permitted by such section on only one axle, only one tandem axle, or only one group of axles when the distance between the first and last axle of the group of axles is six feet or less if the excess load on the axle, tandem axle, or group of axles is caused by a shifting of the weight of the livestock by the livestock and if the vehicle or combination of vehicles is within the maximum gross load as permitted by such section;

(3) With a permit issued by the Department of Roads or the Nebraska State Patrol, a truck with an enclosed body and a compacting mechanism, designed and used exclusively for the collection and transportation of garbage or refuse, may exceed the maximum load as permitted by such section by no more than twenty percent on only one axle, only one tandem axle, or only one group of axles when the vehicle is laden with garbage or refuse if the vehicle is within the maximum gross load as permitted by such section. There shall be a permit fee of ten dollars per month or one hundred dollars per year. The permit may be issued for one or more months up to one year, and the term of applicability shall be stated on the permit;

(4) Any motor vehicle, semitrailer, or trailer carrying any kind of a load, including livestock, which exceeds the legal maximum gross load by five percent or less may proceed on its itinerary and unload the cargo carried thereon to the maximum legal gross weight at the first unloading facility on the itinerary where the cargo can be properly protected. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator; and

(5) Any motor vehicle, semitrailer, or trailer carrying grain or other seasonally harvested products may operate from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory up to seventy miles with a load that exceeds the maximum load permitted by section 60-6,294 by fifteen percent on any tandem axle, group of axles, and gross weight. Any truck with no more than a single rear axle carrying grain or other seasonally harvested products may operate from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory up to seventy miles with a load that exceeds the maximum load permitted by section 60-6,294 by fifteen percent on any single axle and gross weight. The owner or a representative of the owner of the agricultural product shall furnish the driver of the loaded vehicle a signed statement of origin and destination.

Nothing in this section shall be construed to permit to be operated on the National System of Interstate and Defense Highways any vehicle or combination of vehicles which exceeds any of the weight limitations applicable to such system as contained in section 60-6,294.

If the maximum legal gross weight or axle weight of any vehicle is exceeded by five percent or less and the arresting peace officer or carrier enforcement officer has reason to believe that such excessive weight is caused by snow, ice, or rain, the officer may issue a warning citation to the operator.

**Source:** Laws 1953, c. 134, § 5, p. 420; Laws 1955, c. 150, § 1, p. 446; Laws 1963, c. 226, § 3, p. 710; Laws 1969, c. 318, § 4, p. 1156; Laws 1973, LB 491, § 5; R.S.Supp.,1973, § 39-723.07; Laws 1974, LB 920, § 5; Laws 1976, LB 823, § 1; Laws 1977, LB 427, § 3; Laws 1980, LB 785, § 4; Laws 1984, LB 726, § 6; Laws 1986, LB 833, § 2; R.S.1943, (1988), § 39-6,185; Laws 1993, LB 370, § 397; Laws 2000, LB 1361, § 10; Laws 2007, LB148, § 1.

**60-6,302 Connection device; unlawful repositioning; violation; penalty.**

Except for fifth-wheel repositioning done pursuant to section 60-6,301, it shall be unlawful to reposition the fifth-wheel connection device of a truck-tractor and semitrailer combination while such combination is carrying cargo and on the state highway system. Any person violating this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1987, LB 39, § 1; R.S.1943, (1988), § 39-6,185.01; Laws 1993, LB 370, § 398.

**60-6,303 Vehicles; overloading; powers of peace officer or carrier enforcement officer; violation; penalty.**

Any peace officer or carrier enforcement officer having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the vehicle and load. Upon weighing a vehicle and load, if the officer determines that the weight on any axle exceeds the lawful weight, that the weight on any group of two consecutive axles exceeds their lawful weight, or that the weight is unlawful on any axle or group of consecutive axles on any road restricted in accordance with section 60-6,294, the officer may require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle to such limit as permitted under such

section. All material so unloaded shall be cared for by the owner or driver of such vehicle at the risk of such owner or driver.

For purposes of this section, lawful weight shall mean the maximum weight permitted by section 60-6,294.

Any driver of a vehicle who refuses to stop and submit the vehicle and load to a weighing or who refuses, when directed by a peace officer or carrier enforcement officer upon a weighing of the vehicle, to stop the vehicle and otherwise comply with the provisions of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1953, c. 131, § 10, p. 407; Laws 1969, c. 318, § 5, p. 1157; R.R.S.1943, § 39-723.08; Laws 1984, LB 726, § 7; R.S.1943, (1988), § 39-6,186; Laws 1993, LB 370, § 399.

**60-6,304 Load; contents; requirements; violation; penalty.**

(1) No vehicle shall be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping from the vehicle.

(2) No person shall transport any sand, gravel, rock less than two inches in diameter, or refuse in any vehicle on any hard-surfaced state highway if such material protrudes above the sides of that part of the vehicle in which it is being transported unless such material is enclosed or completely covered with canvas or similar covering.

(3) No person shall drive or move a motor vehicle, trailer, or semitrailer upon any highway unless the cargo or contents carried by the motor vehicle, trailer, or semitrailer are properly distributed and adequately secured to prevent the falling of cargo or contents from the vehicle. The tailgate, doors, tarpaulins, and any other equipment used in the operation of the motor vehicle, trailer, or semitrailer or in the distributing or securing of the cargo or contents carried by the motor vehicle, trailer, or semitrailer shall be secured to prevent cargo or contents falling from the vehicle. The means of securement to the motor vehicle, trailer, or semitrailer must be either tiedowns and tiedown assemblies of adequate strength or sides, sideboards, or stakes and a rear endgate, endboard, or stakes strong enough and high enough to assure that cargo or contents will not fall from the vehicle.

(4) Any person who violates any provision of this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1969, c. 304, § 1, p. 1095; C.S.Supp.,1972, § 39-735.02; Laws 1974, LB 593, § 7; Laws 1977, LB 41, § 21; R.S.1943, (1988), § 39-6,129; Laws 1993, LB 370, § 400; Laws 1993, LB 575, § 28; Laws 2002, LB 1105, § 463; Laws 2007, LB147, § 1.

(z) SPECIAL RULES FOR LIVESTOCK FORAGE VEHICLES

**60-6,305 Livestock forage vehicle; restrictions; permit; fee.**

(1) For purposes of this section, livestock forage vehicle shall mean a vehicle with chassis which has a special implement bolted, mounted, or attached thereto for loading, unloading, and moving livestock forage.

(2) All livestock forage vehicles shall:

(a) Not exceed a length of sixty-five feet, extreme overall dimensions inclusive of bumpers and load;

(b) Not exceed a width of eighteen feet;

(c) Not exceed a height of eighteen feet, either for equipment alone or for equipment and load combined. Such vehicles shall comply with subsection (2) of section 60-6,289; and

(d) Only be operated during hours of daylight.

(3) No person shall operate a livestock forage vehicle which carries unbaled livestock forage at a speed in excess of the following limits:

(a) Twenty-five miles per hour in any residential district;

(b) Twenty miles per hour in any business district; and

(c) Fifty miles per hour while upon any highway other than a freeway outside a business or residential district.

The speed limits provided in this section may be altered as provided in section 60-6,190.

(4) The load of baled livestock forage shall be securely fastened to the vehicle at all times while it is on a highway. Any person who transports unbaled or baled livestock forage shall be responsible for all damages occurring to other persons or property as a result of his or her negligence during the transportation of the livestock forage and shall also be responsible for cleaning a highway of unbaled or baled livestock forage which falls or is dropped from the load onto a highway during the moving of the livestock forage.

(5) Any person who uses equipment which exceeds the length, width, and height provisions set forth in subsection (2) of this section shall first obtain a permit from the county sheriff of the county in which he or she resides. The permit shall be valid to carry loads twenty feet wide in such county and in adjacent counties. Such permit shall be furnished to the sheriff's office by the Department of Motor Vehicles and shall be valid for one calendar year. The fee for such permit shall be ten dollars. Any person securing such a permit shall keep a record of all activity covered by such permit, which record shall be available to the issuing sheriff, his or her deputies and agents, or members of the Nebraska State Patrol at all times. The record shall include dates, items moved, route, and other pertinent information.

**Source:** Laws 1973, LB 45, § 100; Laws 1978, LB 750, § 1; Laws 1989, LB 21, § 1; Laws 1990, LB 369, § 2; R.S.Supp.,1992, § 39-6,100; Laws 1993, LB 370, § 401.

#### (aa) SPECIAL RULES FOR MOTORCYCLES

**60-6,306 Nebraska Rules of the Road; applicability to persons operating motorcycles.**

Any person who operates a motorcycle shall have all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under the Nebraska Rules of the Road except for special motorcycle regulations in the rules and except for those provisions of the rules which by their nature can have no application.

**Source:** Laws 1973, LB 45, § 92; R.S.1943, (1988), § 39-692; Laws 1993, LB 370, § 402.

## Cross References

Helmet requirements, see sections 60-6,278 to 60-6,282.

**60-6,307 Restrictions on operating motorcycles.**

(1) Any person who operates a motorcycle shall ride only upon a permanent and regular seat attached to the motorcycle. A person operating a motorcycle shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat, if designed for two persons, or upon another seat firmly attached to the motorcycle to the rear or side of the operator.

(2) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward.

(3) No person shall operate a motorcycle while carrying any package, bundle, or other article which prevents him or her from keeping both hands on the handlebars.

(4) No operator shall carry any person, nor shall any person ride, in a position that interferes with the operation or control of the motorcycle or the view of the operator.

(5) Any motorcycle which carries a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for such passenger.

(6) No person shall operate any motorcycle with handlebars more than fifteen inches above the mounting point of the handlebars.

**Source:** Laws 1973, LB 45, § 93; R.S.1943, (1988), § 39-693; Laws 1993, LB 370, § 403.

**60-6,308 Operating motorcycles on roadways laned for traffic; prohibited acts.**

(1) A motorcycle shall be entitled to full use of a traffic lane of any highway, and no vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of such lane, except that motorcycles may be operated two abreast in a single lane.

(2) The operator of a motorcycle shall not overtake and pass in the same lane occupied by a vehicle being overtaken.

(3) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(4) Motorcycles shall not be operated more than two abreast in a single lane.

(5) Subsections (2) and (3) of this section shall not apply to peace officers in the performance of their official duties.

(6) No person who rides upon a motorcycle shall attach himself, herself, or the motorcycle to any other vehicle on a roadway.

**Source:** Laws 1973, LB 45, § 94; R.S.1943, (1988), § 39-694; Laws 1993, LB 370, § 404.

## (bb) SPECIAL RULES FOR MOPEDS

**60-6,309 Moped; statutes; applicable.**

Mopeds, their owners, and their operators shall be subject to the Motor Vehicle Operator's License Act, but shall be exempt from the requirements of

the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

**Source:** Laws 1979, LB 23, § 3; Laws 1986, LB 731, § 2; R.S.1943, (1988), § 39-6,196; Laws 1993, LB 370, § 405; Laws 2005, LB 274, § 247; Laws 2005, LB 276, § 104.

**Cross References**

**Motor Vehicle Certificate of Title Act**, see section 60-101.

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

**Motor Vehicle Registration Act**, see section 60-301.

**Motor Vehicle Safety Responsibility Act**, see section 60-569.

**60-6,310 Moped; operation; license required.**

No person shall operate a moped upon a highway unless such person has a valid operator's license.

**Source:** Laws 1979, LB 23, § 4; R.S.1943, (1988), § 39-6,197; Laws 1993, LB 370, § 406; Laws 2008, LB756, § 27.

**60-6,311 Moped; operator; Nebraska Rules of the Road; applicable.**

(1) Any person who rides a moped upon a roadway shall have all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle under the Nebraska Rules of the Road except for special moped regulations in the rules and except for those provisions of the rules which by their nature can have no application.

(2) Regulations applicable to mopeds shall apply whenever a moped is operated upon any highway or upon any path set aside by the Department of Roads or a local authority for the use of mopeds.

**Source:** Laws 1979, LB 23, § 5; R.S.1943, (1988), § 39-6,198; Laws 1993, LB 370, § 407.

**60-6,312 Moped; restrictions on operation.**

(1) Any person who operates a moped shall ride only upon a permanent and regular seat attached to the moped. A person operating a moped shall not carry any other person nor shall any other person ride on a moped unless such moped is designed by the manufacturer to carry more than one person.

(2) A person shall ride upon a moped only while sitting astride the seat, facing forward.

(3) No person shall operate a moped while carrying any package, bundle, or other article which prevents him or her from keeping both hands on the handlebars.

(4) No operator shall carry any person, nor shall any person ride, in a position that interferes with the operation or control of the moped or the view of the operator.

(5) Any moped which carries a passenger shall be equipped with footrests for such passenger.

(6) No person shall operate any moped with handlebars more than fifteen inches above the mounting point of the handlebars.

**Source:** Laws 1979, LB 23, § 6; R.S.1943, (1988), § 39-6,199; Laws 1993, LB 370, § 408.

**60-6,313 Operating mopeds on roadways laned for traffic; prohibited acts.**

(1) A moped shall be entitled to full use of a traffic lane of any highway with an authorized speed limit of forty-five miles per hour or less, and no vehicle shall be operated in such a manner as to deprive any moped of the full use of such lane, except that mopeds and motorcycles may be operated two abreast in a single lane.

(2) No person shall operate a moped between lanes of traffic or between adjacent lines or rows of vehicles.

(3) Mopeds shall not be operated more than two abreast in a single lane.

(4) Any person who operates a moped on a roadway with an authorized speed limit of more than forty-five miles per hour shall ride as near to the right side of the roadway as practicable and shall not ride more than single file.

(5) No person who rides upon a moped shall attach himself, herself, or the moped to any other vehicle on a roadway.

(6) Mopeds shall not be operated on the National System of Interstate and Defense Highways or on sidewalks.

(7) Notwithstanding the maximum speed limits in excess of twenty-five miles per hour established in section 60-6,186, no person shall operate any moped at a speed in excess of thirty miles per hour.

**Source:** Laws 1979, LB 23, § 7; R.S.1943, (1988), § 39-6,200; Laws 1993, LB 370, § 409.

**Cross References**

Operator's license, assessment of points for speeding, see section 60-4,182.

(cc) SPECIAL RULES FOR BICYCLES

**60-6,314 Nebraska Rules of the Road; applicability to persons operating bicycles.**

(1) Any person who operates a bicycle upon a highway shall have all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle under the Nebraska Rules of the Road except for special bicycle regulations in the rules, except for those provisions of the rules which by their nature can have no application, and except as provided in section 60-6,142.

(2) Regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside by the Department of Roads or a local authority for the exclusive use of bicycles.

**Source:** Laws 1973, LB 45, § 86; R.S.1943, (1988), § 39-686; Laws 1993, LB 370, § 410; Laws 1993, LB 575, § 19.

**Cross References**

Hand and arm signals, see sections 60-6,162 and 60-6,163.

The statute requiring a driver of a vehicle emerging from a driveway onto a highway to yield the right-of-way to vehicles approaching on such highway applies to a 15-year-old boy riding a bicycle. *McFarland v. King*, 216 Neb. 92, 341 N.W.2d 920 (1983).

A bicyclist, pursuant to this section, is entitled to all the rights and subject to all the rules of the road governing the driver of a vehicle. *Luellman v. Ambroz*, 2 Neb. App. 855, 516 N.W.2d 627 (1994).

**60-6,315 Riding of bicycles; prohibited acts.**

(1) Any person who rides a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(2) Any person who rides a bicycle shall not remove his or her feet from the pedals and shall have at least one hand on the handlebars at all times.

(3) Any person who operates a bicycle shall not carry any package, bundle, or article which prevents such operator from keeping at least one hand upon the handlebars.

(4) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

**Source:** Laws 1973, LB 45, § 88; R.S.1943, (1988), § 39-688; Laws 1993, LB 370, § 411.

**60-6,316 Bicycles; clinging to vehicles; prohibited.**

Any person who rides upon any bicycle shall not attach himself, herself, or the bicycle to any vehicle upon a roadway.

**Source:** Laws 1973, LB 45, § 89; R.S.1943, (1988), § 39-689; Laws 1993, LB 370, § 412.

**60-6,317 Bicycles on roadways and bicycle paths; general rules; regulation by local authority.**

(1) Any person who operates a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under conditions then existing shall ride as near to the right-hand curb or right-hand edge of the roadway as practicable except when:

(a) Overtaking and passing another bicycle or vehicle proceeding in the same direction;

(b) Preparing for a left turn onto a private road or driveway or at an intersection;

(c) Reasonably necessary to avoid conditions that make it unsafe to continue along the right-hand curb or right-hand edge of the roadway, including fixed or moving objects, stopped or moving vehicles, bicycles, pedestrians, animals, or surface hazards;

(d) Riding upon a lane of substandard width which is too narrow for a bicycle and a vehicle to travel safely side by side within the lane; or

(e) Lawfully operating a bicycle on the paved shoulders of a highway included in the state highway system as provided in section 60-6,142.

Any person who operates a bicycle upon a roadway with a posted speed limit of thirty-five miles per hour or less on which traffic is restricted to one direction of movement and which has two or more marked traffic lanes may ride as near to the left-hand curb or left-hand edge of the roadway as practicable. Whenever a person operating a bicycle leaves the roadway to ride on the paved shoulder or leaves the paved shoulder to enter the roadway, the person shall clearly signal his or her intention and yield the right-of-way to all other vehicles.

(2) Any person who operates a bicycle upon a highway shall not ride more than single file except on paths or parts of highways set aside for the exclusive use of bicycles.

(3) Except as provided in section 60-6,142, whenever a usable path for bicycles has been provided adjacent to a highway, a person operating a bicycle shall use such path and shall not use such highway.

(4) A local authority may by ordinance further regulate the operation of bicycles and may provide for the registration and inspection of bicycles.

**Source:** Laws 1973, LB 45, § 90; R.S.1943, (1988), § 39-690; Laws 1993, LB 370, § 413; Laws 1993, LB 575, § 20.

**60-6,318 Equipment on bicycles; lights; brakes.**

(1) When in use at nighttime, a bicycle shall be equipped with a light visible from a distance of at least five hundred feet to the front on a clear night and with a red reflector on the rear of a type which is approved by the Department of Motor Vehicles or a local authority and which is visible on a clear night from all distances between one hundred feet and six hundred feet to the rear when directly in front of lawful lower beams of headlights on a motor vehicle. A red light visible from a distance of five hundred feet to the rear may be used in addition to such red reflector.

(2) Any bicycle used on a highway shall be equipped with a brake or brakes which will enable the operator to stop the bicycle within twenty-five feet of the point of braking when moving at a speed of ten miles per hour on dry, level, clean pavement.

**Source:** Laws 1973, LB 45, § 91; R.S.1943, (1988), § 39-691; Laws 1993, LB 370, § 414; Laws 1993, LB 575, § 21.

**60-6,319 Bicycles; reflective device or material; retail sale; requirements; violation; penalty.**

No commercial dealer shall sell or offer to sell at retail any bicycle unless such bicycle is equipped with pedals which display a white or amber reflective device or material on both the front and rear surfaces of the pedal and such reflective surface is visible during the hours of darkness from four hundred feet when viewed from the front or rear under low beam headlights of a motor vehicle under normal atmospheric conditions.

All bicycles shall also be equipped with tires bearing a white or silver retroreflective material on each side or a wide-angle reflector mounted on the spokes of each wheel. Such retroreflective material shall be at least three-sixteenths of an inch wide, shall be affixed as an integral part of the tire or wheel, and shall remain effective for the life of the tire or wheel. The spoke-mounted, wide-angle reflector devices shall have a reflective surface of at least two square inches and shall be clear, amber, or red in color. Both the retroreflective tires and wide-angle spoke reflectors shall be visible during the hours of darkness from four hundred feet when viewed under low beam headlights of a motor vehicle under normal atmospheric conditions when the bicycle is traveling at a ninety degree right angle to the direction of travel of the motor vehicle and is directly in front of such motor vehicle. Such reflective devices shall remain visible when the bicycle is turned forty degrees in either direction from such angle and crosses directly in front of such motor vehicle at a distance of four hundred feet.

No commercial dealer shall sell or offer to sell at retail any bicycle which does not comply with this section. Any person who violates this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1974, LB 827, § 1; Laws 1976, LB 628, § 1; R.S.1943, (1988), § 39-6,138.01; Laws 1993, LB 370, § 415.

## (dd) SPECIAL RULES FOR SNOWMOBILES

**60-6,320 Snowmobiles; operate, defined.**

For purposes of sections 60-6,320 to 60-6,346, operate means to ride in or on and control the operation of a snowmobile.

**Source:** Laws 1971, LB 330, § 1; Laws 1972, LB 1149, § 1; R.S.1943, (1988), § 60-2001; Laws 1993, LB 121, § 392; Laws 1993, LB 370, § 416; Laws 2005, LB 274, § 248.

**60-6,321 Repealed. Laws 2005, LB 274, § 286.**

**60-6,322 Repealed. Laws 2005, LB 274, § 286.**

**60-6,323 Repealed. Laws 2005, LB 274, § 286.**

**60-6,324 Repealed. Laws 2005, LB 274, § 286.**

**60-6,325 Repealed. Laws 2005, LB 274, § 286.**

**60-6,326 Repealed. Laws 2005, LB 274, § 286.**

**60-6,327 Repealed. Laws 2005, LB 274, § 286.**

**60-6,328 Repealed. Laws 2005, LB 274, § 286.**

**60-6,329 Repealed. Laws 2005, LB 274, § 286.**

**60-6,330 Repealed. Laws 2005, LB 274, § 286.**

**60-6,331 Repealed. Laws 2005, LB 274, § 286.**

**60-6,332 Repealed. Laws 2005, LB 274, § 286.**

**60-6,333 Repealed. Laws 2005, LB 274, § 286.**

**60-6,334 Snowmobile operation; Game and Parks Commission; rules and regulations.**

The Game and Parks Commission shall establish rules and regulations for:

(1) The operation of snowmobiles upon designated state-controlled or state-operated lakes within the State of Nebraska during the period of time when the lake is frozen and safe for the use of snowmobiles; and

(2) The operation of snowmobiles on established snowmobile courses or trails within public parks or on public land in this state owned or leased by the state.

**Source:** Laws 1977, LB 230, § 10; R.S.1943, (1988), § 60-2012.01; Laws 1993, LB 370, § 430.

**60-6,335 Snowmobile operation; regulation; equipment; permission of landowner.**

(1) No person shall operate a snowmobile upon any highway except as provided in sections 60-6,320 to 60-6,346. Subject to regulation by the Department of Roads and by local authorities, in their respective jurisdictions, a snowmobile may be operated on the roadway of any highway, on the right-hand side of such roadway and in the same direction as the highway traffic, except

that no snowmobile shall be operated at any time within the right-of-way of any controlled-access highway within this state.

(2) A snowmobile may make a direct crossing of a highway at any hour of the day if:

(a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(b) The snowmobile is brought to a complete stop before crossing the shoulder or roadway of the highway;

(c) The driver yields the right-of-way to all oncoming traffic which constitutes an immediate hazard;

(d) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and

(e) When the crossing is made between sunset and sunrise or in conditions of reduced visibility, both the headlights and taillights are on.

(3) No snowmobile shall be operated upon a highway unless equipped with at least one headlight and one taillight, with reflector material of a minimum area of sixteen square inches mounted on each side forward of the handlebars, and with brakes.

(4) A snowmobile may be operated upon a highway other than as provided by subsection (2) of this section in an emergency during the period of time when and at locations where snow upon the roadway renders travel by automobile impractical.

(5) Unless otherwise provided in sections 60-6,320 to 60-6,346, all other provisions of Chapter 60 shall apply to the operation of snowmobiles upon highways except for those relating to required equipment and those which by their nature have no application.

(6) No person shall operate a snowmobile upon any private lands without first having obtained permission of the owner, lessee, or operator of such lands.

**Source:** Laws 1971, LB 330, § 13; Laws 1972, LB 1149, § 2; Laws 1977, LB 230, § 11; R.S.1943, (1988), § 60-2013; Laws 1993, LB 370, § 431; Laws 1993, LB 575, § 49; Laws 1995, LB 459, § 4.

**Cross References**

Operation of snowmobile during public emergency or in parades, see section 60-6,348.

**60-6,336 Snowmobile contests; requirements; violation; penalty.**

Nothing in sections 60-6,320 to 60-6,346 shall prohibit the use of snowmobiles within the right-of-way of any highway in any international or other sponsored contest, except that prior written permission for such contests shall first be obtained by the sponsoring persons or group from the official or board having jurisdiction over the highway upon which the contest is to be held. Any person holding a snowmobile contest on any right-of-way of a highway without first obtaining written permission therefor shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided by section 60-6,343. In permitting such contest, the official or board having jurisdiction may prescribe such restrictions or conditions as may be deemed advisable.

**Source:** Laws 1971, LB 330, § 14; R.S.1943, (1988), § 60-2014; Laws 1993, LB 370, § 432.

**60-6,337 Snowmobiles; prohibited acts.**

It shall be unlawful for any person to drive or operate any snowmobile on any public land, ice, snow, park, right-of-way, trail, or course in the following unsafe or harassing ways:

- (1) At a rate of speed greater than reasonable or proper under all the surrounding circumstances;
- (2) In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto;
- (3) While under the influence of alcoholic liquor or of any drug;
- (4) Without a lighted headlight and taillight when required for safety; and
- (5) In any tree nursery or planting in a manner which damages or destroys growing stock.

**Source:** Laws 1971, LB 330, § 15; Laws 1977, LB 230, § 12; R.S.1943, (1988), § 60-2015; Laws 1993, LB 370, § 433.

**60-6,338 Snowmobiles; political subdivisions; regulation; notice; restrictions.**

(1) A county board may by resolution permit the operation of snowmobiles upon the roadway, shoulder, or inside bank or slope of any county highway if safe operation in the ditch or outside bank or slope thereof is impossible, in which case the county board shall cause appropriate notice thereof to be given.

(2) Any county, city, or village may regulate the operation of snowmobiles on public lands, waters, and property under its jurisdiction and on highways within its boundaries by resolution or ordinance of the governing body and by giving appropriate notice. Such resolutions or ordinances shall not be inconsistent with other provisions of law or with sections 60-6,320 to 60-6,346 and rules and regulations promulgated thereunder, and no such governmental unit may adopt an ordinance which (a) imposes a fee for the use of public land or water under the jurisdiction of either the state or any agency of the state or for the use of any access thereto owned by the state, a county, a city, or a village or (b) requires a snowmobile operator to possess an operator's license while operating a snowmobile.

**Source:** Laws 1971, LB 330, § 16; Laws 1977, LB 230, § 13; R.S.1943, (1988), § 60-2016; Laws 1993, LB 370, § 434.

**60-6,339 Snowmobile; operation; muffler, when required.**

Except as provided in this section, every snowmobile shall be equipped at all times with a muffler in good working order which blends the exhaust noise into the overall snowmobile noise and is in constant operation to prevent excessive or unusual noise. The exhaust system shall not emit or produce a sharp popping or crackling sound.

This section shall not apply to organized races or similar competitive events held on (1) private lands, with the permission of the owner, lessee, or custodian of the land, or (2) public lands, with the consent of the public agency owning the land.

**Source:** Laws 1971, LB 330, § 17; R.S.1943, (1988), § 60-2017; Laws 1993, LB 370, § 435; Laws 1995, LB 459, § 5.

**60-6,340 Operation by person under twelve years of age; operation by person under sixteen years of age; restrictions; snowmobile safety certificate.**

(1) No person under the age of twelve years shall operate a snowmobile in this state unless accompanied by a parent, guardian, or other person over eighteen years of age.

(2) No person over the age of twelve years and under the age of sixteen years shall operate a snowmobile in this state unless such person (a) holds a valid snowmobile safety certificate, (b) is accompanied by a person fourteen years of age or over who holds a valid snowmobile safety certificate, or (c) is accompanied by a person over the age of eighteen years.

(3) The operator of a snowmobile shall not be required to hold an operator's license.

**Source:** Laws 1971, LB 330, § 18; Laws 1977, LB 230, § 14; R.S.1943, (1988), § 60-2018; Laws 1993, LB 370, § 436.

**60-6,341 Snowmobile safety certificate; application; contents; when issued.**

(1) Application for a snowmobile safety certificate shall be made on uniform blanks prepared by the Director of Motor Vehicles.

(2) Such application shall contain all information and questions deemed necessary by the director to insure that the applicant is qualified and possesses reasonable ability to operate a snowmobile.

(3) No snowmobile safety certificate shall be issued until the applicant has appeared before an examiner and satisfied the examiner that the applicant possesses adequate vision and physical ability to operate a snowmobile.

(4) For purposes of this section, examiner shall refer to an examiner of the Department of Motor Vehicles.

**Source:** Laws 1977, LB 230, § 15; R.S.1943, (1988), § 60-2018.01; Laws 1993, LB 370, § 437.

**60-6,342 Snowmobiles; carrying firearms; hunting; unlawful.**

It shall be unlawful for any person to shoot, take, hunt, or kill or attempt to shoot, take, hunt, or kill any wild animal or bird from or with a snowmobile or for any person to carry or possess any shotgun or rimfire rifle while operating or riding on a snowmobile, or for any person to carry or possess any firearm, bow and arrow, or other projectile device on a snowmobile unless such bow and arrow or projectile device is enclosed in a carrying case or such firearm is unloaded and enclosed in a carrying case.

**Source:** Laws 1971, LB 330, § 20; R.S.1943, (1988), § 60-2020; Laws 1993, LB 370, § 439.

**60-6,343 Snowmobiles; violations; penalty.**

(1) Any person who violates any provision of sections 60-6,320 to 60-6,346 or any rule or regulation promulgated pursuant to such sections shall be guilty of a Class III misdemeanor, and if such person is convicted of a second or subsequent offense within any period of one year, he or she shall be guilty of a Class II misdemeanor.

(2) Any violation of such sections which is also a violation under any other provision of Chapter 60 may be punished under the penalty provisions thereof.

**Source:** Laws 1971, LB 330, § 21; Laws 1977, LB 230, § 16; Laws 1979, LB 149, § 3; R.S.1943, (1988), § 60-2021; Laws 1993, LB 370, § 440.

**60-6,344 Snowmobile owner; prohibited acts.**

It shall be unlawful for the owner of a snowmobile to permit such snowmobile to be operated contrary to the provisions of sections 60-6,320 to 60-6,346 or for purposes of carrying a shotgun or rifle thereon unless such shotgun or rifle is unloaded and encased.

**Source:** Laws 1971, LB 330, § 19; R.S.1943, (1988), § 60-2019; Laws 1993, LB 370, § 438.

**60-6,345 Snowmobile; confiscation; sale; proceeds; disposition.**

A peace officer shall seize any snowmobile used for the purpose of gaining access to property for the purpose of committing a felony thereon. Any snowmobile seized pursuant to this section shall be held, subject to the order of the district court of the county in which such felony was committed, and shall be confiscated after conviction of the person from whom the snowmobile was seized and disposed of by public auction which shall be conducted by the sheriff of the county in which such conviction occurred. The proceeds from the sale of a confiscated snowmobile shall be remitted to the State Treasurer for credit to the permanent school fund.

**Source:** Laws 1971, LB 330, § 22; Laws 1977, LB 230, § 17; R.S.1943, (1988), § 60-2022; Laws 1993, LB 370, § 441.

**60-6,346 Snowmobile operation; accident; requirements.**

(1) The operator of a snowmobile involved in a collision, accident, or other casualty occurring on any public land, ice, snow, park, right-of-way, trail, or course shall give his or her name and address and the number of such snowmobile in writing to any injured person and to the owner of any property damaged in such collision, accident, or other casualty.

(2) When a collision, accident, or other casualty involving a snowmobile results in death or injury to a person or damage to property in excess of one hundred dollars, the operator of such snowmobile shall within ten days file with the Director of Motor Vehicles a full report of such collision, accident, or other casualty in such form and detail as the director by regulation may prescribe.

**Source:** Laws 1971, LB 330, § 23; Laws 1977, LB 230, § 18; R.S.1943, (1988), § 60-2023; Laws 1993, LB 370, § 442.

(ee) SPECIAL RULES FOR MINIBIKES AND  
OTHER OFF-ROAD VEHICLES

**60-6,347 Minibikes; exemptions from certain requirements.**

Minibikes, their owners, and their operators shall be exempt from the requirements of the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

**Source:** Laws 1972, LB 1196, § 5; Laws 1981, LB 285, § 8; Laws 1986, LB 731, § 3; Laws 1989, LB 285, § 132; R.S.Supp.,1992, § 60-2101.01; Laws 1993, LB 370, § 443; Laws 2004, LB 812, § 1; Laws 2005, LB 274, § 249.

**Cross References**

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

**Motor Vehicle Registration Act**, see section 60-301.

**Motor Vehicle Safety Responsibility Act**, see section 60-569.

**60-6,348 Minibikes and off-road vehicles; use; emergencies; parades.**

Minibikes and all off-road vehicles, including but not limited to golf carts, go-carts, riding lawnmowers, garden tractors, and snowmobiles, shall be exempt from the provisions of sections 60-678 and 60-6,351 to 60-6,353 during any public emergency or while being used in parades by regularly organized units of any recognized charitable, social, educational, or community service organization.

**Source:** Laws 1971, LB 644, § 7; Laws 1972, LB 1196, § 6; Laws 1987, LB 80, § 12; R.S.1943, (1988), § 60-2102; Laws 1993, LB 370, § 444.

**60-6,349 Minibikes and similar vehicles; sale; notice.**

All minibikes and similar two-wheeled, three-wheeled, and four-wheeled miniature vehicles offered for sale in this state shall bear the following notice to the customer and user: This vehicle as manufactured or sold is for off-road use only. This section shall not apply to an electric personal assistive mobility device.

**Source:** Laws 1971, LB 644, § 8; Laws 1972, LB 1196, § 7; R.S.1943, (1988), § 60-2103; Laws 1993, LB 370, § 445; Laws 2002, LB 1105, § 464.

**60-6,350 Moving across streets or a turnaround; authorized.**

Nothing in sections 60-678 and 60-6,348 to 60-6,351 shall prohibit occasional necessary movement of vehicles described in section 60-6,349 on streets for purposes of moving the vehicle across streets or a turnaround on the streets. All such vehicles when used under this section shall be exempt from all motor vehicle legal requirements.

**Source:** Laws 1971, LB 644, § 9; Laws 1989, LB 285, § 133; R.S.Supp.,1992, § 60-2104; Laws 1993, LB 370, § 446.

**60-6,351 Legislative intent.**

It is the intent of the Legislature to remove from street use and operation minibikes and similar two-wheeled, three-wheeled, or four-wheeled miniature vehicles, the visibility, power, and equipment of which are inadequate for

mixing with normal vehicular traffic upon streets and highways. This section shall not apply to an electric personal assistive mobility device.

**Source:** Laws 1971, LB 644, § 10; Laws 1972, LB 1196, § 9; Laws 1989, LB 285, § 134; R.S.Supp.,1992, § 60-2105; Laws 1993, LB 370, § 447; Laws 2002, LB 1105, § 465.

**60-6,352 Violations; penalty.**

It shall be unlawful for any person to operate a minibike on any state highway except as permitted pursuant to section 60-6,353. Any person who violates this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1972, LB 1196, § 8; Laws 1977, LB 39, § 103; R.S.1943, (1988), § 60-2107; Laws 1993, LB 370, § 448.

**60-6,353 Operation; rules and regulations; violations; penalty.**

Any department, board, or commission of the State of Nebraska with jurisdiction over state parks and state recreation areas as defined in section 37-338 and state wayside areas as described in section 81-711, in which motor vehicles of any type are permitted, may adopt and promulgate rules and regulations permitting and controlling the operation of minibikes and designating the place, time, and manner of such operation in the public recreation area under its control. In designating the manner of such operation within a specific location and during a specific time, the department, board, or commission may establish speed limits and restrictions on the age of the operator, noise emission levels, and number of minibikes permitted to be operated within a specific area at the same time. The other provisions of the Nebraska Rules of the Road not inconsistent with sections 60-678 and 60-6,347 to 60-6,353 shall apply to the public area.

Such department, board, or commission may further authorize the supervising official of any area under its ownership or control to prohibit operation of any minibike in emergency situations by personal or posted notice.

Any person operating a minibike in a place, at a time, or in a manner not permitted by the department, board, or commission having control over the area shall be guilty of a Class III misdemeanor.

Any political subdivision of the State of Nebraska with jurisdiction over highways may adopt and promulgate rules, regulations, ordinances, or resolutions in conformity with such sections.

**Source:** Laws 1972, LB 1196, § 10; Laws 1977, LB 39, § 104; Laws 1989, LB 285, § 135; R.S.Supp.,1992, § 60-2108; Laws 1993, LB 370, § 449; Laws 1998, LB 922, § 406.

**60-6,354 Coaster, roller skates, sled, skis, or toy vehicle; prohibited acts.**

Any person who rides upon any coaster, roller skates, sled, skis, or toy vehicle shall not attach such or himself or herself to any vehicle upon a roadway.

**Source:** Laws 1993, LB 370, § 450.

(ff) SPECIAL RULES FOR ALL-TERRAIN VEHICLES

**60-6,355 All-terrain vehicle, defined; utility-type vehicle, defined.**

(1) For purposes of sections 60-6,355 to 60-6,362:

(a) All-terrain vehicle means any motorized off-highway vehicle which (i) is fifty inches or less in width, (ii) has a dry weight of nine hundred pounds or less, (iii) travels on three or more low-pressure tires, (iv) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger, (v) has a seat or saddle designed to be straddled by the operator, and (vi) has handlebars or any other steering assembly for steering control; and

(b)(i) Utility-type vehicle means any motorized off-highway vehicle which (A) is not less than forty-eight inches nor more than seventy-four inches in width, (B) is not more than one hundred thirty-five inches, including the bumper, in length, (C) has a dry weight of not less than nine hundred pounds nor more than two thousand pounds, (D) travels on four or more low-pressure tires, and (E) is equipped with a steering wheel and bench or bucket-type seating designed for at least two people to sit side-by-side.

(ii) Utility-type vehicle does not include golf carts or low-speed vehicles.

(2) All-terrain vehicles and utility-type vehicles which have been modified to include additional equipment not required by sections 60-6,357 and 60-6,358 shall not be required to be registered under the Motor Vehicle Registration Act.

**Source:** Laws 1987, LB 80, § 1; R.S.1943, (1988), § 60-2801; Laws 1993, LB 370, § 451; Laws 2003, LB 333, § 33; Laws 2005, LB 274, § 250; Laws 2010, LB650, § 39.

**Cross References**

Motor Vehicle Registration Act, see section 60-301.

**60-6,356 All-terrain vehicle; utility-type vehicle; operation; restrictions; city or village ordinance; county board resolution.**

(1) An all-terrain vehicle or a utility-type vehicle shall not be operated on any controlled-access highway with more than two marked traffic lanes, and the crossing of any controlled-access highway with more than two marked traffic lanes shall not be permitted. Subsections (2), (3), and (5) through (8) of this section authorize and apply to operation of an all-terrain vehicle or a utility-type vehicle only on a highway other than a controlled-access highway with more than two marked traffic lanes.

(2) An all-terrain vehicle or a utility-type vehicle may be operated in accordance with the operating requirements of subsection (3) of this section:

(a) Outside the corporate limits of a city, village, or unincorporated village if incidental to the vehicle's use for agricultural purposes;

(b) Within the corporate limits of a city or village if authorized by the city or village by ordinance adopted in accordance with this section; or

(c) Within an unincorporated village if authorized by the county board of the county in which the unincorporated village is located by resolution in accordance with this section.

(3) An all-terrain vehicle or a utility-type vehicle may be operated as authorized in subsection (2) of this section when such operation occurs only between the hours of sunrise and sunset. Any person operating an all-terrain vehicle or a utility-type vehicle as authorized in subsection (2) of this section shall have a valid Class O operator's license or a farm permit as provided in section 60-4,126, shall have liability insurance coverage for the all-terrain vehicle or a utility-type vehicle while operating the all-terrain vehicle or a utility-type

vehicle on a highway, and shall not operate such vehicle at a speed in excess of thirty miles per hour. The person operating the all-terrain vehicle or a utility-type vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days of such a request. When operating an all-terrain vehicle or a utility-type vehicle as authorized in subsection (2) of this section, the headlight and taillight of the vehicle shall be on and the vehicle shall be equipped with a bicycle safety flag which extends not less than five feet above ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches and shall be day-glow in color.

(4) All-terrain vehicles and utility-type vehicles may be operated without complying with subsection (3) of this section on highways in parades which have been authorized by the State of Nebraska or any department, board, commission, or political subdivision of the state.

(5) Subject to subsection (1) of this section, the crossing of a highway shall be permitted by an all-terrain vehicle or a utility-type vehicle without complying with subsection (3) of this section only if:

(a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(b) The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;

(c) The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard;

(d) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and

(e) Both the headlight and taillight of the vehicle are on when the crossing is made.

(6) All-terrain vehicles and utility-type vehicles may be operated outside the corporate limits of any municipality by electric utility personnel within the course of their employment in accordance with the operation requirements of subsection (3) of this section, except that the operation of the vehicle pursuant to this subsection need not be limited to the hours between sunrise and sunset.

(7) A city or village may adopt an ordinance authorizing the operation of all-terrain vehicles and utility-type vehicles within the corporate limits of the city or village if the operation is in accordance with subsection (3) of this section. The city or village may place other restrictions on the operation of all-terrain vehicles and utility-type vehicles within its corporate limits.

(8) A county board may adopt a resolution authorizing the operation of all-terrain vehicles and utility-type vehicles within any unincorporated village within the county if the operation is in accordance with subsection (3) of this section. The county may place other restrictions on the operation of all-terrain vehicles and utility-type vehicles within the unincorporated village.

**Source:** Laws 1987, LB 80, § 2; Laws 1989, LB 114, § 1; Laws 1989, LB 285, § 138; R.S.Supp.,1992, § 60-2802; Laws 1993, LB 370, § 452; Laws 2007, LB307, § 1; Laws 2010, LB650, § 40.

**60-6,357 All-terrain vehicle; utility-type vehicle; lights required; when.**

Every all-terrain vehicle and utility-type vehicle shall display a lighted headlight and taillight during the period of time from sunset to sunrise and at any time when visibility is reduced due to insufficient light or unfavorable atmospheric conditions.

**Source:** Laws 1987, LB 80, § 3; R.S.1943, (1988), § 60-2803; Laws 1993, LB 370, § 453; Laws 1993, LB 575, § 50; Laws 2010, LB650, § 41.

**60-6,358 All-terrain vehicle; utility-type vehicle; equipment required.**

Every all-terrain vehicle and utility-type vehicle shall be equipped with:

- (1) A brake system maintained in good operating condition;
- (2) An adequate muffler system in good working condition; and
- (3) A United States Forest Service qualified spark arrester.

**Source:** Laws 1987, LB 80, § 4; R.S.1943, (1988), § 60-2804; Laws 1993, LB 370, § 454; Laws 2010, LB650, § 42.

**60-6,359 Modification of all-terrain vehicle or utility-type vehicle; prohibited.**

No person shall:

- (1) Equip the exhaust system of an all-terrain vehicle or a utility-type vehicle with a cutout, bypass, or similar device;
- (2) Operate an all-terrain vehicle or a utility-type vehicle with an exhaust system so modified; or
- (3) Operate an all-terrain vehicle or a utility-type vehicle with the spark arrester removed or modified except for use in closed-course competition events.

**Source:** Laws 1987, LB 80, § 5; R.S.1943, (1988), § 60-2805; Laws 1993, LB 370, § 455; Laws 2010, LB650, § 43.

**60-6,360 All-terrain vehicle; utility-type vehicle; competitive events; exemptions.**

All-terrain vehicles and utility-type vehicles participating in competitive events may be exempted from sections 60-6,357 to 60-6,359 at the discretion of the Director of Motor Vehicles.

**Source:** Laws 1987, LB 80, § 6; R.S.1943, (1988), § 60-2806; Laws 1993, LB 370, § 456; Laws 2010, LB650, § 44.

**60-6,361 All-terrain vehicle; utility-type vehicle; accident; report required.**

If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle or utility-type vehicle involved in the accident shall give notice of the accident in the same manner as provided in section 60-699.

**Source:** Laws 1987, LB 80, § 7; R.S.1943, (1988), § 60-2807; Laws 1993, LB 370, § 457; Laws 1993, LB 575, § 51; Laws 2010, LB650, § 45.

**60-6,362 Violations; penalty.**

(1) Any person who violates sections 60-6,356 to 60-6,361 shall be guilty of a Class III misdemeanor, except that if such person is convicted of a second or subsequent offense within any period of one year, he or she shall be guilty of a Class II misdemeanor.

(2) Any violation of such sections which is also a violation under any other provision of Chapter 60 may be punished under the penalty provisions of such chapter.

**Source:** Laws 1987, LB 80, § 8; R.S.1943, (1988), § 60-2808; Laws 1993, LB 370, § 458.

(gg) SMOKE EMISSIONS AND NOISE

**60-6,363 Terms, defined.**

For purposes of sections 60-6,363 to 60-6,374:

(1) Diesel-powered motor vehicle shall mean a self-propelled vehicle which is designed primarily for transporting persons or property on a highway and which is powered by an internal combustion engine of the compression ignition type;

(2) Motor vehicle shall mean a self-propelled vehicle with a gross unloaded vehicle weight of ten thousand pounds or more or any combination of vehicles of a type subject to registration which is towed by such a vehicle;

(3) Smoke shall mean the solid or liquid matter, except water, discharged from a motor vehicle engine which obscures the transmission of light;

(4) Smokemeter shall mean a full-flow, light-extinction smokemeter of a type approved by the Department of Environmental Quality and operating on the principles described in the federal standards;

(5) Opacity shall mean the degree to which a smoke plume emitted from a diesel-powered motor vehicle engine will block the passage of a beam of light expressed as a percentage; and

(6) Smoke control system shall mean a system consisting of one or more devices and adjustments designed to control the discharge of smoke from diesel-powered motor vehicles.

**Source:** Laws 1972, LB 1360, § 1; Laws 1976, LB 823, § 3; R.S.1943, (1988), § 60-2201; Laws 1993, LB 370, § 459; Laws 1993, LB 3, § 35.

**60-6,364 Applicability of sections.**

Sections 60-6,363 to 60-6,374 shall apply to all diesel-powered motor vehicles operated within this state with the exception of the following:

(1) Emergency vehicles operated by federal, state, and local governmental authorities;

(2) Vehicles which are not required to be registered in accordance with the Motor Vehicle Registration Act;

(3) Vehicles used for research and development which have been approved by the Director of Environmental Quality;

(4) Vehicles being operated while undergoing maintenance;

(5) Vehicles operated under emergency conditions;

(6) Vehicles being operated in the course of training programs which have been approved by the director; and

(7) Other vehicles expressly exempted by the director.

**Source:** Laws 1972, LB 1360, § 2; R.S.1943, (1988), § 60-2202; Laws 1993, LB 370, § 460; Laws 2005, LB 274, § 251.

**Cross References**

**Motor Vehicle Registration Act**, see section 60-301.

**60-6,365 Diesel-powered motor vehicle; smoke; shade, density, or opacity.**

No one shall operate a diesel-powered motor vehicle on any highway in this state in such a manner that smoke discharged from the exhaust is of a shade or density equal to or darker than that designated as Number 1 of the Ringelmann Chart or equivalent opacity of twenty percent for ten consecutive seconds or longer.

**Source:** Laws 1972, LB 1360, § 3; Laws 1976, LB 823, § 4; R.S.1943, (1988), § 60-2203; Laws 1993, LB 370, § 461.

**60-6,366 Smoke control system; removal or change; prohibited; exception.**

No one shall intentionally make a change or other alteration to any diesel-powered motor vehicle equipped by its manufacturer with a smoke control system, including the basic fuel system, that may limit the ability of the system to control smoke, and no one shall remove such a smoke control system except for repair or installation of a proper replacement.

**Source:** Laws 1972, LB 1360, § 4; Laws 1976, LB 823, § 5; R.S.1943, (1988), § 60-2204; Laws 1993, LB 370, § 462.

**60-6,367 Enforcement of sections; citations; use of smokemeter; results; admissible as evidence.**

(1) Officials of the Department of Environmental Quality and local enforcement officials shall have the authority to issue citations to suspected violators of sections 60-6,363 to 60-6,374 on the basis of their visual evaluation of the smoke emitted from a diesel-powered motor vehicle. A citation shall give the suspected violator a reasonable time to furnish evidence to the department that such alleged violation has been corrected or else such suspected violator shall be subject to the penalties set out in section 60-6,373. A suspected violator may demand that the suspected vehicle be tested by an approved smokemeter prior to a trial on the alleged violation.

(2) Smokemeter tests shall be conducted (a) by or under the supervision of a person or testing facility authorized by the Director of Environmental Quality to conduct such tests and (b) by installing an approved smokemeter on the exhaust pipe and operating the suspected vehicle at engine revolutions per minute equivalent to the engine revolutions per minute at the time of the alleged violation.

(3) The results of smokemeter tests run in accordance with this section and after the alleged violation shall be admissible as evidence in legal proceedings.

**Source:** Laws 1972, LB 1360, § 5; Laws 1976, LB 823, § 6; R.S.1943, (1988), § 60-2205; Laws 1993, LB 370, § 463; Laws 1993, LB 3, § 36.

**60-6,368 Director of Environmental Quality; powers; rules and regulations; control of noise or emissions.**

(1) The Director of Environmental Quality shall have the power, after public hearings on due notice, to adopt and promulgate, consistent with and in furtherance of the provisions of sections 60-6,363 to 60-6,374, rules and regulations in accordance with which he or she will carry out his or her responsibilities and obligations under such sections.

(2) Any rules or regulations promulgated by the director shall be consistent with the provisions of the federal standards, if any, relating to control of emissions from the diesel-powered motor vehicles affected by such rules and regulations. The director shall not require, as a condition for the sale of any diesel-powered motor vehicle covered by sections 60-6,363 to 60-6,374, the inspection, certification, or other approval of any feature or equipment designed for the control of noise or emissions from such diesel-powered motor vehicles if such feature or equipment has been certified, approved, or otherwise authorized pursuant to laws or regulations of any federal governmental body as sufficient to make lawful the sale of any diesel-powered motor vehicle covered by such sections.

**Source:** Laws 1972, LB 1360, § 6; Laws 1976, LB 823, § 7; R.S.1943, (1988), § 60-2206; Laws 1993, LB 370, § 464.

**60-6,369 Noise; restrictions.**

No person shall sell, or offer for sale, a new motor vehicle with a gross vehicle weight of ten thousand pounds or more that produces a maximum noise exceeding a noise limit of 80dB(A) at a distance of fifty feet from the centerline of travel under test procedures established by section 60-6,372.

**Source:** Laws 1972, LB 1360, § 7; Laws 1979, LB 140, § 1; R.S.1943, (1988), § 60-2207; Laws 1993, LB 370, § 465.

**60-6,370 Operation; noise; limitation.**

No person shall operate within the speed limits specified in this section either a motor vehicle with a gross vehicle weight of ten thousand pounds or more or any combination of vehicles of a type subject to registration, towed by such motor vehicle, at any time or under any condition of grade, load, acceleration, or deceleration in such manner as to exceed the following noise limit based on a distance of not less than fifty feet from the centerline of travel under test procedures established by section 60-6,372: When the posted speed limit is thirty-five miles per hour or less, the noise limit shall not exceed 86dB(A), and when the posted speed limit is more than thirty-five miles per hour, the noise limit shall not exceed 90dB(A). This section shall apply to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of sections 60-6,363 to 60-6,374 relating to motor vehicle mufflers for noise control.

**Source:** Laws 1972, LB 1360, § 8; Laws 1976, LB 823, § 8; R.S.1943, (1988), § 60-2208; Laws 1993, LB 370, § 466.

**60-6,371 Exhaust or intake muffler; change; increase of noise; prohibited.**

No person shall modify or change the exhaust muffler, the intake muffler, or any other noise-abatement device of a motor vehicle in a manner such that the

noise emitted by the motor vehicle is increased above that emitted by the vehicle as originally manufactured. Procedures used to establish compliance with this section shall be those used to establish compliance of a new motor vehicle with the requirements of sections 60-6,363 to 60-6,374.

**Source:** Laws 1972, LB 1360, § 9; R.S.1943, (1988), § 60-2209; Laws 1993, LB 370, § 467.

**60-6,372 Noise measurement tests; manner conducted; conditions; enumerated.**

(1) Noise measurements shall be made at a test site which is adjacent to and includes a portion of a roadway. A microphone target point shall be established on the centerline of the roadway, and a microphone location point shall be established on the ground surface at a distance of fifty feet from the microphone target point and on a line that is perpendicular to the centerline of the roadway and that passes through the microphone target point. The microphone shall be placed such that it is at a height of not less than two feet and not more than six feet above the plane of the roadway surface. The test area shall include an open site within a fifty-foot radius of both the microphone target point and the microphone location point. The test site shall be essentially free of large sound-reflecting objects.

(2) Noise measurement conditions shall be as follows:

(a) Noise measurements may only be made if the measured average wind velocity is twelve miles per hour or less. Gust wind measurements of up to twenty miles per hour shall be allowed;

(b) Measurements shall be prohibited under any condition of precipitation, but measurements may be made with snow on the ground. The ground surface within the measurement area shall be free of standing water; and

(c) Road conditions shall be such that they would not cause a motor vehicle to emit irregular tire, body, or chassis-impact noise.

(3) In accordance with this section, a measurement shall be made of the sound level generated by a motor vehicle operating through the measurement area on the traveled portion of the highway within the test site, regardless of the highway grade, load, acceleration, or deceleration. The sound level generated by the motor vehicle shall be the highest reading observed on the sound level measurement system as the vehicle passes through the measurement area.

**Source:** Laws 1972, LB 1360, § 10; Laws 1976, LB 823, § 9; R.S.1943, (1988), § 60-2210; Laws 1993, LB 370, § 468.

**60-6,373 Standards; violations; penalty.**

Every person who operates a diesel-powered or other motor vehicle in this state in violation of the standards established by sections 60-6,363 to 60-6,374 shall be guilty of a Class V misdemeanor, and every day that the diesel-powered or other motor vehicle is so operated shall be deemed to be a separate offense.

**Source:** Laws 1972, LB 1360, § 11; Laws 1977, LB 39, § 105; R.S.1943, (1988), § 60-2211; Laws 1993, LB 370, § 469.

**60-6,374 Sections; exclusive treatment.**

The provisions of sections 60-6,363 to 60-6,374 shall be exclusive and prevail over other provisions of law in this state or any of its subdivisions applied to smoke from diesel-powered motor vehicles.

**Source:** Laws 1972, LB 1360, § 12; R.S.1943, (1988), § 60-2212; Laws 1993, LB 370, § 470.

(hh) SPECIAL RULES FOR ELECTRIC PERSONAL  
ASSISTIVE MOBILITY DEVICES

**60-6,375 Electric personal assistive mobility device; exemptions from certain requirements.**

An electric personal assistive mobility device, its owner, and its operator shall be exempt from the requirements of the Motor Vehicle Certificate of Title Act, the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

**Source:** Laws 2002, LB 1105, § 459; Laws 2005, LB 274, § 252; Laws 2005, LB 276, § 105.

**Cross References**

**Motor Vehicle Certificate of Title Act**, see section 60-101.

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

**Motor Vehicle Registration Act**, see section 60-301.

**Motor Vehicle Safety Responsibility Act**, see section 60-569.

**60-6,376 Electric personal assistive mobility device; operation; violation; penalty.**

(1) Any person who operates an electric personal assistive mobility device on a highway shall have all of the rights and shall be subject to all of the duties applicable to the operator of a vehicle under the Nebraska Rules of the Road except (a) as provided in special electric personal assistive mobility device regulations adopted pursuant to the Nebraska Rules of the Road, (b) any provisions of the Nebraska Rules of the Road which by their nature can have no application, and (c) as provided in section 60-6,142 with respect to operating an electric personal assistive mobility device on a shoulder of a highway.

(2) An electric personal assistive mobility device may be operated on any highway, alley, sidewalk, bike trail, path, or any other area where persons travel, except as provided by the Department of Roads or local authority. Regulations applicable to an electric personal assistive mobility device shall apply whenever an electric personal assistive mobility device is so operated.

(3) An operator of an electric personal assistive mobility device shall yield to pedestrian traffic and any human-powered or animal-powered vehicle at all times. An operator of an electric personal assistive mobility device shall give an audible signal before overtaking and passing any pedestrian or human-powered or animal-powered vehicle. A person violating this subsection shall be fined ten dollars for the first offense. A person violating this subsection shall have his or her electric personal assistive mobility device impounded for up to thirty days for each subsequent offense.

**Source:** Laws 2002, LB 1105, § 460.

**60-6,377 Electric personal assistive mobility device; operation at nighttime.**

When in use at nighttime, an electric personal assistive mobility device or the operator of an electric personal assistive device shall be equipped with a light visible from a distance of at least five hundred feet to the front on a clear night and with a red reflector on the rear of a type which is visible on a clear night from all distances between one hundred feet and six hundred feet to the rear when directly in front of lawful lower beams of headlights on a motor vehicle. A red light visible from a distance of five hundred feet to the rear may be used in addition to such red reflector.

**Source:** Laws 2002, LB 1105, § 461.

(ii) EMERGENCY VEHICLE OR ROAD ASSISTANCE VEHICLE

**60-6,378 Stopped authorized emergency vehicle or road assistance vehicle; driver; duties; violation; penalty.**

(1)(a) A driver in a vehicle on a controlled-access highway approaching or passing a stopped authorized emergency vehicle or road assistance vehicle which makes use of proper audible or visual signals shall proceed with due care and caution as described in subdivision (b) of this subsection.

(b) On a controlled-access highway with at least two adjacent lanes of travel in the same direction on the same side of the highway where a stopped authorized emergency vehicle or road assistance vehicle is using proper audible or visual signals, the driver of the vehicle shall proceed with due care and caution and yield the right-of-way by moving into a lane at least one moving lane apart from the stopped authorized emergency vehicle or road assistance vehicle unless directed otherwise by a peace officer or other authorized emergency personnel. If moving into another lane is not possible because of weather conditions, road conditions, or the immediate presence of vehicular or pedestrian traffic or because the controlled-access highway does not have two available adjacent lanes of travel in the same direction on the same side of the highway where such a stopped authorized emergency vehicle or road assistance vehicle is located, the driver of the approaching or passing vehicle shall reduce his or her speed, maintain a safe speed with regard to the location of the stopped authorized emergency vehicle or road assistance vehicle, the weather conditions, the road conditions, and vehicular or pedestrian traffic, and proceed with due care and caution or proceed as directed by a peace officer or other authorized emergency personnel or road assistance personnel.

(c) Any person who violates this subsection is guilty of a traffic infraction for a first offense and Class IIIA misdemeanor for a second or subsequent offense.

(2) The Department of Roads shall erect and maintain or cause to be erected and maintained signs giving notice of subsection (1) of this section along controlled-access highways.

(3) Enforcement of subsection (1) of this section shall not be accomplished using simulated situations involving an authorized emergency vehicle or a road assistance vehicle.

(4) This section does not relieve the driver of an authorized emergency vehicle or a road assistance vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(5) For purposes of this section, road assistance vehicle includes a vehicle operated by the Department of Roads, a Nebraska State Patrol motorist assistance vehicle, and a United States Department of Transportation registered

towing or roadside assistance vehicle. A road assistance vehicle shall emit a warning signal utilizing properly displayed emergency indicators such as strobe, rotating, or oscillating lights when stopped along a highway.

**Source:** Laws 2009, LB92, § 2.

(jj) SPECIAL RULES FOR MINITRUCKS

**60-6,379 Minitrucks; restrictions on use.**

(1) A minitruck shall not be operated on the National System of Interstate and Defense Highways, on expressways, or on freeways.

(2) A minitruck shall be operated with its headlights and taillights on.

**Source:** Laws 2010, LB650, § 38.

**ARTICLE 7**

**ITINERANT MERCHANT ACT**

Section

- 60-701. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-702. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-703. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-704. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-705. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-706. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-707. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-708. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-709. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-710. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-711. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-712. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-713. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-714. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-715. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-716. Repealed. Laws 1963, c. 425, art. 8, § 2.
- 60-717. Repealed. Laws 1963, c. 425, art. 8, § 2.

**60-701 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-702 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-703 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-704 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-705 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-706 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-707 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-708 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-709 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-710 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-711 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-712 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-713 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-714 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-715 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-716 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-717 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**ARTICLE 8**

**MOTOR CARRIERS OF LIVESTOCK**

Section

60-801. Repealed. Laws 1963, c. 425, art. 8, § 2.

60-802. Repealed. Laws 1963, c. 425, art. 8, § 2.

60-803. Repealed. Laws 1963, c. 425, art. 8, § 2.

60-804. Repealed. Laws 1963, c. 425, art. 8, § 2.

60-805. Repealed. Laws 1963, c. 425, art. 8, § 2.

60-806. Repealed. Laws 1963, c. 425, art. 8, § 2.

60-807. Repealed. Laws 1961, c. 284, § 1.

**60-801 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-802 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-803 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-804 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-805 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-806 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**60-807 Repealed. Laws 1961, c. 284, § 1.**

**ARTICLE 9**

**TOWING MOTOR VEHICLES ON HIGHWAYS**

Section

60-901. Repealed. Laws 1965, c. 374, § 2.

60-902. Repealed. Laws 1965, c. 374, § 2.

60-903. Repealed. Laws 1965, c. 374, § 2.

60-904. Repealed. Laws 1965, c. 374, § 2.

60-905. Repealed. Laws 1965, c. 374, § 2.

60-906. Repealed. Laws 1965, c. 374, § 2.

60-907. Repealed. Laws 1965, c. 374, § 2.

**60-901 Repealed. Laws 1965, c. 374, § 2.**

**60-902 Repealed. Laws 1965, c. 374, § 2.**

**60-903 Repealed. Laws 1965, c. 374, § 2.**

**60-904 Repealed. Laws 1965, c. 374, § 2.**

**60-905 Repealed. Laws 1965, c. 374, § 2.**

**60-906 Repealed. Laws 1965, c. 374, § 2.**

**60-907 Repealed. Laws 1965, c. 374, § 2.**

### ARTICLE 10

#### STATE-OWNED MOTOR VEHICLES

Section

60-1001. Transferred to section 81-1021.  
 60-1001.01. Transferred to section 81-1022.  
 60-1002. Repealed. Laws 1969, c. 770, § 11.  
 60-1003. Repealed. Laws 1983, LB 118, § 5.  
 60-1004. Transferred to section 81-1023.  
 60-1005. Transferred to section 81-1024.  
 60-1006. Transferred to section 81-1025.  
 60-1007. Repealed. Laws 1969, c. 756, § 36.  
 60-1008. Transferred to section 81-8,239.07.  
 60-1009. Repealed. Laws 1981, LB 273, § 33.

**60-1001 Transferred to section 81-1021.**

**60-1001.01 Transferred to section 81-1022.**

**60-1002 Repealed. Laws 1969, c. 770, § 11.**

**60-1003 Repealed. Laws 1983, LB 118, § 5.**

**60-1004 Transferred to section 81-1023.**

**60-1005 Transferred to section 81-1024.**

**60-1006 Transferred to section 81-1025.**

**60-1007 Repealed. Laws 1969, c. 756, § 36.**

**60-1008 Transferred to section 81-8,239.07.**

**60-1009 Repealed. Laws 1981, LB 273, § 33.**

### ARTICLE 11

#### TAXICABS

Section

60-1101. Repealed. Laws 1967, c. 393, § 1.  
 60-1102. Repealed. Laws 1967, c. 393, § 1.  
 60-1103. Repealed. Laws 1967, c. 393, § 1.

**60-1101 Repealed. Laws 1967, c. 393, § 1.**

**60-1102 Repealed. Laws 1967, c. 393, § 1.**

**60-1103 Repealed. Laws 1967, c. 393, § 1.**

### ARTICLE 12

#### MOTOR CARRIERS; DRIVERS; HOURS OF LABOR

Section

60-1201. Transferred to section 75-381.  
 60-1202. Transferred to section 75-382.

**60-1201 Transferred to section 75-381.**

**60-1202 Transferred to section 75-382.**

### ARTICLE 13

### WEIGHING STATIONS

#### Section

- 60-1301. Weighing stations; portable scales; purpose; location; effect as evidence of weight determination; reweighing, when required; pickup trucks; exception; Nebraska State Patrol; rules and regulations.
- 60-1302. Eminent domain; procedure.
- 60-1303. Weighing stations; portable scales; operation; carrier enforcement division; rules and regulations.
- 60-1304. Carrier enforcement officers; transfer; retirement options.
- 60-1305. Carrier enforcement officers; uniform; badge.
- 60-1306. Carrier enforcement officers; powers; funding of firearms.
- 60-1307. Size, weight, load, and registration violations; summons; hearing; promise to appear; violation; penalty; nonresidents, personal appearance required; motor vehicle; seizure and detention; when; release.
- 60-1308. Failure to stop at weighing station or portable scale; violation; penalty.
- 60-1309. Resisting arrest; disobeying order; violation; penalty.

**60-1301 Weighing stations; portable scales; purpose; location; effect as evidence of weight determination; reweighing, when required; pickup trucks; exception; Nebraska State Patrol; rules and regulations.**

In order to promote public safety, to preserve and protect the state highways and bridges and prevent immoderate and destructive use of the same, and to enforce the motor vehicle registration laws, the Department of Roads shall have the responsibility to construct, maintain, provide, and contract with the Nebraska State Patrol for the operation of weighing stations and provide the funding for the same. The Nebraska State Patrol shall operate the weighing stations, including portable scales, for the weighing and inspection of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles. Each of the weighing stations shall be located near, on, or adjacent to a state highway upon real estate owned by the State of Nebraska or upon real estate acquired for that purpose. Weights determined on such weighing stations and portable scales shall be presumed to be accurate and shall be accepted in court as prima facie evidence of a violation of the laws relating to the size, weight, load, and registration of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles. The owner or driver of a vehicle found to be in violation of such laws by the use of portable scales shall be advised by the officer operating the portable scale that he or she has the right to demand an immediate reweighing at his or her expense at the nearest permanent state-approved scale capable of weighing the vehicle, and if a variance exists between the weights of the permanent and portable scales, then the weights determined on the permanent scale shall prevail. Sections 60-1301 to 60-1309 shall not apply to pickup trucks with a factory-rated capacity of one ton or less, except as may be provided by rules and regulations of the Nebraska State Patrol, or to recreational vehicles as defined in section 71-4603. The Nebraska State Patrol may adopt and promulgate rules and regulations concerning the weighing of pickup trucks with a factory-rated capacity of one ton or less which tow vehicles. Such rules and regulations shall require trucks towing vehicles to comply with sections

60-1301 to 60-1309 when it is necessary to promote the public safety and preserve and protect the state highways and bridges.

**Source:** Laws 1949, c. 109, § 1, p. 300; Laws 1951, c. 116, § 1, p. 525; R.R.S.1943, § 39-603.03; Laws 1955, c. 145, § 1, p. 406; Laws 1961, c. 323, § 1, p. 1027; Laws 1963, c. 373, § 5, p. 1197; Laws 1976, LB 823, § 2; Laws 1985, LB 395, § 4; Laws 2002, LB 470, § 1; Laws 2008, LB797, § 2.

**60-1302 Eminent domain; procedure.**

The Department of Roads is hereby authorized to take, hold, and acquire by eminent domain so much real estate as may be necessary and convenient to carry out the provisions of section 60-1301. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** Laws 1949, c. 109, § 2, p. 300; Laws 1951, c. 101, § 88, p. 485; R.R.S.1943, § 39-603.04; Laws 1955, c. 145, § 2, p. 406.

**60-1303 Weighing stations; portable scales; operation; carrier enforcement division; rules and regulations.**

(1) The Nebraska State Patrol is hereby designated as the agency to operate the weighing stations and portable scales and to perform carrier enforcement duties.

(2)(a) On and after July 20, 2002, officers of the Nebraska State Patrol appointed to operate the weighing stations and portable scales and to perform carrier enforcement duties shall be known as the carrier enforcement division. The Superintendent of Law Enforcement and Public Safety shall appoint officers of the Nebraska State Patrol to the carrier enforcement division, including officers as prescribed in sections 81-2001 to 81-2009, and carrier enforcement officers as prescribed in sections 60-1301 to 60-1309.

(b) The employees within the Nebraska State Patrol designated to operate the weighing stations and portable scales and to perform carrier enforcement duties before July 20, 2002, and not authorized to act under subdivisions (1) through (8) of section 81-2005 shall be known as carrier enforcement officers.

(3) All carrier enforcement officers shall be bonded or insured as required by section 11-201. Premiums shall be paid from the money appropriated for the construction, maintenance, and operation of the state weighing stations.

(4) All employees of the Nebraska State Patrol who are carrier enforcement officers and who are not officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009 shall be members of the State Employees Retirement System of the State of Nebraska. Officers of the Nebraska State Patrol who are carrier enforcement officers on July 20, 2002, who subsequently become officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009, and who elect to remain members of the State Employees Retirement System of the State of Nebraska shall continue to participate in the State Employees Retirement System of the State of Nebraska. Carrier enforcement officers shall not receive any expense allowance as provided for by section 81-2002.

(5) The Nebraska State Patrol and the Department of Roads shall have the duty, power, and authority to contract with one another for the staffing and operation of weighing stations and portable scales and the performance of

carrier enforcement duties to ensure that there is adequate personnel in the carrier enforcement division to carry out the duties specified in sections 60-1301 to 60-1309. Through June 30, 2005, the number of full-time equivalent positions funded pursuant to such contract shall be limited to eighty-eight officers, including carrier enforcement officers as prescribed in sections 60-1301 to 60-1309 and officers of the Nebraska State Patrol as prescribed in sections 81-2001 to 81-2009 assigned to the carrier enforcement division. Pursuant to such contract, command of the personnel involved in such carrier enforcement operations shall be with the Nebraska State Patrol. The Department of Roads may use any funds at its disposal for its financing of such carrier enforcement activity in accordance with such contract as long as such funds are used only to finance those activities directly involved with the duties specified in sections 60-1301 to 60-1309. The Nebraska State Patrol shall account for all appropriations and expenditures related to the staffing and operation of weighing stations and portable scales and the performance of carrier enforcement duties in a budget program that is distinct and separate from budget programs used for non-carrier-enforcement-division-related activities.

(6) The Nebraska State Patrol may adopt, promulgate, and enforce rules and regulations consistent with statutory provisions related to carrier enforcement necessary for (a) the collection of fees, as outlined in sections 60-3,177 and 60-3,179 to 60-3,182 and the International Fuel Tax Agreement Act, (b) the inspection of licenses and permits required under the motor fuel laws, and (c) weighing and inspection of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles.

**Source:** Laws 1955, c. 145, § 3, p. 406; Laws 1978, LB 653, § 21; Laws 1985, LB 395, § 5; Laws 1991, LB 627, § 7; Laws 1994, LB 1066, § 47; Laws 1996, LB 1218, § 15; Laws 2002, LB 470, § 2; Laws 2003, LB 408, § 2; Laws 2004, LB 884, § 32; Laws 2004, LB 983, § 2; Laws 2005, LB 274, § 253; Laws 2007, LB322, § 10.

**Cross References**

**International Fuel Tax Agreement Act**, see section 66-1401.

**60-1304 Carrier enforcement officers; transfer; retirement options.**

(1) Carrier enforcement officers described in subdivision (2)(b) of section 60-1303 who, on or after July 20, 2002, are transferred to the Nebraska State Patrol and become officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009 shall, within ninety days of transfer, elect to participate in the Nebraska State Patrol Retirement System or elect to remain members of the State Employees Retirement System of the State of Nebraska.

(2) An officer who elects to become a member of the Nebraska State Patrol Retirement System pursuant to this section shall (a) receive eligibility and vesting credit pursuant to subsection (2) of section 81-2016 for his or her years of participation in the State Employees Retirement System of the State of Nebraska, (b) be vested in the employer account with the State Employees Retirement System of the State of Nebraska regardless of his or her period of participation in the State Employees Retirement System, and (c) be treated for all other purposes of the Nebraska State Patrol Retirement Act as a new member of the Nebraska State Patrol Retirement System.

(3) Transferring participation from the State Employees Retirement System of the State of Nebraska to the Nebraska State Patrol Retirement System pursuant to this section does not constitute a termination for purposes of the State Employees Retirement Act.

**Source:** Laws 2002, LB 470, § 4.

**Cross References**

**Nebraska State Patrol Retirement Act**, see section 81-2014.01.

**60-1305 Carrier enforcement officers; uniform; badge.**

When the carrier enforcement officers are on duty as such, they shall be dressed in a distinctive uniform and display a distinctive badge of office. The superintendent of the Nebraska State Patrol shall issue a distinctive badge of office, with a seal of this state in the center thereof and with the designation of the officer thereon. Every such badge shall be serially numbered.

**Source:** Laws 1955, c. 145, § 5, p. 407; Laws 1985, LB 395, § 6.

**60-1306 Carrier enforcement officers; powers; funding of firearms.**

The carrier enforcement officers shall have the power (1) of peace officers solely for the purpose of enforcing the International Fuel Tax Agreement Act and the provisions of law relating to the size, weight, and load and the Motor Vehicle Registration Act pertaining to buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles, (2) when in uniform, to require the driver thereof to stop and exhibit his or her operator's license and registration issued for the vehicle and submit to an inspection of such vehicle, the license plates, the registration thereon, and licenses and permits required under the motor fuel laws, (3) to make arrests upon view and without warrant for any violation committed in their presence of the provisions of the Motor Vehicle Operator's License Act or of any other law regulating the operation of vehicles or the use of the highways while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections 60-1308, 60-1309, and 75-362 to 75-369.07, (4) to make arrests upon view and without warrant for any violation committed in their presence which is a misdemeanor or felony under the laws of this state while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections 60-1308, 60-1309, and 75-362 to 75-369.07, and (5) to make arrests on warrant for any violation which is a misdemeanor or felony under the laws of this state while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections 60-1308, 60-1309, and 75-362 to 75-369.07.

Any funds used to arm carrier enforcement officers shall be paid solely from the Carrier Enforcement Cash Fund. The amount of funds shall be determined by the Superintendent of Law Enforcement and Public Safety.

**Source:** Laws 1955, c. 145, § 6, p. 407; Laws 1963, c. 373, § 6, p. 1197; Laws 1983, LB 412, § 2; Laws 1985, LB 395, § 7; Laws 1986, LB 783, § 3; Laws 1991, LB 627, § 8; Laws 1994, LB 28, § 1; Laws 1996, LB 1218, § 16; Laws 2002, LB 499, § 4; Laws 2003, LB 480, § 1; Laws 2004, LB 983, § 3; Laws 2005, LB 274, § 254; Laws 2006, LB 1007, § 12.

**Cross References**

**International Fuel Tax Agreement Act**, see section 66-1401.

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

**Motor Vehicle Registration Act**, see section 60-301.

The arrest powers granted to carrier enforcement officers under this section do not allow arrests for all stated law violations which are observed while on duty, but are limited to arrests only for such stated violations which are viewed by the officer while performing a function specifically related to the

duties enumerated in subsections (1) and (2) of this section or a function specifically related to those duties addressed in the statutes and laws referred to in subsections (3), (4), and (5) of this section. *State v. Langan*, 6 Neb. App. 739, 577 N.W.2d 752 (1998).

**60-1307 Size, weight, load, and registration violations; summons; hearing; promise to appear; violation; penalty; nonresidents, personal appearance required; motor vehicle; seizure and detention; when; release.**

(1) Whenever any person is arrested at one of the state weighing stations or portable scales for a violation of the laws relating to the trip permit provided in section 66-1418, the Motor Vehicle Registration Act, or the laws relating to the size, weight, and load of buses, trucks, truck-tractors, semitrailers, trailers, or towed vehicles, the arresting officer shall take the name and address of such person and the license number of his or her motor vehicle and issue a summons or otherwise notify him or her in writing to appear at a time and place to be specified in such summons or notice, such time to be at least five days after such arrest unless the person arrested demands an earlier hearing. Such person shall, if he or she desires, have a right to an immediate hearing or a hearing within twenty-four hours at a convenient hour. The hearing shall be before a magistrate within the county in which the offense was committed. Such officer shall, upon such person giving a written promise to appear at such time and place, release him or her from custody. Such person arrested and released shall not be permitted to operate the motor vehicle concerned until it is in compliance with the Motor Vehicle Registration Act and section 60-6,301. Any person refusing to give such written promise to appear shall be immediately taken by the arresting officer before the nearest or most accessible magistrate. Any person who willfully violates a written promise to appear given in accordance with this section shall be guilty of a Class III misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.

(2) Subsection (1) of this section shall not apply to any person not a resident of the State of Nebraska. The arresting officer shall take such person forthwith before the nearest or most accessible magistrate.

(3)(a) The arresting officer shall seize and detain the motor vehicle concerned until the motor vehicle is in compliance with section 60-6,294 or in conformity with the exceptions permitted by section 60-6,301, and unless all the violations pending before the magistrate relating to section 60-6,294 have been the subject of a conviction, acquittal, or dismissal and all related fines and costs have been paid, the arresting officer may detain the motor vehicle concerned when the officer has reasonable grounds to believe that (i) the accused will refuse to respond to the citation, (ii) the accused has no ties to the jurisdiction reasonably sufficient to assure his or her appearance in court, or (iii) the accused has previously failed to appear in response to a citation.

(b) If a motor vehicle detained pursuant to this section is transporting livestock, procedures and precautions shall be taken if necessary to ensure the health and welfare of such livestock while the motor vehicle is detained.

(c) A motor vehicle detained pursuant to this subsection shall be released upon execution of a bond with such surety or sureties as the court deems proper or, in lieu of such surety or sureties and at the option of the accused, a cash deposit, conditioned upon his or her appearance before the proper court

to answer the offense for which he or she may be charged and to appear at such times thereafter as the court so orders. Such bond shall be in an amount as set forth in the schedule adopted pursuant to section 29-901.05 and shall be administered, subject to review and forfeiture, in the same manner as bail bonds, except that for violations of section 60-6,294, such bond or cash deposit shall be in an amount not less than the sum of costs together with the appropriate fine prescribed in section 60-6,296.

(d) In addition to the operator, any owner or lessee of the motor vehicle may execute the bond or make the cash deposit required by this section. Upon execution of the bond or cash deposit, the arresting or custodial officer shall release the motor vehicle and cargo to the person who executed the bond or deposited the cash or to the designee of such person.

(e) Towing and storage charges, if any, shall be paid by the person to whom the motor vehicle is released prior to the release of the motor vehicle. Such charges shall be assessed as costs in any action for the forfeiture of the recognizance.

(4) Nothing in this section shall (a) prevent the owner or the owner's representative of such motor vehicle or the cargo on the motor vehicle from taking possession of the cargo and transferring it to another vehicle or taking possession of the cargo and the trailer, if the trailer can be separated from the power unit, or (b) create any liability for the state arising out of damage to such motor vehicle and its cargo.

**Source:** Laws 1955, c. 145, § 7, p. 407; Laws 1957, c. 279, § 1, p. 1010; Laws 1963, c. 373, § 7, p. 1198; Laws 1977, LB 39, § 90; Laws 1985, LB 395, § 8; Laws 1986, LB 783, § 4; Laws 1987, LB 307, § 1; Laws 1993, LB 370, § 471; Laws 2004, LB 983, § 4; Laws 2005, LB 274, § 255.

#### Cross References

Motor Vehicle Registration Act, see section 60-301.

#### **60-1308 Failure to stop at weighing station or portable scale; violation; penalty.**

The driver of any motor truck, truck-tractor, semitrailer, trailer, or towed vehicle who fails to obey any sign, message board, or in-cab signal from any state weighing station or portable scale or who knowingly passes or bypasses any state weighing station or portable scale, when the station or scale is open and being operated by an officer of the Nebraska State Patrol, is guilty of a Class III misdemeanor.

**Source:** Laws 1955, c. 145, § 8, p. 408; Laws 1959, c. 302, § 1, p. 1130; Laws 1963, c. 373, § 8, p. 1199; Laws 1977, LB 39, § 91; Laws 1985, LB 395, § 9; Laws 2003, LB 481, § 1.

#### **60-1309 Resisting arrest; disobeying order; violation; penalty.**

Any person who fails or refuses to obey any lawful order of a carrier enforcement officer or who resists lawful arrest by any such officer shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 1955, c. 145, § 9, p. 408; Laws 1977, LB 39, § 92; Laws 1985, LB 395, § 10.

## MOTOR VEHICLES

### ARTICLE 14

#### MOTOR VEHICLE INDUSTRY LICENSING

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## MOTOR VEHICLE INDUSTRY LICENSING

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§ 60-1401

MOTOR VEHICLES

Section

60-1439. Dealer, manufacturer, distributor; liability for damages to motor vehicles.  
60-1440. Violations; actions for damages and equitable relief; arbitration.

**60-1401 Act, how cited; applicability of amendments.**

Sections 60-1401 to 60-1440 shall be known and may be cited as the Motor Vehicle Industry Regulation Act.

Any amendments to the act shall apply to franchises subject to the act which are entered into, amended, altered, modified, renewed, or extended after the date of the amendments to the act except as otherwise specifically provided in the act.

**Source:** Laws 2010, LB816, § 12.

**60-1401.01 Legislative findings and declaration.**

(1) The Legislature finds and declares that the distribution and sales of motor vehicles, motorcycles, and trailers in the State of Nebraska vitally affects the general economy of the state, the public interest, the public welfare, and public safety and that in order to promote the public interest and the public welfare and in the exercise of its police power, it is necessary to regulate motor vehicle, motorcycle, and trailer dealers, manufacturers, distributors, and their representatives doing business in the State of Nebraska.

(2) The Legislature further finds that the sales of motor vehicles, motorcycles, and trailers are involved to a large extent in a franchise system established between manufacturers and dealers and hereby declares that the sale of motor vehicles, motorcycles, and trailers to the public in the state under the franchise system includes more than the mere transfer of title, being a continuing obligation of the manufacturer, distributor, and dealer to the buying public affecting the public interest; that the termination or failure of the established relationship between the manufacturer, distributor, and dealer without cause or good faith denies to the general buying public its right to availability of continuing post-sale mechanical and operational services and precludes the relationship, expected and implied at the time of sale, between the buyer and the seller necessary to insure safe operating condition of the vehicle.

(3) The Legislature further finds and declares that the distribution and sale of motor vehicles in the state under the franchise system vitally affects commerce, the general economy of the state, and the welfare of the citizens of the state requiring the exercise of its police power to insure the public welfare, to regulate commerce, to establish guidelines for enforcement of a fair and equitable balance between parties to such franchises, and to provide judicial relief from unfair and inequitable practices affecting the public interest.

**Source:** Laws 1971, LB 768, § 1; Laws 2010, LB816, § 13.

In refusing to consider petitioner's challenge of the constitutionality of this act, the court held a litigant who invokes the provisions of a statute may not simultaneously question its constitutionality. American Motors Sales Corp. v. Perkins, 198 Neb. 97, 251 N.W.2d 727 (1977).

**60-1401.02 Definitions, where found.**

For purposes of the Motor Vehicle Industry Regulation Act, the definitions found in sections 60-1401.03 to 60-1401.40 apply.

**Source:** Laws 1971, LB 768, § 2; Laws 1972, LB 1335, § 1; Laws 1974, LB 754, § 1; Laws 1978, LB 248, § 3; Laws 1983, LB 234, § 18;

Laws 1984, LB 825, § 12; Laws 1989, LB 280, § 1; Laws 1993, LB 121, § 388; Laws 1993, LB 200, § 1; Laws 1995, LB 564, § 2; Laws 1996, LB 1035, § 1; Laws 1998, LB 903, § 3; Laws 2000, LB 1018, § 1; Laws 2003, LB 498, § 1; Laws 2003, LB 563, § 34; Laws 2005, LB 274, § 256; Laws 2008, LB797, § 3; Laws 2009, LB50, § 1; Laws 2010, LB816, § 14.

Terms of dealer's license do not require dealer to provide safe tools for dealer's employees. Durand v. Western Surety Co., 245 Neb. 649, 514 N.W.2d 840 (1994).

**60-1401.03 Association, defined.**

Association means any two or more persons acting with a common purpose, regardless of the relative degrees of involvement, and includes, but is not limited to, the following persons so acting:

(1) A person and one or more of his or her family members. For purposes of this subdivision, family member means an individual related to the person by blood, marriage, adoption, or legal guardianship as the person's spouse, child, parent, brother, sister, grandchild, grandparent, ward, or legal guardian or any individual so related to the person's spouse; and

(2) Two or more persons living in the same dwelling unit, whether or not related to each other.

**Source:** Laws 2010, LB816, § 15.

**60-1401.04 Auction, defined.**

Auction means a sale of motor vehicles and trailers of types required to be registered in this state, except such vehicles as are eligible for registration pursuant to section 60-3,198, sold or offered for sale at which the price offered is increased by the prospective buyers who bid against one another, the highest bidder becoming the purchaser. The holding of a farm auction or an occasional motor vehicle or trailer auction of not more than two auctions in a calendar year does not constitute an auction subject to the Motor Vehicle Industry Regulation Act.

**Source:** Laws 2010, LB816, § 16.

**60-1401.05 Auction dealer, defined.**

Auction dealer means any person engaged in the business of conducting an auction for the sale of motor vehicles and trailers.

**Source:** Laws 2010, LB816, § 17.

**60-1401.06 Board, defined.**

Board means the Nebraska Motor Vehicle Industry Licensing Board.

**Source:** Laws 2010, LB816, § 18.

**60-1401.07 Bona fide consumer, defined.**

Bona fide consumer means an owner of a motor vehicle, motorcycle, or trailer who has acquired such vehicle for use in business or for pleasure purposes, who has been granted a certificate of title on such motor vehicle, motorcycle, or trailer, and who has registered such motor vehicle, motorcycle, or trailer, all in accordance with the laws of the residence of the owner, except

that no owner who sells more than eight registered motor vehicles, motorcycles, or trailers within a twelve-month period shall qualify as a bona fide consumer.

**Source:** Laws 2010, LB816, § 19.

**60-1401.08 Coerce, defined.**

Coerce means to compel a dealer or manipulate a dealer to behave in an involuntary way, whether through action or inaction, by use of threats, intimidation, trickery, or some other form of pressure or force.

**Source:** Laws 2010, LB816, § 20.

**60-1401.09 Community, defined.**

Community means a franchisee's area of responsibility as stipulated in the franchise or, if the franchise fails to designate a community, (1) the community of the franchisee is the area surrounding the location of the franchisee in a five-mile radius from the dealership if the location is within a city of the metropolitan class and (2) the community of the franchisee is the county in which the franchisee is located if the location is not within a city of the metropolitan class.

**Source:** Laws 2010, LB816, § 21.

**60-1401.10 Consumer care, defined.**

Consumer care means the performance, for the public, of necessary maintenance and repairs to motor vehicles.

**Source:** Laws 2010, LB816, § 22.

**60-1401.11 Dealer's agent, defined.**

Dealer's agent means a person who acts as a buying agent for one or more motor vehicle dealers, motorcycle dealers, or trailer dealers.

**Source:** Laws 2010, LB816, § 23.

**60-1401.12 Designated family member, defined.**

Designated family member means the spouse, child, grandchild, parent, brother, or sister of the owner of a new motor vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner's will, who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of such dealership, has been appointed by a court as the legal representative of the new motor vehicle dealer's property.

**Source:** Laws 2010, LB816, § 24.

**60-1401.13 Distributor, defined.**

Distributor means a person, resident or nonresident of this state, who, in whole or in part, sells or distributes new motor vehicles, trailers, or motorcycles to dealers or who maintains distributors or representatives who sell or distribute motor vehicles, trailers, or motorcycles to dealers and also has the same meaning as the term franchisor.

**Source:** Laws 2010, LB816, § 25.

**60-1401.14 Distributor representative, defined.**

Distributor representative means a representative employed by a distributor or distributor branch for the same purpose as set forth in the definition of factory representative.

**Source:** Laws 2010, LB816, § 26.

**60-1401.15 Established place of business, defined.**

(1) Established place of business means a permanent location within this state, easily accessible to the public, owned or leased by the applicant or a licensee for at least the term of the license year, and conforming with applicable zoning laws, at which the licensee conducts the business for which he or she is licensed and may be contacted by the public during posted reasonable business hours which shall be not less than forty hours per week.

(2) The established place of business shall have the following facilities:

(a) Office space in a building or mobile home, which space shall be clean, dry, safe, and well lighted and in which shall be kept and maintained all books, records, and files necessary for the conduct of the licensed business, which premises, books, records, and files shall be available for inspection during regular business hours by any peace officer or investigator employed or designated by the board. Dealers shall, upon demand of the board's investigator, furnish copies of records so required when conducting any investigation of a complaint;

(b) A sound and well-maintained sign which is legible from a public road and displayed with letters not less than eight inches in height and one contiguous area to display ten or more motor vehicles, motorcycles, or trailers in a presentable manner;

(c) Adequate repair facilities and tools to properly and actually service warranties on motor vehicles, motorcycles, or trailers sold at such place of business and to make other repairs arising out of the conduct of the licensee's business or, in lieu of such repair facilities, the licensee may enter into a contract for the provision of such service and file a copy thereof annually with the board and shall furnish to each buyer a written statement as to where such service will be provided as required by section 60-1417. The service facility shall be located in the same county as the licensee unless the board specifically authorizes the facility to be located elsewhere. Such facility shall maintain regular business hours and shall have suitable repair equipment and facilities to service and inspect the type of vehicles sold by the licensee. Investigators of the board may certify ongoing compliance with the service and inspection facilities or repair facilities; and

(d) An operating telephone connected with a public telephone exchange and located on the premises of the established place of business with a telephone number listed by the public telephone exchange and available to the public during the required posted business hours.

(3) A mobile truck equipped with repair facilities to properly perform warranty functions and other repairs shall be deemed adequate repair facilities for trailers.

(4) The requirements of this section shall apply to the place of business authorized under a supplemental motor vehicle, motorcycle, or trailer dealer's license.

**Source:** Laws 2010, LB816, § 27.

**60-1401.16 Factory branch, defined.**

Factory branch means a branch office maintained in this state by a person who manufactures, assembles, or distributes motor vehicles, motorcycles, or trailers for the sale of such motor vehicles, motorcycles, or trailers to distributors or dealers or for directing or supervising, in whole or in part, its representatives in this state.

**Source:** Laws 2010, LB816, § 28.

**60-1401.17 Factory representative, defined.**

Factory representative means a representative employed by a person who manufactures or assembles motor vehicles, motorcycles, or trailers, or by a factory branch, for the purpose of promoting the sale of its motor vehicles, motorcycles, or trailers to, or for supervising or contacting, its dealers or prospective dealers in this state.

**Source:** Laws 2010, LB816, § 29.

**60-1401.18 Finance company, defined.**

Finance company means any person engaged in the business of financing sales of motor vehicles, motorcycles, or trailers, or purchasing or acquiring promissory notes, secured instruments, or other documents by which the motor vehicles, motorcycles, or trailers are pledged as security for payment of obligations arising from such sales and who may find it necessary to engage in the activity of repossession and the sale of the motor vehicles, motorcycles, or trailers so pledged.

**Source:** Laws 2010, LB816, § 30.

**60-1401.19 Franchise, defined.**

Franchise means a contract between two or more persons when all of the following conditions are included:

- (1) A commercial relationship of definite duration or continuing indefinite duration is involved;
- (2) The franchisee is granted the right to offer and sell motor vehicles manufactured or distributed by the franchisor;
- (3) The franchisee, as an independent business, constitutes a component of the franchisor's distribution system;
- (4) The operation of the franchisee's business is substantially associated with the franchisor's trademark, service mark, trade name, advertising, or other commercial symbol designating the franchisor; and
- (5) The operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of motor vehicles, parts, and accessories.

**Source:** Laws 2010, LB816, § 31.

**60-1401.20 Franchisee, defined.**

Franchisee means a new motor vehicle dealer who receives motor vehicles from the franchisor under a franchise and who offers and sells such motor vehicles to the general public.

**Source:** Laws 2010, LB816, § 32.

**60-1401.21 Franchisor, defined.**

Franchisor means a person who manufactures or distributes motor vehicles and who may enter into a franchise.

**Source:** Laws 2010, LB816, § 33.

**60-1401.22 Line-make, defined.**

Line-make means a collection of models, series, or groups of motor vehicles manufactured by or for a particular manufacturer, distributor, or importer that are offered for sale, lease, or distribution pursuant to a common brand name or mark, except that:

(1) Multiple brand names or marks may constitute a single line-make, but only when included in a common dealer agreement and the manufacturer, distributor, or importer offers such vehicles bearing the multiple names or marks together only, and not separately, to its authorized dealers; and

(2) Motor vehicles bearing a common brand name or mark may constitute separate line-makes when pertaining to motor vehicles subject to separate dealer agreements or when such vehicles are intended for different types of use.

**Source:** Laws 2010, LB816, § 34.

**60-1401.23 Manufactured home, defined.**

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 section 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, 42 U.S.C. 5401 et seq., as such act existed on January 1, 2010.

**Source:** Laws 2010, LB816, § 35.

**60-1401.24 Manufacturer, defined.**

Manufacturer means any person, resident or nonresident of this state, who is engaged in the business of distributing, manufacturing, or assembling a line-make of new motor vehicles, trailers, or motorcycles and distributes them directly or indirectly through one or more distributors to one or more new motor vehicle, trailer, or motorcycle dealers in this state and also has the same meaning as the term franchisor.

Manufacturer also includes a central or principal sales corporation or other entity through which, by contractual agreement or otherwise, a manufacturer distributes its products.

**Source:** Laws 2010, LB816, § 36.

**60-1401.25 Motor vehicle, defined.**

Motor vehicle means any vehicle for which evidence of title is required as a condition precedent to registration under the laws of this state but does not include trailers.

Motor vehicle also means any engine, transmission, or rear axle, regardless of whether attached to a vehicle chassis, that is manufactured for installation in any motor-driven vehicle with a gross vehicle weight rating of more than sixteen thousand pounds for which motor-driven vehicle evidence of title is required as a condition precedent to registration under the laws of this state.

**Source:** Laws 2010, LB816, § 37.

**60-1401.26 Motor vehicle dealer, defined.**

Motor vehicle dealer means any person, other than a bona fide consumer, actively and regularly engaged in the act of selling, leasing for a period of thirty or more days, or exchanging new or used motor vehicles, trailers, and manufactured homes who buys, sells, exchanges, causes the sale of, or offers or attempts to sell new or used motor vehicles. Such person is a motor vehicle dealer and subject to the Motor Vehicle Industry Regulation Act.

Motor vehicle dealer does not include a lessor who was not involved in or associated with the selection, location, acquisition, or supply of a motor vehicle which is the subject of a lease agreement.

**Source:** Laws 2010, LB816, § 38.

**60-1401.27 Motor vehicle, motorcycle, or trailer salesperson, defined.**

Motor vehicle, motorcycle, or trailer salesperson means any person who, for a salary, commission, or compensation of any kind, is employed directly by only one specified licensed Nebraska motor vehicle dealer, motorcycle dealer, or trailer dealer, except when the salesperson is working for two or more dealerships with common ownership, to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of motor vehicles, motorcycles, or trailers. A person owning any part of more than one dealership may be a salesperson for each of such dealerships. For purposes of this section, common ownership means that there is at least an eighty percent interest in each dealership by one or more persons having ownership in such dealership.

**Source:** Laws 2010, LB816, § 39.

**60-1401.28 Motorcycle, defined.**

Motorcycle means every motor vehicle, except a tractor, having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground and for which evidence of title is required as a condition precedent to registration under the laws of this state.

**Source:** Laws 2010, LB816, § 40.

**60-1401.29 Motorcycle dealer, defined.**

Motorcycle dealer means any person, other than a bona fide consumer, actively and regularly engaged in the business of selling or exchanging new or used motorcycles.

**Source:** Laws 2010, LB816, § 41.

**60-1401.30 New motor vehicle, defined.**

New motor vehicle means all motor vehicles which are not included within the definition of a used motor vehicle.

**Source:** Laws 2010, LB816, § 42.

**60-1401.31 Person, defined.**

Person means every natural person, firm, partnership, limited liability company, association, or corporation.

**Source:** Laws 2010, LB816, § 43.

**60-1401.32 Retail, defined.**

Retail, when used to describe a sale, means a sale to any person other than a licensed dealer of any kind licensed under the Motor Vehicle Industry Regulation Act.

**Source:** Laws 2010, LB816, § 44.

**60-1401.33 Sale and selling, defined.**

Sale, selling, and equivalent expressions mean the attempted act or acts either as principal, agent, or salesperson or in any capacity whatsoever of selling, bartering, exchanging, or otherwise disposing of or negotiating or offering or attempting to negotiate the sale, purchase, or exchange of or interest in any motor vehicle, trailer, or motorcycle, including the leasing of any motor vehicle, trailer, or motorcycle for a period of thirty or more days with a right or option to purchase under the terms of the lease.

**Source:** Laws 2010, LB816, § 45.

**60-1401.34 Scrap metal processor, defined.**

Scrap metal processor means any person engaged in the business of buying vehicles, motorcycles, or parts thereof for the purpose of remelting or processing into scrap metal or who otherwise processes ferrous or nonferrous metallic scrap for resale.

No scrap metal processor shall sell vehicles or motorcycles without obtaining a wrecker or salvage dealer license.

**Source:** Laws 2010, LB816, § 46.

**60-1401.35 Supplemental motor vehicle, trailer, motorcycle, or motor vehicle auction dealer, defined.**

Supplemental motor vehicle, trailer, motorcycle, or motor vehicle auction dealer means any person holding either a motor vehicle, trailer, motorcycle, or motor vehicle auction dealer's license engaging in the business authorized by such license at a place of business that is more than three hundred feet from

any part of the place of business designated in the dealer's original license but which is located within the city or county described in such original license.

**Source:** Laws 2010, LB816, § 47.

**60-1401.36 Trailer, defined.**

Trailer means semitrailers and trailers as defined in sections 60-348 and 60-354, respectively, which are required to be licensed as commercial trailers, other vehicles without motive power constructed so as to permit their being used as conveyances upon the public streets and highways and so constructed as not to be attached to real estate and to permit the vehicle to be used for human habitation by one or more persons, and camping trailers, slide-in campers, fold-down campers, and fold-down tent trailers.

Machinery and equipment to which wheels are attached and designed for being towed by a motor vehicle are excluded from the Motor Vehicle Industry Regulation Act.

**Source:** Laws 2010, LB816, § 48.

**60-1401.37 Trailer dealer, defined.**

Trailer dealer means any person, other than a bona fide consumer, actively and regularly engaged in the business of selling or exchanging new or used trailers and manufactured homes.

**Source:** Laws 2010, LB816, § 49.

**60-1401.38 Used motor vehicle, defined.**

Used motor vehicle means every motor vehicle which has been sold, bargained, exchanged, or given away or for which title has been transferred from the person who first acquired it from the manufacturer, importer, dealer, or agent of the manufacturer or importer.

A new motor vehicle is not considered a used motor vehicle until it has been placed in use by a bona fide consumer, notwithstanding the number of transfers of the motor vehicle.

**Source:** Laws 2010, LB816, § 50.

**60-1401.39 Violator, defined.**

Violator means a person acting without a license or registration as required by the Motor Vehicle Industry Regulation Act.

**Source:** Laws 2010, LB816, § 51.

**60-1401.40 Wrecker or salvage dealer, defined.**

Wrecker or salvage dealer means any person who acquires one or more motor vehicles or trailers for the purpose of dismantling them for the purpose of reselling the parts or reselling the vehicles as scrap.

**Source:** Laws 2010, LB816, § 52.

**60-1401.41 Applicability of act; persons not considered dealer.**

(1) Nothing in the Motor Vehicle Industry Regulation Act shall apply to the State of Nebraska or any of its agencies or subdivisions.

(2) No insurance company, finance company, public utility company, fleet owner, or other person coming into possession of any motor vehicle, motorcy-

cle, or trailer, as an incident to its regular business, who sells or exchanges the motor vehicle, motorcycle, or trailer shall be considered a dealer except persons whose regular business is leasing or renting motor vehicles, motorcycles, or trailers.

**Source:** Laws 2010, LB816, § 53.

**60-1402 Board; creation; membership; qualifications; appointment; term; per diem; traveling expenses.**

(1) There is hereby established the Nebraska Motor Vehicle Industry Licensing Board which shall consist of the Director of Motor Vehicles, who shall be the chairperson of the board, and nine members appointed by the Governor as follows: One factory representative, one member of the general public, and one motorcycle dealer, all of whom shall be appointed from the state at large, one new motor vehicle dealer from each of the three congressional districts of the state as the districts are constituted on October 19, 1963, and two used motor vehicle dealers and one trailer dealer or combination motor vehicle or trailer dealer, not more than one used motor vehicle dealer being appointed from the same congressional district as they are constituted on October 19, 1963, and the trailer dealer or combination motor vehicle or trailer dealer being appointed from the state at large. No member of the board shall participate in any manner in a proceeding before the board involving his or her licensed business.

(2) On October 19, 1963, the Governor shall appoint a new motor vehicle dealer and a trailer dealer or combination motor vehicle or trailer dealer to the board. In making the appointments, the Governor shall appoint one of the new members for one year and one for two years as designated by the Governor in making the appointments. On January 1, 1972, the Governor shall appoint one factory representative and one member of the general public to the board, designating one to serve for a term of one year and one for a term of two years. On January 1, 1974, the Governor shall appoint one motorcycle dealer to serve for a term of three years. At the expiration of the term of any appointed member of the board, the Governor shall appoint a successor for a term of three years. In the event of a vacancy on the board, the Governor shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. No member appointed shall serve more than two consecutive terms. The action of the majority of the members of the board shall be deemed the action of the board. All appointments made to the board, except the Director of Motor Vehicles, shall be confirmed by the Legislature if in session. In the event the Legislature is not in session all appointments including appointments to fill a vacancy shall be temporary appointments until the next meeting of the Legislature when the Governor shall nominate some person to fill the office. Any person so nominated who is confirmed by the Legislature shall hold office during the remainder of the term. No appointed person may act as a member of the board while holding any other elective or appointive state or federal office except the Director of Motor Vehicles. All appointed members of the board shall be paid fifty dollars for each day actually engaged in the performance of their duties and be entitled to their reasonable traveling expenses in the performance of their duties.

**Source:** Laws 1957, c. 280, § 2, p. 1014; Laws 1961, c. 282, § 2, p. 823; Laws 1963, c. 365, § 3, p. 1169; Laws 1971, LB 768, § 3; Laws 1973, LB 443, § 1; Laws 1974, LB 754, § 2; Laws 1978, LB 248, § 4; Laws 2010, LB816, § 54.

## Cross References

For current limits and designation of congressional districts, see section 32-504.

The composition of the Nebraska Motor Vehicle Industry Licensing Board is not inherently biased against automobile manufacturers, and therefore, the composition of the board does not violate the manufacturer's due process rights. *Chrysler Motors Corp. v. Lee Janssen Motor Co.*, 248 Neb. 322, 534 N.W.2d 309 (1995).

**60-1403 Board; investigators; powers and duties; seal; records; authentication.**

(1) The board may:

(a) Regulate the issuance and revocation of licenses in accordance with and subject to the Motor Vehicle Industry Regulation Act;

(b) Perform all acts and duties provided for in the act necessary to the administration and enforcement of the act; and

(c) Make and enforce rules and regulations relating to the administration of but not inconsistent with the act.

(2) The board shall adopt a seal, which may be either an engraved or ink stamp seal, with the words Nebraska Motor Vehicle Industry Licensing Board and such other devices as the board may desire included on the seal by which it shall authenticate the acts of its office. Copies of all records and papers in the office of the board under the hand and seal of its office shall be received in evidence in all cases equally and with like effect as the original.

(3) Investigators employed by the board may enter upon and inspect the facilities, the required records, and any vehicles, trailers, or motorcycles found in any licensed motor vehicle, motorcycle, or trailer dealer's established place or places of business.

**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.

**60-1403.01 License required; restriction on issuance; exception.**

(1) No person shall engage in the business as, serve in the capacity of, or act as a motor vehicle, trailer, or motorcycle dealer, wrecker or salvage dealer, salesperson, auction dealer, dealer's agent, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative in this state without being licensed by the board under the Motor Vehicle Industry Regulation Act. No salesperson's license shall be issued to any person under the age of sixteen, and no dealer's license shall be issued to any minor. No wrecker or salvage dealer's license shall be issued or renewed unless the applicant has a permanent place of business at which the activity requiring licensing is performed and which conforms to all local laws.

(2) A license issued under the act shall authorize the holder thereof to engage in the business or activities permitted by the license subject to the act and the rules and regulations adopted and promulgated by the board under the act.

(3) This section shall not apply to a licensed real estate salesperson or broker who negotiates for sale or sells a trailer for any individual who is the owner of not more than two trailers.

**Source:** Laws 1971, LB 768, § 5; Laws 1972, LB 1335, § 2; Laws 1974, LB 754, § 3; Laws 1983, LB 234, § 20; Laws 2000, LB 1018, § 2; Laws 2003, LB 498, § 2; Laws 2010, LB816, § 56.

**60-1404 Executive director; duties; meetings of board; attorney; other employees; salaries; office at capitol.**

The board shall have the authority to employ an executive director who shall direct and administer the affairs of the board and who shall keep a record of all proceedings, transactions, communications, and official acts of the board. He or she shall be custodian of all records of the board and perform such other duties as the board may require. The executive director shall call a meeting of the board at the direction of the chairperson thereof or upon a written request of two or more members thereof. The executive director, with the approval of the board, is authorized to employ an attorney at a minimum salary of six hundred dollars per month together with such other employees, including staff for its attorney, as may be necessary to properly carry out the Motor Vehicle Industry Regulation Act, to fix the salaries of such employees, and to make such other expenditures as are necessary to properly carry out the act. The office of the board shall be maintained in the State Capitol at Lincoln and all files, records, and property of the board shall at all times be and remain therein. The executive director shall be the board's representative in the administration of the act, and he or she shall insure that the policies and directives of the board are carried out.

**Source:** Laws 1957, c. 280, § 4, p. 1016; Laws 1969, c. 515, § 2, p. 2113; Laws 1974, LB 754, § 4; Laws 1984, LB 825, § 13; Laws 2010, LB816, § 57.

**60-1405 Attorney General; attorney for board; fees and expenses.**

The Attorney General shall render to the Nebraska Motor Vehicle Industry Licensing Board opinions on all questions of law relating to the interpretation of the Motor Vehicle Industry Regulation Act or arising in the administration thereof. The Attorney General shall act as attorney for the board in all actions and proceedings brought by or against it under or pursuant to any of the provisions of the act. All fees and expenses of the Attorney General for such duties shall be paid out of the Nebraska Motor Vehicle Industry Licensing Fund.

**Source:** Laws 1957, c. 280, § 5, p. 1016; Laws 2010, LB816, § 58.

**60-1406 Licenses; classes.**

Licenses issued by the board under the Motor Vehicle Industry Regulation Act shall be of the classes set out in this section and shall permit the business activities described in this section:

(1) Motor vehicle dealer's license. This license permits the licensee to engage in the business of selling or exchanging new, used, or new and used motor vehicles, trailers, and manufactured homes at the established place of business designated in the license and another place or places of business located within three hundred feet of the designated place of business and within the city or county described in the original license. This license permits the sale of a trade-in or consignment mobile home greater than forty feet in length and eight feet in width and located at a place other than the dealer's established place of business. This license permits one person, either the licensee, if he or she is the individual owner of the licensed business, or a stockholder, officer, partner, or member of the licensee, to act as a motor vehicle, trailer, and manufactured

home salesperson and the name of the authorized person shall appear on the license;

(2) Motor vehicle, motorcycle, or trailer salesperson license. This license permits the licensee to engage in the activities of a motor vehicle, motorcycle, or trailer salesperson. This license permits the one person named on the license to act as a salesperson;

(3) Manufacturer license. This license permits the licensee to engage in the activities of a motor vehicle, motorcycle, or trailer manufacturer or manufacturer's factory branch;

(4) Distributor license. This license permits the licensee to engage in the activities of a motor vehicle, motorcycle, or trailer distributor;

(5) Factory representative license. This license permits the licensee to engage in the activities of a factory branch representative;

(6) Factory branch license. This license permits the licensee to maintain a branch office in this state;

(7) Distributor representative license. This license permits the licensee to engage in the activities of a distributor representative;

(8) Finance company license. This license permits the licensee to engage in the activities of repossession of motor vehicles or trailers and the sale of such motor vehicles or trailers so repossessed;

(9) Wrecker or salvage dealer license. This license permits the licensee to engage in the business of acquiring motor vehicles or trailers for the purpose of dismantling the motor vehicles or trailers and selling or otherwise disposing of the parts and accessories of motor vehicles or trailers;

(10) Supplemental motor vehicle, motorcycle, or trailer dealer's license. This license permits the licensee to engage in the business of selling or exchanging motor vehicles, motorcycles, or trailers of the type designated in his or her dealer's license at a specified place of business which is located more than three hundred feet from any part of the place of business designated in the original motor vehicle, motorcycle, or trailer dealer's license but which is located within the city or county described in such original license;

(11) Motorcycle dealer's license. This license permits the licensee to engage in the business of selling or exchanging new, used, or new and used motorcycles at the established place of business designated in the license and another place or places of business located within three hundred feet of the designated place of business and within the city or county described in the original license. This form of license permits one person named on the license, either the licensee, if he or she is the individual owner of the licensed business, or a stockholder, officer, partner, or member of the licensee, to act as a motorcycle salesperson and the name of the authorized person shall appear on the license;

(12) Motor vehicle auction dealer's license. This license permits the licensee to engage in the business of selling motor vehicles and trailers. This form of license permits one person named on the license, either the licensee, if he or she is the individual owner of the licensed business, or a stockholder, officer, partner, or member of the licensee, to act as a motor vehicle auction dealer's salesperson and the name of the authorized person shall appear on the license;

(13) Trailer dealer's license. This license permits the licensee to engage in the business of selling or exchanging new, used, or new and used trailers and manufactured homes at the established place of business designated in the

license and another place or places of business located within three hundred feet of the designated place of business and within the city or county described in the original license. This form of license permits one person named on the license, either the licensee, if he or she is the individual owner of the licensed business, or a stockholder, officer, partner, or member of the licensee, to act as a trailer and manufactured home salesperson and the name of the authorized person shall appear on the license; and

(14) Dealer's agent license. This license permits the licensee to act as the buying agent for one or more licensed motor vehicle dealers, motorcycle dealers, or trailer dealers. The agent shall act in accordance with a written contract and file a copy of the contract with the board. The dealer shall be bound by and liable for the actions of the agent. The dealer's agent shall disclose in writing to each dealer with which the agent contracts as an agent the names of all other dealers contracting with the agent. The agent shall make each purchase on behalf of and in the name of only one dealer and may purchase for dealers only at auctions and only from licensed dealers. The agent shall not act as a licensed dealer and is not authorized to sell any vehicle pursuant to this license.

**Source:** Laws 1957, c. 280, § 6, p. 1016; Laws 1961, c. 307, § 8, p. 977; Laws 1963, c. 365, § 4, p. 1170; Laws 1967, c. 394, § 4, p. 1229; Laws 1971, LB 768, § 6; Laws 1972, LB 1335, § 3; Laws 1974, LB 754, § 5; Laws 1978, LB 248, § 5; Laws 1984, LB 825, § 14; Laws 1993, LB 121, § 389; Laws 1995, LB 564, § 4; Laws 1999, LB 632, § 1; Laws 2000, LB 1018, § 4; Laws 2003, LB 498, § 3; Laws 2010, LB816, § 59.

#### **60-1407 Application for license; contents.**

Any person desiring to apply for one or more of the types of licenses described in the Motor Vehicle Industry Regulation Act shall submit to the board, in writing, the following required information:

(1) The name and address of the applicant, if the applicant is an individual, his or her social security number, and the name under which he or she intends to conduct business. If the applicant is a partnership or limited liability company, it shall set forth the name and address of each partner or member thereof and the name under which the business is to be conducted. If the applicant is a corporation, it shall set forth the name of the corporation and the name and address of each of its principal officers;

(2) The place or places, including the city or village and the street and street number, if any, where the business is to be conducted or the salesperson employed;

(3) If the application is for a motor vehicle dealer's license, trailer dealer's license, or motorcycle dealer's license (a) the name or names of the new motor vehicle or vehicles, new trailer or trailers, or new motorcycle or motorcycles which the applicant has been enfranchised to sell or exchange, (b) the name or names and address or addresses of the manufacturer or distributor who has enfranchised the applicant, (c) a current copy of each existing franchise, and (d) a description of the community;

(4) If the application is for any of the above-named classes of dealer's licenses, the name and address of the person who is to act as a motor vehicle, trailer, or motorcycle salesperson under such license if issued;

(5) If the application is for a dealer's agent, the dealers for which the agent will be buying;

(6) A description of the proposed place or places of business proposed to be operated in the event a license is granted together with (a) a statement whether the applicant owns or leases the proposed established place of business and, if the proposed established place of business is leased, the applicant shall file a true and correct copy of the lease agreement, and (b) a description of the facilities for the display of motor vehicles, trailers, and motorcycles;

(7) If the application is for a manufacturer's license, a statement regarding the manufacturer's compliance with the Motor Vehicle Industry Regulation Act; and

(8) A statement that the licensee will comply with and be subject to the act, the rules and regulations adopted and promulgated by the board, and any amendments to the act and the rules and regulations existing on the date of application.

Subdivision (3)(d) of this section shall not be construed to require any licensee who has a franchise on August 31, 2003, to show good cause to be in the same community as any other licensee who has a franchise of the same line-make in the same community on August 31, 2003.

**Source:** Laws 1957, c. 280, § 7, p. 1017; Laws 1959, c. 286, § 9, p. 1087; Laws 1963, c. 365, § 5, p. 1172; Laws 1967, c. 394, § 5, p. 1231; Laws 1971, LB 768, § 7; Laws 1972, LB 1335, § 4; Laws 1993, LB 121, § 390; Laws 1997, LB 752, § 146; Laws 2003, LB 182, § 1; Laws 2003, LB 498, § 4; Laws 2010, LB816, § 60.

**60-1407.01 License; application; filing; investigation; report; contents; requirements; revocation of license; when.**

(1) Upon the filing of any application, a staff member of the board shall endorse on it the date of filing. If no patent disqualification of the applicant is disclosed or if no valid objection to the granting of the application is apparent and if all requirements relative to the filing of the application appear to have been complied with, the chairperson of the board or executive director shall refer the application to a staff member for investigation and report. The report shall include:

(a) A statement as to whether or not the applicant or any person holding any financial interest in the applicant is for any reason disqualified by the Motor Vehicle Industry Regulation Act from obtaining or exercising a license and whether or not the applicant has complied with all the requirements of the act relative to the making and filing of his or her application;

(b) Information relating to any and all other matters and things which in the judgment of the staff member pertain to or affect the matter of the application or the issuance or exercise of the license applied for; and

(c) In the case of an application for a dealer's license:

(i) A description of the premises intended to become the licensed premises and of the equipment and surrounding conditions;

(ii) If the applicant has held a prior dealer's license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license; and

(iii) If the applicant proposes to engage in the business of selling new motor vehicles, motorcycles, or trailers, a written statement from the applicable manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or such other evidence as prescribed by the board, that the applicant is authorized to sell or distribute such new motor vehicles, motorcycles, or trailers.

(2) After the filing of the report, the board may interview the applicant. Notice of such interview shall be given at least ten days prior to the interview.

(3) The executive director shall not issue or renew a license if the applicant or licensee does not (a) maintain an established place of business, (b) meet the requirement for a bond pursuant to section 60-1419, (c) present a certificate or policy of insurance written by an insurance carrier duly authorized to do business in this state which gives the effective dates of coverage indicating that it is in force, which covers the fleet of motor vehicles owned by the applicant or licensee in the ordinary course of business, and which provides liability coverage as described in sections 60-534 and 60-538, (d) present evidence of compliance with the insurance requirements of the Nebraska Workers' Compensation Act, and (e) meet requirements for licensure and comply with the Motor Vehicle Industry Regulation Act, the rules and regulations adopted and promulgated by the board, and any amendments to the act and the rules and regulations. The executive director shall refuse to renew a motor vehicle dealer's license if the dealer cannot prove that he or she sold at least five motor vehicles during the previous licensing period. The requirement under subdivision (c) of this subsection for a certificate or policy of insurance shall not apply to trailer dealers.

(4) The board shall revoke the license of any licensee if, after December 31, 1991, it comes to the attention of the board that the policy of motor vehicle liability coverage required under subdivision (3)(c) of this section is no longer in force.

(5) Nothing in this section shall be construed to change any existing liability or to create any new liability.

**Source:** Laws 1971, LB 768, § 8; Laws 1984, LB 825, § 15; Laws 1989, LB 280, § 2; Laws 1991, LB 171, § 1; Laws 1999, LB 632, § 2; Laws 2010, LB816, § 61.

**Cross References**

Nebraska Workers' Compensation Act, see section 48-1,110.

**60-1407.02 Sales tax permit; authorized use; violations; penalty.**

It shall be unlawful for any person holding a Nebraska sales tax permit, except a dealer licensed pursuant to the Motor Vehicle Industry Regulation Act, to sell or offer for sale any motor vehicle, motorcycle, or trailer, not owned by such person, on the premises covered by such sales tax permit. Any person violating this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1972, LB 1335, § 15; Laws 1977, LB 39, § 93; Laws 2010, LB816, § 62.

**60-1407.03 Special permit for sale at other than established place of business; issuance.**

Notwithstanding the other provisions of the Motor Vehicle Industry Regulation Act restricting sales to an established place of business, any motor vehicle, motorcycle, or trailer dealer licensed in accordance with the act may be granted a special permit to display and sell passenger cars, motor vehicles, motorcycles, trailers, or self-propelled motor homes at fairs, sports shows, vacation shows, and similar events, subject to the conditions established by sections 60-1407.02 to 60-1407.04.

**Source:** Laws 1972, LB 1335, § 16; Laws 1974, LB 754, § 6; Laws 1981, LB 361, § 2; Laws 2000, LB 1018, § 5; Laws 2010, LB816, § 63.

**60-1407.04 Special permit for sale at other than established place of business; approval; conditions.**

The event for which a permit is sought under section 60-1407.03 must be approved by the board. In determining approval, the board shall consider the size, location, duration, sponsors, and purpose of the event. Approval shall not be given to any event sponsored solely by a dealer or dealers or for which the sole or primary purpose is the sale of motor vehicles, motorcycles, trailers, or self-propelled mobile homes.

**Source:** Laws 1972, LB 1335, § 17; Laws 2010, LB816, § 64.

**60-1407.05 Repealed. Laws 2000, LB 1018, § 10.**

**60-1407.06 Special permit for sale at other than established place of business; rules and regulations; fee.**

The board may adopt rules and regulations establishing procedures for the issuance of such special permits. The fee for each such special permit shall be not more than the same fee as established for a dealer's license pursuant to section 60-1411.01.

**Source:** Laws 1972, LB 1335, § 19; Laws 1974, LB 754, § 7.

**60-1408 Repealed. Laws 1971, LB 768, § 40.**

**60-1409 Nebraska Motor Vehicle Industry Licensing Fund; created; collections; disbursements; investment; audited.**

The Nebraska Motor Vehicle Industry Licensing Fund is created. All fees collected under the Motor Vehicle Industry Regulation Act shall be remitted by the board, as collected, to the State Treasurer for credit to the fund. Such fund shall be appropriated by the Legislature for the operations of the Nebraska Motor Vehicle Industry Licensing Board and shall be paid out from time to time by warrants of the Director of Administrative Services on the State Treasurer for authorized expenditures upon duly itemized vouchers executed as provided by law and approved by the chairperson of the board or the executive secretary, except that transfers from the fund to the General Fund may be made at the direction of the Legislature through June 30, 2011. The expenses of conducting the office must always be kept within the income collected and reported to the State Treasurer by such board. Such office and expense thereof shall not be supported or paid from the General Fund, and all money deposited in the Nebraska Motor Vehicle Industry Licensing Fund shall be expended only for such office and expense thereof and, unless determined by the board, it shall

not be required to expend any funds to any person or any other governmental agency.

Any money in the Nebraska Motor Vehicle Industry Licensing Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The fund shall be audited annually by the Auditor of Public Accounts.

**Source:** Laws 1957, c. 280, § 9, p. 1019; Laws 1969, c. 584, § 60, p. 2382; Laws 1972, LB 1335, § 5; Laws 1974, LB 754, § 8; Laws 1978, LB 248, § 6; Laws 1995, LB 7, § 63; Laws 2002, LB 1310, § 6; Laws 2009, First Spec. Sess., LB3, § 36; Laws 2010, LB816, § 65.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-1410 License; form; display; pocket card.**

The board shall prescribe the form of the license and each license shall have printed thereon the seal of its office. All licenses shall be mailed to each licensee except the license of each motor vehicle, motorcycle, or trailer salesperson which shall be delivered or mailed to the motor vehicle, motorcycle, or trailer dealer by whom the motor vehicle, motorcycle, or trailer salesperson is employed and be kept in the custody and control of such dealer. It shall be the duty of each dealer to conspicuously display his or her own license or licenses in his or her place or places of business.

The board shall prepare and deliver a pocket card for salespersons, dealer's agents, factory representatives, and distributor representatives. Such card shall certify that the person whose name appears thereon is a licensed motor vehicle, motorcycle, or trailer salesperson, dealer's agent, factory representative, or distributor representative, as the case may be. Such motor vehicle or trailer salesperson's card shall also contain the name and address of the dealer employing the salesperson.

**Source:** Laws 1957, c. 280, § 10, p. 1019; Laws 1963, c. 365, § 7, p. 1173; Laws 1971, LB 768, § 9; Laws 1972, LB 1335, § 6; Laws 2003, LB 498, § 5.

**60-1411 Notice of changes; return of pocket card; required when.**

If a motor vehicle dealer, motorcycle dealer, or trailer dealer changes the address of his or her place of business, changes franchise, adds another franchise, or loses a franchise for sale of new motor vehicles, motorcycles, or trailers, the dealer shall notify the board of such change within ten days prior to such change. Thereupon the license shall be corrected for the unexpired portion of the term at no additional fee except as provided in section 60-1411.01.

If any motor vehicle, trailer, or motorcycle salesperson is discharged, leaves his or her employer, or changes his or her place of employment, the employer who last employed the salesperson shall forthwith return the license to the board. The salesperson's pocket card shall thereupon be returned by the salesperson. The salesperson shall be notified at his or her last-known place of residence that his or her license has been returned to the board. It shall be unlawful for the salesperson to act as a motor vehicle, motorcycle, or trailer salesperson until a new license is secured.

If a dealer's agent changes his or her agent's status with any dealer, the agent shall notify the board. If the agent is no longer contracting with any dealer, the dealer's agent license shall lapse and the license and pocket card shall be returned to the board.

**Source:** Laws 1957, c. 280, § 11, p. 1020; Laws 1963, c. 365, § 8, p. 1174; Laws 1971, LB 768, § 10; Laws 1972, LB 1335, § 7; Laws 2003, LB 498, § 6.

**60-1411.01 Administration and enforcement expenses; how paid; fees; licenses; expiration.**

(1) To pay the expenses of the administration, operation, maintenance, and enforcement of the Motor Vehicle Industry Regulation Act, the board shall collect with each application for each class of license fees not exceeding the following amounts:

- (a) Motor vehicle dealer's license, four hundred dollars;
- (b) Supplemental motor vehicle dealer's license, twenty dollars;
- (c) Motor vehicle or motorcycle salesperson's license, twenty dollars;
- (d) Dealer's agent license, one hundred dollars;
- (e) Motor vehicle, motorcycle, or trailer manufacturer's license, six hundred dollars;
- (f) Distributor's license, six hundred dollars;
- (g) Factory representative's license, twenty dollars;
- (h) Distributor representative's license, twenty dollars;
- (i) Finance company's license, four hundred dollars;
- (j) Wrecker or salvage dealer's license, two hundred dollars;
- (k) Factory branch license, two hundred dollars;
- (l) Motorcycle dealer's license, four hundred dollars;
- (m) Motor vehicle auction dealer's license, four hundred dollars; and
- (n) Trailer dealer's license, four hundred dollars.

(2) The fees shall be fixed by the board and shall not exceed the amount actually necessary to sustain the administration, operation, maintenance, and enforcement of the act.

(3) Such licenses, if issued, shall expire on December 31 next following the date of the issuance thereof. Any motor vehicle, motorcycle, or trailer dealer changing its location shall not be required to obtain a new license if the new location is within the same city limits or county, all requirements of law are complied with, and a fee of twenty-five dollars is paid, but any change of ownership of any licensee shall require a new application for a license and a new license. Change of name of licensee without change of ownership shall require the licensee to obtain a new license and pay a fee of five dollars. Applications shall be made each year for a new or renewal license. If the applicant is an individual, the application shall include the applicant's social security number.

**Source:** Laws 1971, LB 768, § 11; Laws 1972, LB 1335, § 8; Laws 1974, LB 754, § 9; Laws 1978, LB 248, § 7; Laws 1984, LB 825, § 16;

Laws 1997, LB 752, § 147; Laws 1998, LB 903, § 4; Laws 1999, LB 632, § 3; Laws 2003, LB 498, § 7; Laws 2007, LB681, § 1; Laws 2010, LB816, § 66.

**60-1411.02 Investigation; denial of application; revocation or suspension of license; probation; administrative fine; grounds.**

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

- (1) Has had any license issued under the act revoked or suspended and, if the license has been suspended, has not complied with the terms of suspension;
- (2) Has knowingly purchased, sold, or done business in stolen motor vehicles, motorcycles, or trailers or parts therefor;
- (3) Has failed to provide and maintain an established place of business;
- (4) Has been found guilty of any felony which has not been pardoned, has been found guilty of any misdemeanor concerning fraud or conversion, or has suffered any judgment in any civil action involving fraud, misrepresentation, or conversion. In the event felony charges are pending against an applicant, the board may refuse to issue a license to the applicant until there has been a final determination of the charges;
- (5) Has made a false material statement in his or her application or any data attached to the application or to any investigator or employee of the board;
- (6) Has willfully failed to perform any written agreement with any consumer or retail buyer;
- (7) Has made a fraudulent sale, transaction, or repossession, or created a fraudulent security interest as defined in the Uniform Commercial Code, in a motor vehicle, trailer, or motorcycle;
- (8) Has failed to notify the board of a change in the location of his or her established place or places of business and in the case of a salesperson has failed to notify the board of any change in his or her employment;
- (9) Has willfully failed to deliver to a purchaser a proper certificate of ownership for a motor vehicle, trailer, or motorcycle sold by the licensee or to refund the full purchase price if the purchaser cannot legally obtain proper certification of ownership within thirty days;
- (10) Has forged the signature of the registered or legal owner on a certificate of title;

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

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

(13) Has failed to comply with any provisions of the Motor Vehicle Certificate of Title Act, the Motor Vehicle Industry Regulation Act, the Motor Vehicle Registration Act, or the rules or regulations adopted and promulgated by the board pursuant to the Motor Vehicle Industry Regulation Act;

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

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

(16) Has employed any unlicensed salesperson or salespersons;

(17) Has failed to comply with sections 60-190 to 60-196;

(18) Has engaged in any unfair methods of competition or unfair or deceptive acts or practices prohibited under the Uniform Deceptive Trade Practices Act;

(19) Has conspired, as defined in section 28-202, with other persons to process certificates of title in violation of the Motor Vehicle Certificate of Title Act; or

(20) Has violated the Guaranteed Asset Protection Waiver Act.

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

**Source:** Laws 1971, LB 768, § 12; Laws 1972, LB 1335, § 9; Laws 1974, LB 754, § 10; Laws 1978, LB 248, § 8; Laws 1980, LB 820, § 2; Laws 1984, LB 825, § 17; Laws 1991, LB 47, § 6; Laws 1993, LB 106, § 1; Laws 1993, LB 121, § 391; Laws 1993, LB 370, § 472; Laws 1994, LB 884, § 82; Laws 1995, LB 564, § 5; Laws 1999, LB 632, § 4; Laws 2003, LB 498, § 8; Laws 2005, LB 274, § 257; Laws 2005, LB 276, § 106; Laws 2010, LB571, § 12; Laws 2010, LB816, § 67.

#### Cross References

**Guaranteed Asset Protection Waiver Act**, see section 45-1101.

**Motor Vehicle Certificate of Title Act**, see section 60-101.

**Motor Vehicle Registration Act**, see section 60-301.

**Uniform Deceptive Trade Practices Act**, see section 87-306.

The Nebraska Motor Vehicle Industry Licensing Board has no other sanctions. Chrysler Corp. v. Lee Janssen Motor Co., authority only to impose the sanctions authorized by statute and 248 Neb. 281, 534 N.W.2d 568 (1995).

#### 60-1411.03 Unauthorized acts.

It shall be unlawful for any licensee or motor vehicle dealer to engage, directly or indirectly, in the following acts:

(1) To advertise and offer any year, make, engine size, model, type, equipment, price, trade-in allowance, or terms or make other claims or conditions pertaining to the sale, leasing, or rental of motor vehicles, motorcycles, and trailers which are not truthful and clearly set forth;

(2) To advertise for sale, lease, or rental a specific motor vehicle, motorcycle, or trailer which is not in the possession of the dealer, owner, or advertiser and

willingly shown and sold, as advertised, illustrated, or described, at the advertised price and terms, at the advertised address. Unless otherwise specified, a motor vehicle, motorcycle, or trailer advertised for sale shall be in operable condition and, on request, the advertiser thereof shall show records to substantiate an advertised offer;

(3) To advertise a new motor vehicle, motorcycle, or trailer at a price which does not include standard equipment with which it is fitted or is ordinarily fitted, without disclosing such fact, or eliminating any such equipment for the purpose of advertising a low price;

(4) To advertise (a) that the advertiser's prices are always or generally lower than competitive prices and not met or equalled by others or that the advertiser always or generally undersells competitors, (b) that the advertiser's prices are always or generally the lowest or that no other dealer has lower prices, (c) that the advertiser is never undersold, or (d) that no other advertiser or dealer will have a lower price;

(5) To advertise and make statements such as, Write Your Own Deal, Name Your Own Price, or Name Your Own Monthly Payments and other statements of a similar nature;

(6) To advertise by making disparaging comparisons with competitors' services, quality, price, products, or business methods;

(7) To advertise by making the layout, headlines, illustrations, and type size of an advertisement so as to convey or permit an erroneous impression as to which motor vehicle, motorcycle, or trailer or motor vehicles, motorcycles, or trailers are offered at featured prices. No advertised offer, expression, or display of price, terms, downpayment, trade-in allowance, cash difference, or savings shall be misleading by itself, and any qualification to such offer, expression, or display shall be clearly and conspicuously set forth in comparative type size and style, location, and layout to prevent deception;

(8) To advertise the price of a motor vehicle, motorcycle, or trailer without including all charges which the customer must pay for the motor vehicle, motorcycle, or trailer, excepting state and local taxes and license, title, and other fees. It shall be unlawful to advertise prices described as unpaid balance unless they are the full cash selling price and to advertise price which is not the full selling price even though qualified with expressions such as with trade, with acceptable trade, or other similar words;

(9) To advertise as at cost, below cost, below invoice, or wholesale, unless the term used is strictly construed that the word cost as used in this subdivision or in a similar meaning is the actual price paid by the advertiser to the manufacturer for the motor vehicle, motorcycle, or trailer so advertised;

(10) To advertise claims that Everybody Financed, No Credit Rejected, or We Finance Anyone and other similar affirmative statements;

(11) To advertise a specific trade-in amount or range of amounts;

(12) To advertise the words Finance, Loan, or Discounts or others of similar import in the firm name or trade style of a person offering motor vehicles, motorcycles, and trailers for sale unless such person is actually engaged in the finance business and offering only bona fide repossessed motor vehicles, motorcycles, and trailers. It shall be unlawful to use the word Repossessed in the name or trade style of a firm in the advertising of motor vehicles, motorcycles, and trailers sold by such a company unless they are bona fide

repossessions sold for unpaid balances due only. Advertisers offering repossessed automobiles for sale shall be able to offer proof of repossession;

(13) To advertise the term Authorized Dealer in any way as to mislead as to the make or makes of motor vehicles, motorcycles, or trailers for which a dealer is franchised to sell at retail;

(14) To advertise or sell new motor vehicles, motorcycles, and trailers by any person not enfranchised by the manufacturer of the motor vehicle, motorcycle, or trailer offered without disclosing the fact in each advertisement which includes the motor vehicle, motorcycle, or trailer, and in writing in the lease or purchase agreement that the licensee or motor vehicle dealer is not enfranchised by the manufacturer for service under factory warranty provisions. No person shall transfer ownership of a motor vehicle by reassignment on a manufacturer's statement of origin unless the person is enfranchised to do so by the manufacturer of the motor vehicle;

(15) To advertise used motor vehicles, motorcycles, or trailers so as to create the impression that they are new. Used motor vehicles, motorcycles, and trailers of the current and preceding model year shall be clearly identified as Used, Executive Driven, Demonstrator, or Driver Training, and lease cars, taxicabs, fleet vehicles, police motor vehicles, or motorcycles as may be the case and descriptions such as Low Mileage or Slightly Driven may also be applied only when correct. The terms demonstrator's, executive's, and official's motor vehicles, motorcycles, or trailers shall not be used unless (a) they have never been sold to a member of the public, (b) such terms describe motor vehicles, motorcycles, or trailers used by new motor vehicle, motorcycle, or trailer dealers or their employees for demonstrating performance ability, and (c) such vehicles are advertised for sale as such only by an authorized dealer in the same make of motor vehicle, motorcycle, or trailer. Phrases such as Last of the Remaining, Closeout, or Final Clearance and others of similar import shall not be used in advertising used motor vehicles, motorcycles, and trailers so as to convey the impression that the motor vehicles, motorcycles, and trailers offered are holdover new motor vehicles, motorcycles, and trailers. When new and used motor vehicles, motorcycles, and trailers of the current and preceding model year are offered in the same advertisement, such offers shall be clearly separated by description, layout, and art treatment;

(16) To advertise executives' or officials' motor vehicles, motorcycles, or trailers unless they have been used exclusively by the personnel or executive of the motor vehicle, motorcycle, or trailer manufacturer or by an executive of any authorized dealer of the same make thereof and such motor vehicles, motorcycles, and trailers have not been sold to a member of the public prior to the appearance of the advertisement;

(17) To advertise motor vehicles, motorcycles, and trailers owned by or in the possession of dealers without the name of the dealership or in any other manner so as to convey the impression that they are being offered by private parties;

(18) To advertise the term wholesale in connection with the retail offering of used motor vehicles, motorcycles, and trailers;

(19) To advertise the terms auction or auction special and other terms of similar import unless such terms are used in connection with motor vehicles, motorcycles, and trailers offered or sold at a bona fide auction to the highest

bidder and under such other specific conditions as may be required in the Motor Vehicle Industry Regulation Act;

(20) To advertise free driving trial unless it means a trial without obligation of any kind and that the motor vehicle, motorcycle, or trailer may be returned in the period specified without obligation or cost. A driving trial advertised on a money back basis or with privilege of exchange or applying money paid on another motor vehicle, motorcycle, or trailer shall be so explained. Terms and conditions of driving trials, free or otherwise, shall be set forth in writing for the customer;

(21) To advertise (a) the term Manufacturer's Warranty unless it is used in advertising only in reference to cars covered by a bona fide factory warranty for that particular make of motor vehicle, motorcycle, or trailer. In the event only a portion of such warranty is remaining, then reference to a warranty may be used only if stated that that unused portion of the warranty is still in effect, (b) the term New Car Guarantee except in connection with new motor vehicles, motorcycles, and trailers, and (c) the terms Ninety-day Warranty, Fifty-fifty Guarantee, Three-hundred-mile Guarantee, and Six-month Warranty, unless the major terms and exclusions are sufficiently described in the advertisement;

(22) To advertise representations inconsistent with or contrary to the fact that a motor vehicle, motorcycle, or trailer is sold as is and without a guarantee. The customer contract shall clearly indicate when a car will be sold with a guarantee and what that guarantee is and similarly shall clearly indicate when a car is sold as is and without a guarantee; and

(23) To advertise or to make any statement, declaration, or representation in any advertisement that cannot be substantiated in fact, and the burden of proof of the factual basis for the statement, declaration, or representation shall be on the licensee or motor vehicle dealer and not on the board.

**Source:** Laws 1971, LB 768, § 13; Laws 1972, LB 1335, § 10; Laws 1974, LB 754, § 11; Laws 1980, LB 820, § 3; Laws 1984, LB 825, § 18; Laws 1989, LB 280, § 3; Laws 1995, LB 564, § 6; Laws 1997, LB 271, § 33; Laws 2010, LB816, § 68.

#### **60-1411.04 Advertising; violations; penalty.**

The use, employment, or publication of advertising by any licensee or motor vehicle dealer which does not comply with section 60-1411.03 is hereby declared to be an unlawful act, and any person violating such section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1971, LB 768, § 14; Laws 1972, LB 1335, § 11; Laws 1977, LB 39, § 94; Laws 1989, LB 280, § 4.

#### **60-1412 Repealed. Laws 1971, LB 768, § 40.**

#### **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 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 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 salesperson or 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.

**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 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.

**60-1415 Disciplinary actions; findings of board; order; restitution; appeal; distribution of fines.**

(1) The board shall state in writing, officially signed by the chairperson or vice-chairperson and the executive director, its findings and determination after such hearing and its order in the matter. If the board determines and orders that an applicant is not qualified to receive a license or registration, no license or registration shall be granted. If the board determines that the party has willfully or through undue negligence been guilty of any violation of the Motor Vehicle Industry Regulation Act or any rule or regulation adopted and promulgated by the board under authority of the act, the board may suspend or revoke the license or registration, place the party on probation, assess an administrative fine, or take any combination of such actions. In determining the amount of the fine, the board may consider the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and any attempt made by the party to retaliate against another party for seeking relief pursuant to the laws, rules, or regulations relating to motor vehicle industry licensing. The board may also, after hearing, assess an additional administrative fine in an amount not to exceed five thousand dollars for each day a violation continues if a party fails to obey a direct order of the board or repeats the same violation within forty-eight months of the previous violation. The imposition of any such additional administrative fine shall commence one month after the initial order of the board or any final order on appeal if taken for failure to obey a direct order of the board and on the date of the second or subsequent violation for repeat violations within forty-eight months. The board may make a demand on a violator for restitution to a harmed consumer. The party may appeal the decision of the board. The appeal shall be in accordance with the Administrative Procedure Act.

(2) The board shall remit administrative fines to the State Treasurer on a monthly basis for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Any administrative fine imposed under this section and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name of the State of Nebraska, in the district court of the county in which the violator resides or owns property.

**Source:** Laws 1957, c. 280, § 15, p. 1023; Laws 1963, c. 365, § 11, p. 1178; Laws 1967, c. 394, § 9, p. 1236; Laws 1971, LB 768, § 17; Laws 1972, LB 1335, § 12; Laws 1974, LB 754, § 12; Laws 1978, LB 248, § 10; Laws 1984, LB 825, § 25; Laws 1988, LB 352, § 107; Laws 1993, LB 106, § 3; Laws 2010, LB816, § 69.

**Cross References**

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

A motor vehicle dealer is not a consumer within the meaning of this section, and therefore, a dealer may not be granted restitution under the authority of this section. *Chrysler Corp. v. Lee Janssen Motor Co.*, 248 Neb. 281, 534 N.W.2d 568 (1995).

The failure of the Nebraska Motor Vehicle Industry Licensing Board to make a specific determination of undue negligence or willfulness is not fatal if the court finds, after a de novo review, the record supports such a finding. *Park Place Pontiac v. Neb. Motor Vehicle Ind. Lic. Bd.*, 232 Neb. 273, 440 N.W.2d 445 (1989).

In order to perfect an appeal from an order of the Nebraska Motor Vehicle Industry Licensing Board, an appeal bond must be filed with the board within ten days of the rendition of the order. *Kizzier Chevrolet Co. v. General Motors Corp.*, 219 Neb. 319, 363 N.W.2d 167 (1985).

#### **60-1415.01 Restraining order.**

Whenever the board shall believe from evidence satisfactory to it that any person has violated or is violating any provisions of the Motor Vehicle Industry Regulation Act, the board may, in addition to any other remedy, bring an action in the name and on behalf of the State of Nebraska against such person and any other person concerned in or in any way participating in or about to participate in practices or acts in violation of the act to enjoin such person and such other person from continuing the same. In any such action, the board may apply for and on due showing be entitled to have issued the court's subpoena, requiring forthwith the appearance of any defendant and the defendant's agent and employees and the production of documents, books, and records as may appear necessary for the hearing of such petition to testify and give evidence concerning the acts or conduct of practices or things complained of in such application for injunction. In such action an order or judgment may be entered awarding such preliminary or final injunctions as may be proper.

**Source:** Laws 1971, LB 768, § 18; Laws 2010, LB816, § 70.

#### **60-1416 Acting without license; penalty.**

Any person acting as a motor vehicle dealer, trailer dealer, wrecker or salvage dealer, motorcycle dealer, auction dealer, motor vehicle, motorcycle, or trailer salesperson, dealer's agent, manufacturer, factory representative, distributor, or distributor representative without having first obtained the license provided in section 60-1406 is guilty of a Class IV felony and is subject to the civil penalty provisions of section 60-1411.02.

**Source:** Laws 1957, c. 280, § 16, p. 1023; Laws 1963, c. 365, § 12, p. 1178; Laws 1971, LB 768, § 19; Laws 1974, LB 754, § 13; Laws 1977, LB 39, § 95; Laws 1984, LB 825, § 26; Laws 1989, LB 47, § 1; Laws 1995, LB 564, § 8; Laws 2003, LB 498, § 10.

#### **60-1417 Vehicle sale; instrument in writing; contents; copy of instruments and odometer statements retained by dealer; out-of-state sale; requirements.**

Every motor vehicle, motorcycle, or trailer sale, except between a manufacturer or distributor, shall be evidenced by an instrument in writing upon a form that may be adopted and promulgated by the board and approved by the Attorney General which shall contain all the agreements of the parties and shall be signed by the buyer and seller or a duly acknowledged agent of the seller. Prior to or concurrent with any such motor vehicle, motorcycle, or trailer sale, the seller shall deliver to the buyer written documentation which shall contain the following information:

- (1) Name of seller;
- (2) Name of buyer;
- (3) Year of model and identification number;
- (4) Cash sale price;
- (5) Year and model of trailer and serial number, if any;

(6) The amount of buyer's downpayment and whether made in money or goods or partly in money and partly in goods, including a brief description of any goods traded in;

(7) The difference between subdivisions (4) and (6) of this section;

(8) The amount included for insurance if a separate charge is made for insurance, specifying the types of coverages;

(9) If the sale is an installment sale:

(a) The basic time price, which is the sum of subdivisions (7) and (8) of this section;

(b) The time-price differential;

(c) The amount of the time-price balance, which is the sum of subdivisions (a) and (b) of this subdivision, payable in installments by the buyer to the seller;

(d) The number, amount, and due date or period of each installment payment; and

(e) The time-sales price;

(10) Whether the sale is as is or subject to warranty and, if subject to warranty, specifying the warranty; and

(11) If repairs or inspections arising out of the conduct of a dealer's business cannot be provided by the dealer in any representations or warranties that may arise, the instrument shall so state that fact and shall provide the purchaser with the location of a facility where such repairs or inspections, as provided for in the service contract, can be accomplished.

A copy of all such instruments and written documentation shall be retained in the file of the dealer for five years from the date of sale. The dealer shall keep a copy of the odometer statement required by section 60-192 which is furnished to him or her for each motor vehicle the dealer purchases or sells. The dealer shall keep such statements for five years from the date of the transaction as shown on the odometer statement.

If a transaction for the sale of a new motor vehicle which does not take place in the State of Nebraska provides for delivery in Nebraska, delivery in Nebraska shall only be made through a motor vehicle dealer licensed and bonded in Nebraska. The motor vehicle dealer may charge the seller for such service but shall not charge the purchaser. The motor vehicle dealer shall be jointly and severally liable for compliance with all applicable laws and contracts with the seller. If the dealer is not a franchisee of the manufacturer or distributor of the line-make of the vehicle, the dealer shall notify the purchaser in writing that the dealer is jointly and severally liable with the seller for compliance with all applicable laws and contracts with the seller and that the dealer is not authorized to provide repairs or inspections pursuant to the manufacturer's warranty.

**Source:** Laws 1945, c. 143, § 9, p. 463; Laws 1953, c. 207, § 13, p. 730; Laws 1955, c. 243, § 7, p. 767; R.R.S.1943, § 60-617; Laws 1963, c. 365, § 13, p. 1179; Laws 1967, c. 394, § 10, p. 1237; Laws 1971, LB 768, § 36; Laws 1974, LB 754, § 14; Laws 1978, LB 248, § 11; Laws 1984, LB 825, § 27; Laws 1993, LB 370, § 473; Laws 1995, LB 564, § 9; Laws 2000, LB 1018, § 6; Laws 2005, LB 276, § 107.

Where an agent wrongfully sells automobiles belonging to the principal, the principal is not liable to the buyers for failing to complete the required buyer and seller forms. *Wolfson Car Leasing Co., Inc. v. Weberg*, 200 Neb. 420, 264 N.W.2d 178 (1978).

An agreement which fully complied with the provisions of section 60-1417, R.S.Supp.,1967, constituted a valid agreement of sale and excluded insurance coverage of transferor of automobile. *Dyas v. Morris*, 194 Neb. 773, 235 N.W.2d 636 (1975).

**60-1417.01 Auction dealer; records; requirements; sale on consignment; title; exception.**

(1)(a) Each auction dealer shall establish and retain at the primary place of business a record of the following information for each motor vehicle or trailer coming into his or her possession as an auction dealer: (i) The name of the most recent owner, other than the auction dealer; (ii) the name of the buyer; (iii) the vehicle identification number; (iv) the odometer reading on the date on which the auction dealer took possession of the motor vehicle or trailer; and (v) a bill of sale or other transaction document signed by the seller or the seller's agent and the buyer or the buyer's agent.

(b) The dealer shall maintain the information in a manner that permits systematic retrieval for five years following the date of sale of each vehicle or trailer. The information may be maintained in a tangible medium or stored in an electronic or other medium that is retrievable in perceivable form.

(c) The auction dealer shall be responsible for insuring that the information required in subdivisions (1)(a)(i), (iii), and (iv) of this section is available to all prospective buyers at the time a vehicle or trailer is offered for sale at auction and shall give the bill of sale or other transaction document required in subdivision (1)(a)(v) of this section to the buyer purchasing the vehicle or trailer at auction.

(2) When any dealer, except an auction dealer selling at auction, sells any unit on consignment, he or she shall take title to such unit in his or her own name, except that any dealer or other person, other than the owner of a used mobile home, selling a used mobile home shall not be required to take title but shall complete a buyer's information form approved by the board. The seller of the used mobile home shall be responsible for insuring that a copy of the form is delivered to the buyer prior to closing the sale of the used mobile home. The form shall include the (a) name and address of the record owner of the mobile home, (b) model, (c) year, and (d) serial number.

**Source:** Laws 1974, LB 754, § 16; Laws 1983, LB 234, § 21; Laws 1984, LB 825, § 28; Laws 1991, LB 333, § 3; Laws 1999, LB 340, § 1; Laws 2002, LB 1105, § 466.

**60-1417.02 Auction; registration of seller.**

(1) Any person who engages in or attempts to engage in the selling of motor vehicles or trailers at an auction licensed pursuant to the Motor Vehicle Industry Regulation Act shall register to do so. Registration shall be made on a form provided by the auction dealer and approved by the board. A copy of the registration shall serve as proof of registration for the calendar year. The registration information shall be made available and accessible to the board by the auction dealer within seventy-two hours after the registrant has met the registration requirements and such registration is issued. Such registration information shall be maintained and made accessible to the board by the auction dealer for two years. It shall be the duty of the auction dealer to ensure that no seller participates in any sales activities until and unless registration has

been received by the auction dealer or unless such seller is otherwise licensed under the act.

(2) The information required on the registration form shall include, but not be limited to, the following: (a) The legal name of the registrant; (b) the registrant's current mailing address and telephone number; (c) the business name and address of the person with whom the registrant is associated; and (d) whether or not the registrant is bonded.

(3) The registration form shall be signed by the registrant and an authorized representative of the auction and shall be notarized by a notary public.

(4) Any person who is convicted of any violation of the act pursuant to section 60-1411.02 may be denied the right to be registered at all licensed auctions of this state following a hearing before the board as prescribed in section 60-1413.

**Source:** Laws 1984, LB 825, § 29; Laws 1999, LB 340, § 2; Laws 2010, LB816, § 71.

#### **60-1418 Motor vehicle sale; violation; penalty.**

Any person guilty of violating any of the provisions of section 60-1417 shall be guilty of a Class III misdemeanor.

**Source:** Laws 1945, c. 143, § 10, p. 463; R.R.S.1943, § 60-618; Laws 1963, c. 365, § 14, p. 1179; Laws 1971, LB 768, § 37; Laws 1977, LB 39, § 96.

#### **60-1419 Dealer's licenses; bond; conditions.**

(1) Applicants for a motor vehicle dealer's license, trailer dealer's license, or motorcycle dealer's license shall furnish, at the time of making application, a corporate surety bond in the penal sum of fifty thousand dollars.

(2) Applicants for a motor vehicle auction dealer's license shall, at the time of making application, furnish a corporate surety bond in the penal sum of not less than one hundred thousand dollars. The bond shall be on a form prescribed by the Attorney General of the State of Nebraska and shall be signed by the Nebraska registered agent. The bond shall provide: (a) That the applicant will faithfully perform all the terms and conditions of such license; (b) that the licensed dealer will first fully indemnify any holder of a lien or security interest created pursuant to section 60-164 or article 9, Uniform Commercial Code, whichever applies, in the order of its priority and then any person or other dealer by reason of any loss suffered because of (i) the substitution of any motor vehicle or trailer other than the one selected by the purchaser, (ii) the dealer's failure to deliver to the purchaser a clear and marketable title, (iii) the dealer's misappropriation of any funds belonging to the purchaser, (iv) any alteration on the part of the dealer so as to deceive the purchaser as to the year model of any motor vehicle or trailer, (v) any false and fraudulent representations or deceitful practices whatever in representing any motor vehicle or trailer, (vi) the dealer's failure to remit the proceeds from the sale of any motor vehicle which is subject to a lien or security interest to the holder of such lien or security interest, and (vii) the dealer's failure to pay any person or other dealer for the purchase of a motor vehicle, motorcycle, trailer, or any part or other purchase; and (c) that the motor vehicle, motorcycle, motor vehicle auction, or trailer dealer or wholesaler shall well, truly, and faithfully comply with all the provisions of his or her license and the acts of the Legislature relating to such

license. The aggregate liability of the surety shall in no event exceed the penalty of such bond.

**Source:** Laws 1945, c. 143, § 11, p. 463; Laws 1947, c. 210, § 1, p. 686; Laws 1953, c. 216, § 1, p. 764; R.R.S.1943, § 60-619; Laws 1963, c. 365, § 15, p. 1180; Laws 1967, c. 394, § 11, p. 1238; Laws 1972, LB 1335, § 13; Laws 1974, LB 754, § 15; Laws 1984, LB 825, § 30; Laws 1989, LB 608, § 1; Laws 1999, LB 550, § 41; Laws 1999, LB 632, § 6; Laws 2005, LB 276, § 108; Laws 2007, LB681, § 2.

A false representation, standing alone, is insufficient to justify recovery by a lienholder under subsection (2)(e) of this section. The lienholder must also show that its loss is proximately caused by the false representation. This section provides no relief for conversion of a vehicle apart from a cause of action for false representation. *First Nat. Bank in Morrill v. Union Ins. Co.*, 246 Neb. 636, 522 N.W.2d 168 (1994).

A motor vehicle dealer's bond protects persons in addition to purchasers against loss resulting from misappropriation of funds belonging to the purchasers. A bank can recover on a motor vehicle dealer's bond if it can prove that it sustained a loss as a result of the dealer's breach of one of the conditions of the bond. *Adams Bank & Trust v. Empire Fire & Marine Ins. Co.*, 235 Neb. 464, 455 N.W.2d 569 (1990).

A bank, if it can prove a loss occasioned by a statutory motor vehicle dealer's breach of one of the conditions outlined in this statute, is entitled to recover on the dealer's statutory bond. *Havelock Bank v. Western Surety Co.*, 217 Neb. 560, 352 N.W.2d 855 (1984).

A motor vehicle dealer's bond, furnished pursuant to the provisions of this section, which creates a liability on the part of the surety to indemnify any person "by reason of any loss suffered" requires proof of an actual loss suffered before recovery is permitted, and does not cover statutory penalties. *Darr v. Long*, 210 Neb. 57, 313 N.W.2d 215 (1981).

Failure of motor vehicle dealer to keep a promise to do an act in the future did not amount to fraud. *Sterner v. Lehmanowsky*, 173 Neb. 401, 113 N.W.2d 588 (1962).

Any loss by reason of a motor vehicle dealer's conduct in engaging in acts prohibited by law and enumerated in this section entitles the offended party recourse on a motor vehicle dealer's bond. A dealer's oral promise to repay a party upon the subsequent sale of vehicles did not create a security interest, and therefore, the dealer's failure to remit the proceeds to the party did not amount to a misappropriation of anyone's funds, nor was the dealer's failure to pay an unlawful act. *Paus Motor Sales, Inc. v. Western Surety Co.*, 6 Neb. App. 233, 572 N.W.2d 403 (1997).

#### **60-1420 Franchise; termination; hearing; when required.**

(1) Except as provided in subsection (2) of this section, no franchisor shall terminate or refuse to continue any franchise unless the franchisor has first established, in a hearing held pursuant to section 60-1425, that:

(a) The franchisor has good cause for termination or noncontinuance;

(b) Upon termination or noncontinuance, another franchise in the same line-make will become effective in the same community, without diminution of the franchisee's service formerly provided, or that the community cannot be reasonably expected to support such a dealership; and

(c) The franchisor is willing and able to comply with section 60-1430.02.

(2) Upon providing good and sufficient evidence to the board, a franchisor may terminate a franchise without such hearing (a) for a particular line-make if the franchisor discontinues that line-make, (b) if the franchisee's license as a motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealer is revoked pursuant to the Motor Vehicle Industry Regulation Act, or (c) upon a mutual written agreement of the franchisor and franchisee.

**Source:** Laws 1971, LB 768, § 20; Laws 1987, LB 327, § 1; Laws 1989, LB 280, § 5; Laws 2010, LB816, § 72.

The Federal Arbitration Act preempts Nebraska law which is in conflict with the act. *Cornhusker Internat. Trucks v. Thomas Built Buses*, 263 Neb. 10, 637 N.W.2d 876 (2002).

The means by which a dealership can be terminated are found solely within this section. *Chrysler Motors Corp. v. Lee Janssen Motor Co.*, 248 Neb. 322, 534 N.W.2d 309 (1995).

Where the Nebraska Motor Vehicle Industry Licensing Board's order is clearly conditional, operating only in the event that the franchisor finds another franchisee and notifies the board of the fact that it has done so, it is not a final order and is therefore not appealable. *Garber v. State*, 241 Neb. 523, 489 N.W.2d 550 (1992).

#### **60-1421 Franchise; termination; effect.**

If franchisor is permitted to terminate or not continue a franchise, and is further permitted not to enter into a franchise, for the line-make in the

community, no franchise shall thereafter be entered into for the sale of a motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealer of that line-make in the community, unless the franchisor has first established in a hearing held under the Motor Vehicle Industry Regulation Act that there has been a change of circumstances so that the community at that time can be reasonably expected to support the dealership.

**Source:** Laws 1971, LB 768, § 21; Laws 2010, LB816, § 73.

**60-1422 Franchise; hearing; approval.**

No franchisor shall enter into any franchise for the purpose of establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership or warranty repair service facility, in any community in which the same line-make is then represented, unless the franchisor has first established in a hearing held under the Motor Vehicle Industry Regulation Act that there is good cause for such additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership under such franchise, or warranty repair service facility, and that it is in the public interest.

**Source:** Laws 1971, LB 768, § 22; Laws 2003, LB 182, § 2; Laws 2010, LB816, § 74.

In an application for the establishment of a new motor vehicle franchise, the franchisor has the burden of establishing the existence of good cause for establishing the dealership and that such dealership is in the public interest. In re Application of General Motors Corp., 232 Neb. 11, 439 N.W.2d 453 (1989).

**60-1423 Franchise; contract; fulfillment; violation; damages.**

Every franchisor and franchisee shall fulfill the terms of any express or implied warranty concerning the sale of a motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer to the public of the line-make which is the subject of a contract or franchise agreement between the parties. If it is determined by the district court that either the franchisor or franchisee, or both, have violated an express or implied warranty, the court shall add to any award or relief granted an additional award for reasonable attorney fees and other necessary expenses for maintaining the litigation.

**Source:** Laws 1971, LB 768, § 23.

**60-1424 Franchise; termination; additional; application.**

If a franchisor seeks to terminate or not continue any franchise, or seeks to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle or trailer dealership of the same line-make, the franchisor shall file an application with the board for permission to terminate or not continue the franchise, or for permission to enter into a franchise for additional representation of the same line-make in that community.

**Source:** Laws 1971, LB 768, § 24.

**60-1425 Franchise; termination; additional; application; hearing; notice.**

Upon receiving an application under the provisions of section 60-1424, the board shall enter an order fixing a time, which shall be within ninety days of the date of such order, and place of hearing, and shall send by certified or registered mail, with return receipt requested, a copy of the order to the franchisee whose franchise the franchisor seeks to terminate or not continue. If

the application requests permission to establish an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership, a copy of the order shall be sent to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of orders shall be addressed to the franchisee at the place where the business is conducted. The board may also give notice of franchisor's application to any other parties whom the board may deem interested persons, such notice to be in the form and substance and given in the manner the board deems appropriate. Any person who can show an interest in the application may become a party to the hearing, whether or not he receives notice, but a party not receiving notice shall be limited to participation at the hearing on the question of the public interest in the termination or continuation of the franchise or in the establishment of an additional motor vehicle dealership.

**Source:** Laws 1971, LB 768, § 25.

**60-1426 Franchise; termination; additional; application; hearing; continuance.**

If the board finds it desirable it may upon request continue the date of hearing for a period of ninety days, and may upon application, but not ex parte, continue the date of hearing for an additional period of ninety days.

**Source:** Laws 1971, LB 768, § 26.

**60-1427 Franchise; termination; 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 or to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership.

Nothing contained in the act shall be construed to require or authorize any investigation by the board of any matter before the board under the provisions of sections 60-1420 to 60-1435. Upon hearing, the board shall hear the evidence introduced by the parties and shall make its decision solely upon the record so made.

**Source:** Laws 1971, LB 768, § 27; Laws 1972, LB 1335, § 14; Laws 2010, LB816, § 75.

The auto manufacturer-franchisor carries the burden of proof to provide evidence sufficient to terminate an auto franchise. American Motors Sales Corp. v. Perkins, 198 Neb. 97, 251 N.W.2d 727 (1977).

**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. The board shall apportion all costs between the parties.

**Source:** Laws 1971, LB 768, § 28; Laws 2010, LB816, § 76.

**60-1429 Franchise; termination or noncontinuation; acts not constituting good cause.**

Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the following shall not constitute good cause, as used in sections 60-1420 and 60-1422, for the termination or noncontinuation of a franchise or for entering into a franchise for the establishment of an additional dealership in a community for the same line-make:

- (1) The sole fact that the franchisor desires further penetration of the market;
- (2) The change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership unless the franchisor, having the burden of proof, proves that such change of ownership or executive management will be substantially detrimental to the distribution of the franchisor's motor vehicles, combination motor vehicles and trailers, motorcycles, or trailer products or to competition in the community. Substantially detrimental may include, but is not limited to, the failure of any proposed transferee or individual to meet the current criteria generally applied by the franchisor in qualifying new motor vehicle dealers; or
- (3) The fact that the franchisee refused to purchase or accept delivery of any motor vehicle, combination motor vehicle and trailer, motorcycle, trailer, vehicle parts or accessories, or other commodity or service not ordered by the franchisee.

**Source:** Laws 1971, LB 768, § 29; Laws 1984, LB 825, § 32; Laws 1989, LB 280, § 6.

Change of ownership of a franchisee's dealership is not good cause for termination of the franchise unless the franchisor proves that the change of ownership will be substantially detrimental to the distribution of franchisor's motor vehicles in the community. *S & T Motors v. General Motors Corp.*, 203 Neb. 188, 277 N.W.2d 701 (1979).

The term "motor vehicle" as used in this section refers to the motor vehicle covered by the franchise and does not refer to all of the motor vehicles which a franchisor may distribute through

various divisions and separate franchises. *S & T Motors v. General Motors Corp.*, 203 Neb. 188, 277 N.W.2d 701 (1979).

When the franchisee transfers its ownership, the franchisor need not recognize the transfer until after the board has had a chance to act on the issue of whether the transfer is detrimental to the distribution of franchisor's vehicles in the community. *Kizzier Chevrolet Co. v. General Motors Corp.*, 705 F.2d 322 (8th Cir. 1983).

**60-1430 Franchise; sale or transfer of ownership; franchisor; duties.**

Notwithstanding the terms, provisions, or conditions of any agreement or franchise, subject to subdivision (2) of section 60-1429, in the event of the sale or a contract for sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer or in the event of change in the executive management of the franchisee's dealership, the franchisor shall give effect to such a change in the franchise unless (1) the transfer of the franchisee's license under the Motor Vehicle Industry Regulation Act is denied or the new owner is unable to obtain a license under the act, as the case may be, or (2) the proposed sale or transfer of the business or change of executive management will be substantially detrimental to the distribution of the franchisor's motor vehicles, combination motor vehicles and trailers, motorcycles, or trailer products or to competition in the community if the franchisor has given written notice of such fact to the franchisee within sixty days of receipt by the

franchisor of information reasonably necessary to evaluate the proposed change.

**Source:** Laws 1971, LB 768, § 30; Laws 1984, LB 825, § 33; Laws 1989, LB 280, § 7; Laws 2010, LB816, § 77.

In the event of sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business, the franchisor shall give effect to such change in the franchise unless the transfer of the franchisee's license under the act is denied or the new owner is unable to obtain a license. *S & T Motors v. General Motors Corp.*, 203 Neb. 188, 277 N.W.2d 701 (1979).

After the transfer of a franchise, the franchisor need not give effect to the contract for a change of ownership until it has had the opportunity to show that such a change would be detrimental

to the distribution of the franchisor's motor vehicles. *Kizzier Chevrolet Co. v. General Motors Corp.*, 705 F.2d 322 (8th Cir. 1983).

When the franchisee transfers its ownership, the franchisor need not recognize the transfer until after the board has had a chance to act on the issue of whether the transfer is detrimental to the distribution of franchisor's vehicles in the community. *Kizzier Chevrolet Co. v. General Motors Corp.*, 705 F.2d 322 (8th Cir. 1983).

**60-1430.01 Succession to new motor vehicle dealership by family member; conditions.**

(1) Any designated family member of a deceased or incapacitated new motor vehicle dealer may succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement if the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the dealership within one hundred twenty days after the dealer's death or incapacity, agrees to be bound by all of the terms and conditions of the dealer agreement, and meets the current criteria generally applied by the manufacturer or distributor in qualifying new motor vehicle dealers. A manufacturer or distributor may refuse to honor the existing dealer agreement with the designated family member only for good cause.

(2) The manufacturer or distributor may request from a designated family member such personal financial data as is reasonably necessary to determine whether the existing dealer agreement should be honored. The designated family member shall supply the personal and financial data promptly upon the request.

(3) If a manufacturer or distributor believes that good cause exists for refusing to honor that succession, the manufacturer or distributor may, within sixty days after receipt of the notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, or within sixty days after the receipt of the requested personal and financial data, whichever is later, serve upon the designated family member notice of its refusal to approve the succession.

(4) The notice of the manufacturer or distributor provided in subsection (3) of this section shall state the specific ground for the refusal to approve the succession and that discontinuance of the agreement shall take effect not less than ninety days after the date the notice is served.

(5) If notice of refusal is not served within the sixty days provided for in subsection (3) of this section, the dealer agreement shall continue in effect and shall be subject to termination only as otherwise permitted by the Motor Vehicle Industry Regulation Act.

(6) This section shall not preclude a new motor vehicle dealer from designating any person as his or her successor by written instrument filed with the manufacturer or distributor, and if such an instrument is filed, it alone shall determine the succession rights to the management and operation of the dealership.

**Source:** Laws 1984, LB 825, § 34; Laws 2010, LB816, § 78.

**60-1430.02 Franchise termination, cancellation, or noncontinuation; termination, elimination, or cessation of line-make; payments required; mitigate damages.**

(1) Upon the termination, cancellation, or noncontinuation of a franchise by the franchisor or franchisee pursuant to the Motor Vehicle Industry Regulation Act, the franchisor shall pay the franchisee:

(a) The dealer cost, plus any charges made by the franchisor for distribution, delivery, and taxes, less all allowances paid or credited to the franchisee by the franchisor, of unused, undamaged, and unsold motor vehicles in the franchisee's inventory acquired from the franchisor or another franchisee of the same line and made within the previous twelve months;

(b) The dealer cost, less all allowances paid or credited to the franchisee by the franchisor, for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging, except that (i) in the case of sheet metal, a comparable substitute for original packaging may be used if such supply, part, or accessory is offered for sale by the franchisor and was acquired from the franchisor or the predecessor franchisee as a part of the franchisee's initial inventory and (ii) in the case of a motorcycle franchise, the payment for such supplies, parts, and accessories shall be based upon the currently published dealer cost for all unused, undamaged, and unsold supplies, parts, and accessories currently offered for sale by the franchisor and originally acquired from the franchisor or the predecessor franchisee as a part of the franchisee's initial inventory, and all such supplies, parts, and accessories shall be currently identifiable and labeled and in the original packaging or a comparable substitute for the original packaging;

(c) The fair market value of each undamaged sign owned by the franchisee which bears a common name, trade name, or trademark of the franchisor if acquisition of such sign was recommended or required by the franchisor;

(d) The fair market value of all special tools, equipment, and furnishings acquired from the franchisor or sources approved by the franchisor which were recommended and required by the franchisor and are in good and usable condition except for reasonable wear and tear; and

(e) The cost of transporting, handling, packing, and loading motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings.

(2) The franchisor shall pay the franchisee the amounts specified in subsection (1) of this section within ninety days after the tender of the property if the franchisee has clear title to the property and is in a position to convey that title to the franchisor. This section shall not apply to a termination or noncontinuation of a franchise that is implemented as a result of the sale of the assets or stock of the franchisee.

(3)(a) If the termination, cancellation, or nonrenewal of a franchise is the result of the termination, elimination, or cessation of a line-make by the manufacturer, distributor, or factory branch, then, in addition to the payments to the franchisee pursuant to subsection (1) of this section, the manufacturer, distributor, or factory branch shall be liable to the franchisee for an amount at least equivalent to the fair market value of the franchise for the line-make, which shall be the greater of that value determined as of (i) the date the franchisor announces the action that results in termination, cancellation, or nonrenewal of the line-make or (ii) the date the action that resulted in

termination, cancellation, or nonrenewal of the line-make first became general knowledge. In determining the fair market value of a franchise for a line-make, if the line-make is not the only line-make for which the franchisee holds a franchise in the dealership facilities, the franchisee shall also be entitled to compensation for the contribution of the line-make to payment of the rent or to covering obligations for the fair rental value of the franchise facilities for the period set forth in subdivision (b) of this subsection. Fair market value of the franchise for the line-make shall only include the goodwill value of the franchise for that line-make in the franchisee's community.

(b) If the line-make is the only line-make for which the franchisee holds a franchise, the manufacturer, distributor, or factory branch shall also pay assistance with respect to the franchise facilities leased or owned by the franchisee as follows:

(i) The manufacturer, distributor, or factory branch shall pay the franchisee a sum equivalent to the rent for the unexpired term of the lease or two years' rent, whichever is less; or

(ii) If the franchisee owns the franchise facilities, the manufacturer, distributor, or factory branch shall pay the franchisee a sum equivalent to the reasonable rental value of the franchise facilities for two years.

(c) To be entitled to franchise facilities assistance from the manufacturer, distributor, or factory branch, the franchisee shall have the obligation to mitigate damages by listing the franchise facilities for lease or sublease with a licensed real estate agent within thirty days after the effective date of the termination of the franchise and by reasonably cooperating with the real estate agent in the performance of the agent's duties and responsibilities. If the franchisee is able to lease or sublease the franchise facilities on terms that are consistent with local zoning requirements to preserve the right to sell motor vehicles from the franchise facilities and the terms of the franchisee's lease, the franchisee shall be obligated to pay the manufacturer the net revenue received from such mitigation, but only following receipt of franchise facilities assistance payments pursuant to subdivision (3)(b) of this section and only up to the total amount of franchise facilities assistance payments that the franchisee has received.

(d) This subsection does not apply to the termination of a line-make by a franchisor of recreational vehicles.

(4) This section shall not relieve a franchisee from any other obligation to mitigate damages upon termination, cancellation, or noncontinuation of the franchise.

**Source:** Laws 1989, LB 280, § 8; Laws 2010, LB816, § 79.

**60-1431 Franchise; board; power of subpoena; administer oaths; compel witnesses and production of books, papers, documents; enforcement.**

The board may issue subpoenas, administer oaths, compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The board may apply to the district court of the county wherein the hearing is being held for a court order enforcing this section.

**Source:** Laws 1971, LB 768, § 31.

**60-1432 Franchise; denial; license refused.**

If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership in a community where the same line-make is then represented, without first complying with the Motor Vehicle Industry Regulation Act, no license under the act shall be issued to that franchisee or proposed franchisee to engage in the business of selling motor vehicles, combination motor vehicles and trailers, motorcycles, or trailers manufactured or distributed by that franchisor.

**Source:** Laws 1971, LB 768, § 32; Laws 2010, LB816, § 80.

**60-1433 Franchise; termination; discontinuance; evidence of good cause.**

In determining whether good cause has been established for terminating or not continuing a franchise, the board shall take into consideration the existing circumstances, including, but not limited to:

- (1) Amount of business transacted by the franchisee;
- (2) Investment necessarily made and obligations incurred by the franchisee in the performance of his part of the franchise;
- (3) Permanency of the investment;
- (4) Whether it is injurious to the public welfare for the business of the franchisee to be disrupted;
- (5) Whether the franchisee has adequate motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer service facilities, equipment, parts and qualified service personnel to reasonably provide consumer care for the motor vehicles, combination motor vehicles and trailers, motorcycles, or trailers sold at retail by the franchisee and any other motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer of the same line-make;
- (6) Whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for such warranty work performed by the franchisee;
- (7) Except as provided in section 60-1429, failure by the franchisee to substantially comply with those requirements of the franchise which are determined by the board to be reasonable and material; and
- (8) Except as provided in section 60-1429, bad faith by the franchisee in complying with those terms of the franchise which are determined by the board to be reasonable and material.

**Source:** Laws 1971, LB 768, § 33.

Auto dealer-franchisee, who was proven to not meet the criteria of this section, was terminated as franchisee. *American Motors Sales Corp. v. Perkins*, 198 Neb. 97, 251 N.W.2d 727 (1977).

The nonexclusive factors of section call for a qualitative rather than a quantitative analysis. *Chrysler Corp. v. Lee Janssen Motor Co.*, 9 Neb. App. 721, 619 N.W.2d 78 (2000).

**60-1434 Franchise; additional; service facility; evidence of good cause.**

In determining whether good cause has been established for entering into an additional franchise for the same line-make, the board shall take into consideration the existing circumstances, including, but not limited to:

- (1) Amount of business transacted by other franchisees of the same line-make in that community;
- (2) Investment necessarily made and obligations incurred by other franchisees of the same line-make, in that community, in the performance of their part of their franchises;

- (3) Permanency of the investment;
- (4) Effect on the retail motor vehicle business as a whole in that community;
- (5) Whether it is injurious to the public welfare for an additional franchise to be established; and
- (6) Whether the franchisees of the same line-make in that community are providing adequate consumer care for the motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer products of the line-make which shall include the adequacy of motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealer service facilities, equipment, supply of parts, and qualified service personnel.

No franchisor, franchisee, or other person shall, directly or indirectly, establish or authorize a separate consumer care or service facility to perform repairs and service, pursuant to the manufacturer's original warranty, on motor vehicles within any community previously assigned to and being served by an existing franchisee without first establishing good cause in the same manner as required for an additional franchise.

**Source:** Laws 1971, LB 768, § 34; Laws 2000, LB 1018, § 7.

In determining good cause for the establishment of a new automobile dealership, the Nebraska Supreme Court specifically considers each criterion as set out in this section. In re Application of General Motors Corp., 232 Neb. 11, 439 N.W.2d 453 (1989).

#### **60-1435 Franchise; appeal.**

Any party to a hearing before 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.

#### **Cross References**

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

#### **60-1436 Manufacturer or distributor; prohibited acts with respect to new motor vehicle dealers.**

A manufacturer or distributor shall not require or coerce any new motor vehicle dealer in this state to do any of the following:

- (1) Order or accept delivery of any new motor vehicle, part or accessory, equipment, or other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section shall not be construed to prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;
- (2) Offer or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;
- (3) Participate monetarily in any advertising campaign or contest or purchase any promotional materials, display devices, or display decorations or materials at the expense of the new motor vehicle dealer;
- (4) Join, contribute to, or affiliate with an advertising association;
- (5) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to termi-

nate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement shall not constitute a violation of the Motor Vehicle Industry Regulation Act;

(6) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership, if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria;

(7) Refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products as long as the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer;

(8) Prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by the act or require any controversy between the new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of the state or the United States, if the referral would be binding upon the new motor vehicle dealer;

(9) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, if such changes or alterations would be unreasonable;

(10) Release, convey, or otherwise provide customer information if to do so is unlawful or if the customer objects in writing to doing so, unless the information is necessary for the manufacturer, factory branch, or distributor to meet its obligations to consumers or the new motor vehicle dealer including vehicle recalls or other requirements imposed by state or federal law;

(11) Release to any unaffiliated third party any customer information which has been provided by the new motor vehicle dealer to the manufacturer except as provided in subdivision (10) of this section;

(12) Establish in connection with the sale of a motor vehicle prices at which the dealer must sell products or services not manufactured or distributed by the manufacturer or distributor, whether by agreement, program, incentive provision, or otherwise; or

(13) Underutilize the dealer's facilities by requiring or coercing a dealer to exclude or remove from the dealer's facilities operations for selling or servicing a line-make of motor vehicles for which the dealer has a franchise agreement to utilize the facilities, except that this subdivision does not prohibit a manufacturer from requiring exclusive sales facilities that are in compliance with reasonable requirements for the facilities.

Any action prohibited for a manufacturer or distributor under the Motor Vehicle Industry Regulation Act is also prohibited for a subsidiary which is wholly owned or controlled by contract by a manufacturer or distributor or in which a manufacturer or distributor has more than a ten percent ownership interest, including a financing division.

**Source:** Laws 1984, LB 825, § 19; Laws 1999, LB 632, § 7; Laws 2010, LB816, § 81.

**60-1437 Manufacturer or distributor; prohibited acts with respect to new motor vehicles.**

In addition to the restrictions imposed by section 60-1436, a manufacturer or distributor shall not:

(1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor;

(2) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor;

(3) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone, or region, whichever geographical area is the smallest;

(4) Increase the price of any new motor vehicle which the new motor vehicle dealer had ordered and delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer shall constitute evidence of such order. In the event of manufacturer or distributor price reduction or cash rebate, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of five dollars shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to a new model or series of motor vehicles at the time of the introduction of the new model or series shall not be considered a price increase or price decrease. This subdivision shall not apply to price changes caused by the following:

(a) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

(b) In the case of foreign-made vehicles or components, revaluation of the United States dollar; or

(c) Any increase in transportation charges due to an increase in rates charged by a common carrier or other transporter;

(5) Fail or refuse to sell or offer to sell to all franchised new motor vehicle dealers in a line-make every new motor vehicle sold or offered for sale to any franchised new motor vehicle dealer of the same line-make. However, the failure to deliver any such new motor vehicle shall not be considered a violation of this section if the failure is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo, or any other cause over which the franchisor has no control. A manufacturer or distributor shall not require that any of its new motor vehicle dealers located in this state pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the new motor vehicle dealer's existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the provisions of this

subdivision, nothing contained in this section shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this state purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of new motor vehicles. This subdivision shall not apply to manufacturers of recreational vehicles;

(6) Fail to offer dealers of a specific line-make a new franchise agreement containing substantially similar terms and conditions for sales of the line-make if the ownership of the manufacturer or distributor changes or there is a change in the plan or system of distribution;

(7) Take an adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States. A franchise provision that allows a manufacturer or distributor to take adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States is enforceable only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the motor vehicle would be exported to a location outside the United States. A dealer is presumed to have no knowledge that a motor vehicle the dealer sells or leases will be exported to a location outside the United States if, under the laws of a state of the United States (a) the motor vehicle is titled, (b) the motor vehicle is registered, and (c) applicable state and local taxes are paid for the motor vehicle. Such presumption may be rebutted by direct, clear, and convincing evidence that the dealer knew or reasonably should have known at the time of the original sale or lease that the motor vehicle would be exported to a location outside the United States. Except as otherwise permitted by subdivision (7) of this section, a franchise provision that allows a manufacturer or distributor to take adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States is void and unenforceable;

(8) Discriminate against a dealer holding a franchise for a line-make of the manufacturer or distributor in favor of other dealers of the same line-make in this state by:

(a) Selling or offering to sell a new motor vehicle to a dealer at a lower actual price, including the price for vehicle transportation, than the actual price at which the same model similarly equipped is offered to or is available to another dealer in this state during a similar time period; or

(b) Using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle to the dealer or later, that results in the sale or offer to sell a new motor vehicle to a dealer at a lower price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is available to another dealer in this state during a similar time period. This subdivision shall not prohibit a promotional or incentive program that is functionally available to competing dealers of the same line-make in this state on substantially comparable terms; or

(9) Make any express or implied statement or representation directly or indirectly that the dealer is under any obligation whatsoever to offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or to sell, assign, or

transfer any of the dealer's retail sales contracts or leases in this state on motor vehicles manufactured or sold by the manufacturer or distributor to a finance company or class of finance companies, leasing company or class of leasing companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies, leasing company or leasing companies, or the specified person or persons.

Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

**Source:** Laws 1984, LB 825, § 20; Laws 1999, LB 632, § 8; Laws 2010, LB816, § 82.

**60-1438 Manufacturer or distributor; warranty obligation.**

(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service which such manufacturer or distributor requires the dealer to provide. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work, and service and the time allowance for the performance of the work and service.

(2) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event shall the compensation of the dealer for warranty parts and labor be less than the rates charged by the dealer for like parts and service to retail or fleet customers, as long as such rates are reasonable.

(3) A manufacturer or distributor shall not do any of the following:

- (a) Fail to perform any warranty obligation;
- (b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or
- (c) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall.

(4) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be paid within thirty days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within thirty days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within thirty days after the receipt of the form shall be considered to be approved and payment shall be made within thirty days. The manufacturer has the right to audit the claims for two years after payment and to charge back to the new motor vehicle

dealer the amount of any false or fraudulent claim. A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error that does not put into question the legitimacy of the claim. If a claim is rejected for a clerical error, the dealer may resubmit a corrected claim in a timely manner.

(5) The warranty obligations set forth in this section shall also apply to any manufacturer of a new motor vehicle transmission, engine, or rear axle that separately warrants its components to customers.

**Source:** Laws 1984, LB 825, § 21; Laws 1991, LB 393, § 1; Laws 2003, LB 371, § 1; Laws 2010, LB816, § 83.

**60-1438.01 Manufacturer or distributor; restrictions with respect to franchises and consumer care or service facilities.**

(1) For purposes of this section, manufacturer or distributor includes (a) a factory representative or a distributor representative or (b) a person who is affiliated with a manufacturer or distributor or who, directly or indirectly through an intermediary, is controlled by, or is under common control with, the manufacturer or distributor. A person is controlled by a manufacturer or distributor if the manufacturer or distributor has the authority directly or indirectly, by law or by agreement of the parties, to direct or influence the management and policies of the person. A franchise agreement with a Nebraska-licensed dealer which conforms to and is subject to the Motor Vehicle Industry Regulation Act is not control for purposes of this section.

(2) Except as provided in this section, a manufacturer or distributor shall not directly or indirectly:

(a) Own an interest in a franchise, franchisee, or consumer care or service facility, except that a manufacturer or distributor may hold stock in a publicly held franchise, franchisee, or consumer care or service facility so long as the manufacturer or distributor does not by virtue of holding such stock operate or control the franchise, franchisee, or consumer care or service facility;

(b) Operate or control a franchise, franchisee, or consumer care or service facility; or

(c) Act in the capacity of a franchisee.

(3) A manufacturer or distributor may own an interest in a franchisee or otherwise control a franchise for a period not to exceed twelve months after the date the manufacturer or distributor acquires the franchise if:

(a) The person from whom the manufacturer or distributor acquired the franchise was a franchisee; and

(b) The franchise is for sale by the manufacturer or distributor.

(4) For purposes of broadening the diversity of its franchisees and enhancing opportunities for qualified persons who lack the resources to purchase a franchise outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a franchise if the manufacturer's or distributor's participation in the franchise is in a bona fide relationship with a franchisee and the franchisee:

(a) Has made a significant investment in the franchise, which investment is subject to loss;

(b) Has an ownership interest in the franchise; and

(c) Operates the franchise under a plan to acquire full ownership of the franchise within a reasonable time and under reasonable terms and conditions.

(5) On a showing of good cause by a manufacturer or distributor, the board may extend the time limit set forth in subsection (3) of this section. An extension may not exceed twelve months. An application for an extension after the first extension is granted is subject to protest by a franchisee of the same line-make whose franchise is located in the same community as the franchise owned or controlled by the manufacturer or distributor.

(6) The prohibition in subdivision (2)(b) of this section shall not apply to any manufacturer of manufactured housing, recreational vehicles, or trailers.

**Source:** Laws 2000, LB 1018, § 3; Laws 2010, LB816, § 84.

**60-1439 Dealer, manufacturer, distributor; liability for damages to motor vehicles.**

(1) The new motor vehicle dealer shall be solely liable for damages to new motor vehicles after acceptance from the carrier and before delivery to the ultimate purchaser. A delivery receipt signed by a new motor vehicle dealer shall be evidence of such dealer's acceptance of any new motor vehicles.

(2) The manufacturer or distributor shall be liable for all damages to motor vehicles before delivery to a carrier or transporter and while such vehicles are on the carrier or transporter, except that if the new motor vehicle dealer selected the method and mode of transportation and the carrier or transporter, then such dealer shall be liable for damages to any new motor vehicles after delivery to the carrier or transporter.

**Source:** Laws 1984, LB 825, § 22.

**60-1440 Violations; actions for damages and equitable relief; arbitration.**

(1) Any person who is or may be injured by a violation of the Motor Vehicle Industry Regulation Act or any party to a franchise whose business or property is damaged by a violation of the act relating to that franchise may bring an action for damages and equitable relief, including injunctive relief.

(2) When a violation of the act can be shown to be willful or wanton, the court shall award damages. If the manufacturer engages in continued multiple violations of the act, the court may, in addition to any other damages, award court costs and attorney's fees.

(3) A new motor vehicle dealer, if he or she has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that a violation of the act by a manufacturer may have the effect of causing such loss of money or property.

(4) If any action to enforce any of the provisions of the act is brought by a new motor vehicle dealer against a manufacturer and the new motor vehicle dealer prevails, he or she shall be awarded reasonable attorney's fees and the court shall assess costs against the manufacturer.

(5) If any dispute between a franchisor and franchisee becomes subject to resolution by means of binding arbitration, the provisions of the act regulating

the relationship of franchisor and franchisee shall apply in any such proceeding.

**Source:** Laws 1984, LB 825, § 31; Laws 1989, LB 280, § 9; Laws 2010, LB816, § 85.

## ARTICLE 15

### DEPARTMENT OF MOTOR VEHICLES

#### Cross References

For other provisions for state administrative departments, see Chapter 81, article 1.

#### Section

- 60-1501. Director; qualifications.
- 60-1502. Director; oath; bond or insurance.
- 60-1503. Employment of personnel; technical advisors.
- 60-1504. Seal; certified copies of records as evidence.
- 60-1505. Repealed. Laws 1985, LB 21, § 1.
- 60-1506. Repealed. Laws 1961, c. 284, § 1.
- 60-1507. Repealed. Laws 1985, LB 21, § 1.
- 60-1508. Repealed. Laws 1985, LB 21, § 1.
- 60-1509. Repealed. Laws 1961, c. 284, § 1.
- 60-1510. Repealed. Laws 1985, LB 21, § 1.
- 60-1511. Repealed. Laws 1985, LB 21, § 1.
- 60-1512. Repealed. Laws 1985, LB 21, § 1.
- 60-1513. Department of Motor Vehicles Cash Fund; created; use; investment.
- 60-1514. Repealed. Laws 1995, LB 467, § 21.
- 60-1515. Department of Motor Vehicles Cash Fund; use; legislative intent.
- 60-1516. Repealed. Laws 2005, LB 1, § 11.

#### **60-1501 Director; qualifications.**

The Director of Motor Vehicles at the time of his appointment and qualification shall (a) be a citizen of the United States and a resident of the State of Nebraska, (b) have been a qualified voter in the state for a period of at least five years preceding his appointment, and (c) not be less than thirty years of age.

**Source:** Laws 1957, c. 366, § 54, p. 1284.

#### **60-1502 Director; oath; bond or insurance.**

The Director of Motor Vehicles shall take the oath as provided by law and be bonded or insured as required by section 11-201.

**Source:** Laws 1957, c. 366, § 55, p. 1284; Laws 1978, LB 653, § 22; Laws 2004, LB 884, § 33.

#### **60-1503 Employment of personnel; technical advisors.**

The Director of Motor Vehicles shall have authority to employ such personnel, including legal, and technical advisors as may be necessary to carry out the duties of his office.

**Source:** Laws 1957, c. 366, § 56, p. 1284.

The Director of Motor Vehicles has the authority to employ personnel, including legal personnel and technical advisors, as may be necessary to carry out the duties of his office. *Koepf v. Jensen*, 230 Neb. 489, 432 N.W.2d 237 (1988).

The authority of the Director of Motor Vehicles to delegate her implied consent revocation duties under section 39-669.16 (transferred to section 60-498.02) is fairly implied by this section. *Fulmer v. Jensen*, 221 Neb. 582, 379 N.W.2d 736 (1986).

#### **60-1504 Seal; certified copies of records as evidence.**

The Director of Motor Vehicles shall adopt a seal. Copies of all records or other instruments in the department, when certified by the director as true

copies and bearing the seal thereof, shall be received in any court as prima facie evidence of the original records or instruments.

**Source:** Laws 1957, c. 366, § 57, p. 1284.

**60-1505 Repealed. Laws 1985, LB 21, § 1.**

**60-1506 Repealed. Laws 1961, c. 284, § 1.**

**60-1507 Repealed. Laws 1985, LB 21, § 1.**

**60-1508 Repealed. Laws 1985, LB 21, § 1.**

**60-1509 Repealed. Laws 1961, c. 284, § 1.**

**60-1510 Repealed. Laws 1985, LB 21, § 1.**

**60-1511 Repealed. Laws 1985, LB 21, § 1.**

**60-1512 Repealed. Laws 1985, LB 21, § 1.**

**60-1513 Department of Motor Vehicles Cash Fund; created; use; investment.**

The Department of Motor Vehicles Cash Fund is hereby created. The fund shall be administered by the Director of Motor Vehicles. The fund shall be used by the Department of Motor Vehicles to carry out its duties as deemed necessary by the Director of Motor Vehicles, except that transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Department of Motor Vehicles Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1993, LB 491, § 17; Laws 1994, LB 1066, § 48; Laws 1995, LB 467, § 16; Laws 1996, LB 1191, § 1; Laws 2003, LB 209, § 16; Laws 2006, LB 1061, § 9; Laws 2007, LB322, § 11.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-1514 Repealed. Laws 1995, LB 467, § 21.**

**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:

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(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 furnish to the counties the certificate of registration forms specified in section 60-390. The certificate of registration form shall be prescribed by the department;

(c) To pay for the costs of an operator’s license system as specified in sections 60-484.01 and 60-4,119 and designated by the department. The costs shall be limited to such terminals, printers, software, programming, and other equipment or devices as deemed necessary by the department to support the issuance of such licenses and state identification cards in the counties and by the department; and

(d) To pay for the motor vehicle insurance data base created under section 60-3,136.

**Source:** Laws 1993, LB 491, § 19; Laws 1995, LB 467, § 17; Laws 2001, LB 574, § 31; Laws 2002, LB 488, § 6; Laws 2005, LB 274, § 258.

**60-1516 Repealed. Laws 2005, LB 1, § 11.**

**ARTICLE 16**

**CABIN TRAILERS**

Section

- 60-1601. Repealed. Laws 1981, LB 168, § 18.
- 60-1601.01. Repealed. Laws 1981, LB 168, § 18.
- 60-1602. Repealed. Laws 1981, LB 168, § 18.
- 60-1603. Repealed. Laws 1981, LB 168, § 18.
- 60-1604. Repealed. Laws 1981, LB 168, § 18.
- 60-1605. Repealed. Laws 1981, LB 168, § 18.
- 60-1606. Repealed. Laws 1972, LB 1100, § 7.
- 60-1606.01. Repealed. Laws 1972, LB 1100, § 7.
- 60-1606.02. Repealed. Laws 1972, LB 1100, § 7.
- 60-1606.03. Repealed. Laws 1972, LB 1100, § 7.
- 60-1607. Repealed. Laws 1972, LB 1100, § 7.
- 60-1608. Repealed. Laws 1981, LB 168, § 18.
- 60-1609. Transferred to section 77-3706.
- 60-1609.01. Transferred to section 77-3707.
- 60-1610. Repealed. Laws 1981, LB 168, § 18.
- 60-1611. Transferred to section 77-3708.
- 60-1612. Transferred to section 77-3709.
- 60-1613. Transferred to section 77-3710.

**60-1601 Repealed. Laws 1981, LB 168, § 18.**

**60-1601.01 Repealed. Laws 1981, LB 168, § 18.**

**60-1602 Repealed. Laws 1981, LB 168, § 18.**

**60-1603 Repealed. Laws 1981, LB 168, § 18.**

- 60-1604 Repealed. Laws 1981, LB 168, § 18.**
- 60-1605 Repealed. Laws 1981, LB 168, § 18.**
- 60-1606 Repealed. Laws 1972, LB 1100, § 7.**
- 60-1606.01 Repealed. Laws 1972, LB 1100, § 7.**
- 60-1606.02 Repealed. Laws 1972, LB 1100, § 7.**
- 60-1606.03 Repealed. Laws 1972, LB 1100, § 7.**
- 60-1607 Repealed. Laws 1972, LB 1100, § 7.**
- 60-1608 Repealed. Laws 1981, LB 168, § 18.**
- 60-1609 Transferred to section 77-3706.**
- 60-1609.01 Transferred to section 77-3707.**
- 60-1610 Repealed. Laws 1981, LB 168, § 18.**
- 60-1611 Transferred to section 77-3708.**
- 60-1612 Transferred to section 77-3709.**
- 60-1613 Transferred to section 77-3710.**

**ARTICLE 17**

**MOTOR VEHICLE INSPECTION**

Section

- 60-1701. Repealed. Laws 1981, LB 35, § 1.
  - 60-1701.01. Repealed. Laws 1981, LB 35, § 1.
  - 60-1702. Repealed. Laws 1981, LB 35, § 1.
  - 60-1703. Repealed. Laws 1981, LB 35, § 1.
  - 60-1704. Repealed. Laws 1981, LB 35, § 1.
  - 60-1705. Repealed. Laws 1981, LB 35, § 1.
  - 60-1706. Repealed. Laws 1981, LB 35, § 1.
  - 60-1707. Repealed. Laws 1981, LB 35, § 1.
  - 60-1708. Repealed. Laws 1986, LB 731, § 4.
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- 60-1701 Repealed. Laws 1981, LB 35, § 1.**
  - 60-1701.01 Repealed. Laws 1981, LB 35, § 1.**
  - 60-1702 Repealed. Laws 1981, LB 35, § 1.**
  - 60-1703 Repealed. Laws 1981, LB 35, § 1.**
  - 60-1704 Repealed. Laws 1981, LB 35, § 1.**
  - 60-1705 Repealed. Laws 1981, LB 35, § 1.**
  - 60-1706 Repealed. Laws 1981, LB 35, § 1.**
  - 60-1707 Repealed. Laws 1981, LB 35, § 1.**

**60-1708 Repealed. Laws 1986, LB 731, § 4.****ARTICLE 18  
CAMPER UNITS**

## Section

- 60-1801. Camper unit, defined.
- 60-1802. Permit required.
- 60-1803. Permit; application; contents; fee.
- 60-1804. Department of Motor Vehicles; validation decal; furnish.
- 60-1805. Permit; renewal; fee.
- 60-1806. Repealed. Laws 1997, LB 271, § 57.
- 60-1807. Permit; renewal; issuance; receipt required.
- 60-1808. Violations; penalty.

**60-1801 Camper unit, defined.**

As used in sections 60-1801 to 60-1808, unless the context otherwise requires, camper unit means any structure designed and intended to be placed on a truck and to provide living quarters and which may be removed from a truck without dismantling or damage when ordinary care is exercised. Camper unit does not include a recreational vehicle as defined in section 60-347, or a mobile home as defined in section 77-3701.

**Source:** Laws 1969, c. 627, § 1, p. 2526; Laws 1981, LB 168, § 12; Laws 2005, LB 274, § 259.

**60-1802 Permit required.**

Every owner, except dealers or manufacturers, of a camper unit which is located within this state for a period of thirty days or more shall obtain a permit therefor in the manner prescribed by sections 60-1801 to 60-1808. No refund of the permit fee shall be made after a permit has been issued. The permit shall not be transferred to a new owner, and in case of transfer of ownership of such camper unit, a new permit must be obtained in the same manner as the original permit was obtained.

**Source:** Laws 1969, c. 627, § 2, p. 2526.

**60-1803 Permit; application; contents; fee.**

Every owner of a camper unit shall make application for a permit to the county treasurer or designated county official pursuant to section 23-186 of the county in which such owner resides or is domiciled or conducts a bona fide business, or if such owner is not a resident of this state, such application shall be made to the county treasurer or designated county official of the county in which such owner actually lives or conducts a bona fide business, except as otherwise expressly provided. Any person, firm, association, or corporation who is neither a resident of this state nor domiciled in this state, but who desires to obtain a permit for a camper unit owned by such person, firm, association, or corporation, may register the same in any county of this state. The application shall contain a statement of the name, post office address, and place of residence of the applicant, a description of the camper unit, including the name of the maker, the number, if any, affixed or assigned thereto by the manufacturer, the weight, width, and length of the vehicle, the year, the model, and the trade name or other designation given thereto by the manufacturer, if any. Camper unit permits required by sections 60-1801 to 60-1808 shall be

issued by the county treasurer or designated county official in the same manner as registration certificates as provided in the Motor Vehicle Registration Act except as otherwise provided in sections 60-1801 to 60-1808. Every applicant for permit, at the time of making such application, shall exhibit to the county treasurer or designated county official evidence of ownership of such camper unit. Contemporaneously with such application, the applicant shall pay a permit fee in the amount of two dollars which shall be distributed in the same manner as all other motor vehicle license fees. Upon proper application being made and the payment of the permit fee, the applicant shall be issued a permit.

**Source:** Laws 1969, c. 627, § 3, p. 2526; Laws 1993, LB 112, § 40; Laws 1995, LB 37, § 11; Laws 1997, LB 271, § 34; Laws 2005, LB 274, § 260.

**Cross References**

Motor Vehicle Registration Act, see section 60-301.

**60-1804 Department of Motor Vehicles; validation decal; furnish.**

The Department of Motor Vehicles shall design, procure, and furnish to the county treasurers a validation decal which may be attached to the camper unit as evidence that a permit has been obtained. Each county treasurer shall furnish a validation decal to the person obtaining the permit and such decal shall be attached to the camper unit so as to be clearly visible from the outside of the unit.

**Source:** Laws 1969, c. 627, § 4, p. 2527; Laws 2005, LB 274, § 261.

**60-1805 Permit; renewal; fee.**

Such permit shall be renewed annually in the same manner and upon the payment of the same fee as provided for original issuance. Such renewal shall become due on the first day of January of each year and delinquent on March 1 of each year.

**Source:** Laws 1969, c. 627, § 5, p. 2527; Laws 2004, LB 560, § 40.

**60-1806 Repealed. Laws 1997, LB 271, § 57.**

**60-1807 Permit; renewal; issuance; receipt required.**

In issuing such permits or renewals, the county treasurer or designated county official pursuant to section 23-186 shall neither receive nor accept such application nor permit fee nor issue any permit for any such camper unit unless the applicant first exhibits proof by receipt or otherwise (1) that he or she has paid all applicable taxes and fees upon such camper unit based on the computation thereof made in the year preceding the year for which such application for permit is made, (2) that he or she was the owner of another camper unit or other motor vehicles on which he or she paid the taxes and fees during such year, or (3) that he or she owned no camper unit or other motor vehicle upon which taxes and fees might have been imposed during such year.

**Source:** Laws 1969, c. 627, § 7, p. 2528; Laws 1997, LB 271, § 35; Laws 2005, LB 274, § 262.

**60-1808 Violations; penalty.**

Any person violating any of the provisions of sections 60-1801 to 60-1808 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1969, c. 627, § 8, p. 2528; Laws 1977, LB 39, § 99.

**ARTICLE 19**

**ABANDONED MOTOR VEHICLES**

Section

60-1901.	Abandoned vehicle, defined.
60-1902.	Abandoned vehicle; title; vest in local authority or state agency; when.
60-1903.	Local authorities or state agency; powers and duties.
60-1903.01.	Law enforcement agency; powers and duties.
60-1904.	Custody; who entitled.
60-1905.	Proceeds of sale; disposition.
60-1906.	Liability for removal.
60-1907.	Person cannot abandon a vehicle.
60-1908.	Destroy, deface, or remove parts; unlawful; exception; violation; penalty.
60-1909.	Costs of removal and storage; last-registered owner; liable.
60-1910.	Rules and regulations.
60-1911.	Violations; penalty.

**60-1901 Abandoned vehicle, defined.**

(1) A motor vehicle is an abandoned vehicle:

(a) If left unattended, with no license plates or valid In Transit stickers issued pursuant to the Motor Vehicle Registration Act affixed thereto, for more than six hours on any public property;

(b) If left unattended for more than twenty-four hours on any public property, except a portion thereof on which parking is legally permitted;

(c) If left unattended for more than forty-eight hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(d) If left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated;

(e) If left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner under section 60-1903.01; or

(f) If removed from private property by a municipality pursuant to a municipal ordinance.

(2) An all-terrain vehicle, a utility-type vehicle, or a minibike is an abandoned vehicle:

(a) If left unattended for more than twenty-four hours on any public property, except a portion thereof on which parking is legally permitted;

(b) If left unattended for more than forty-eight hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(c) If left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated;

(d) If left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner under section 60-1903.01; or

(e) If removed from private property by a municipality pursuant to a municipal ordinance.

(3) For purposes of this section:

(a) Public property means any public right-of-way, street, highway, alley, or park or other state, county, or municipally owned property; and

(b) Private property means any privately owned property which is not included within the definition of public property.

(4) No motor vehicle subject to forfeiture under section 28-431 shall be an abandoned vehicle under this section.

**Source:** Laws 1971, LB 295, § 1; Laws 1999, LB 90, § 1; Laws 2004, LB 560, § 41; Laws 2005, LB 274, § 263; Laws 2009, LB60, § 1; Laws 2010, LB650, § 46.

**Cross References**

**Motor Vehicle Registration Act**, see section 60-301.

**60-1902 Abandoned vehicle; title; vest in local authority or state agency; when.**

If an abandoned vehicle, at the time of abandonment, has no license plates of the current year or valid In Transit stickers issued pursuant to section 60-376 affixed and is of a wholesale value, taking into consideration the condition of the vehicle, of two hundred fifty dollars or less, title shall immediately vest in the local authority or state agency having jurisdiction thereof as provided in section 60-1904. Any certificate of title issued under this section to the local authority or state agency shall be issued at no cost to such authority or agency.

**Source:** Laws 1971, LB 295, § 2; Laws 1974, LB 689, § 1; Laws 1975, LB 131, § 1; Laws 1999, LB 90, § 2; Laws 2005, LB 274, § 264.

**60-1903 Local authorities or state agency; powers and duties.**

(1) Except for vehicles governed by section 60-1902, the local authority or state agency having custody of an abandoned vehicle shall make an inquiry concerning the last-registered owner of such vehicle as follows:

(a) Abandoned vehicle with license plates affixed, to the jurisdiction which issued such license plates; or

(b) Abandoned vehicle with no license plates affixed, to the Department of Motor Vehicles.

(2) The local authority or state agency shall notify the last-registered owner, if any, that the vehicle in question has been determined to be an abandoned vehicle and that, if unclaimed, either (a) it will be sold or will be offered at public auction after five days from the date such notice was mailed or (b) title will vest in the local authority or state agency thirty days after the date such notice was mailed. If the agency described in subdivision (1)(a) or (b) of this section also notifies the local authority or state agency that a lien or mortgage exists, such notice shall also be sent to the lienholder or mortgagee. Any person claiming such vehicle shall be required to pay the cost of removal and storage of such vehicle.

(3) Title to an abandoned vehicle, if unclaimed, shall vest in the local authority or state agency (a) five days after the date the notice is mailed if the vehicle will be sold or offered at public auction under subdivision (2)(a) of this section, (b) thirty days after the date the notice is mailed if the local authority or state agency will retain the vehicle, or (c) if the last-registered owner cannot be ascertained, when notice of such fact is received.

(4) After title to the abandoned vehicle vests pursuant to subsection (3) of this section, the local authority or state agency may retain for use, sell, or auction the abandoned vehicle. If the local authority or state agency has determined that the vehicle should be retained for use, the local authority or state agency shall, at the same time that the notice, if any, is mailed, publish in a newspaper of general circulation in the jurisdiction an announcement that the local authority or state agency intends to retain the abandoned vehicle for its use and that title will vest in the local authority or state agency thirty days after the publication.

**Source:** Laws 1971, LB 295, § 3; Laws 1999, LB 90, § 3.

#### **60-1903.01 Law enforcement agency; powers and duties.**

A state or local law enforcement agency which has custody of a motor vehicle for investigatory purposes and has no further need to keep it in custody shall send a certified letter to each of the last-registered owners stating that the vehicle is in the custody of the law enforcement agency, that the vehicle is no longer needed for law enforcement purposes, and that after thirty days the agency will dispose of the vehicle. This section shall not apply to motor vehicles subject to forfeiture under section 28-431. No storage fees shall be assessed against the registered owner of a motor vehicle held in custody for investigatory purposes under this section unless the registered owner or the person in possession of the vehicle when it is taken into custody is charged with a felony or misdemeanor related to the offense for which the law enforcement agency took the vehicle into custody. If a registered owner or the person in possession of the vehicle when it is taken into custody is charged with a felony or misdemeanor but is not convicted, the registered owner shall be entitled to a refund of the storage fees.

**Source:** Laws 1999, LB 90, § 4.

#### **60-1904 Custody; who entitled.**

If a state agency caused an abandoned vehicle described in subdivision (1)(e) or (2)(d) of section 60-1901 to be removed from public property, the state agency shall be entitled to custody of the vehicle. If a state agency caused an abandoned vehicle described in subdivision (1)(a), (b), (c), or (d) or (2)(a), (b), or (c) of section 60-1901 to be removed from public property, the state agency shall deliver the vehicle to the local authority which shall have custody. The local authority entitled to custody of an abandoned vehicle shall be the county in which the vehicle was abandoned or, if abandoned in a city or village, the city or village in which the vehicle was abandoned.

**Source:** Laws 1971, LB 295, § 4; Laws 1977, LB 116, § 1; Laws 1999, LB 90, § 5; Laws 2004, LB 560, § 42.

#### **60-1905 Proceeds of sale; disposition.**

Any proceeds from the sale of an abandoned vehicle less any expenses incurred by the local authority or state agency shall be held by the local authority or state agency without interest, for the benefit of the owner or lienholders of such vehicle for a period of two years. If not claimed within such two-year period, the proceeds shall be paid into the general fund of the local authority entitled to custody under section 60-1904 or the state General Fund if a state agency is entitled to custody under section 60-1904.

**Source:** Laws 1971, LB 295, § 5; Laws 1999, LB 90, § 6.

**60-1906 Liability for removal.**

Neither the owner, lessee, nor occupant of the premises from which any abandoned vehicle is removed, nor the state, city, village, or county, shall be liable for any loss or damage to such vehicle which occurs during its removal or while in the possession of the state, city, village, or county or its contractual agent or as a result of any subsequent disposition.

**Source:** Laws 1971, LB 295, § 6; Laws 1999, LB 90, § 7.

**60-1907 Person cannot abandon a vehicle.**

No person shall cause any vehicle to be an abandoned vehicle as described in subdivision (1)(a), (b), (c), or (d) or (2)(a), (b), or (c) of section 60-1901.

**Source:** Laws 1971, LB 295, § 7; Laws 1999, LB 90, § 8; Laws 2004, LB 560, § 43.

**60-1908 Destroy, deface, or remove parts; unlawful; exception; violation; penalty.**

No person other than one authorized by the appropriate local authority or state agency shall destroy, deface, or remove any part of a vehicle which is left unattended on a highway or other public place without license plates affixed or which is abandoned. Anyone violating this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1971, LB 295, § 8; Laws 1977, LB 39, § 100; Laws 1999, LB 90, § 9.

**60-1909 Costs of removal and storage; last-registered owner; liable.**

The last-registered owner of an abandoned vehicle shall be liable to the local authority or state agency for the costs of removal and storage of such vehicle.

**Source:** Laws 1971, LB 295, § 9; Laws 1999, LB 90, § 10.

**60-1910 Rules and regulations.**

The Director of Motor Vehicles shall adopt and promulgate rules and regulations providing for such forms and procedures as are necessary or desirable to effectuate the provisions of sections 60-1901 to 60-1911. Such rules and regulations may include procedures for the removal and disposition of vehicle identification numbers of abandoned vehicles, forms for local records for abandoned vehicles, and inquiries relating to ownership of such vehicles.

**Source:** Laws 1971, LB 295, § 10; Laws 1999, LB 90, § 11.

**60-1911 Violations; penalty.**

**SNOWMOBILES**

**§ 60-2010**

Except as provided in section 60-1908, any person violating the provisions of sections 60-1901 to 60-1911 shall be guilty of a Class II misdemeanor.

**Source:** Laws 1971, LB 295, § 11; Laws 1977, LB 39, § 101; Laws 1999, LB 90, § 12.

**ARTICLE 20  
SNOWMOBILES**

Section	
60-2001.	Transferred to section 60-6,320.
60-2002.	Transferred to section 60-6,321.
60-2003.	Transferred to section 60-6,322.
60-2004.	Transferred to section 60-6,323.
60-2005.	Transferred to section 60-6,324.
60-2006.	Transferred to section 60-6,325.
60-2007.	Transferred to section 60-6,326.
60-2008.	Transferred to section 60-6,327.
60-2009.	Transferred to section 60-6,328.
60-2009.01.	Transferred to section 60-6,329.
60-2010.	Transferred to section 60-6,330.
60-2010.01.	Transferred to section 60-6,331.
60-2010.02.	Transferred to section 60-6,332.
60-2011.	Transferred to section 60-6,333.
60-2012.	Repealed. Laws 1977, LB 230, § 19.
60-2012.01.	Transferred to section 60-6,334.
60-2013.	Transferred to section 60-6,335.
60-2014.	Transferred to section 60-6,336.
60-2015.	Transferred to section 60-6,337.
60-2016.	Transferred to section 60-6,338.
60-2017.	Transferred to section 60-6,339.
60-2018.	Transferred to section 60-6,340.
60-2018.01.	Transferred to section 60-6,341.
60-2019.	Transferred to section 60-6,344.
60-2020.	Transferred to section 60-6,342.
60-2021.	Transferred to section 60-6,343.
60-2022.	Transferred to section 60-6,345.
60-2023.	Transferred to section 60-6,346.

**60-2001 Transferred to section 60-6,320.**

**60-2002 Transferred to section 60-6,321.**

**60-2003 Transferred to section 60-6,322.**

**60-2004 Transferred to section 60-6,323.**

**60-2005 Transferred to section 60-6,324.**

**60-2006 Transferred to section 60-6,325.**

**60-2007 Transferred to section 60-6,326.**

**60-2008 Transferred to section 60-6,327.**

**60-2009 Transferred to section 60-6,328.**

**60-2009.01 Transferred to section 60-6,329.**

**60-2010 Transferred to section 60-6,330.**

- 60-2010.01 Transferred to section 60-6,331.
- 60-2010.02 Transferred to section 60-6,332.
- 60-2011 Transferred to section 60-6,333.
- 60-2012 Repealed. Laws 1977, LB 230, § 19.
- 60-2012.01 Transferred to section 60-6,334.
- 60-2013 Transferred to section 60-6,335.
- 60-2014 Transferred to section 60-6,336.
- 60-2015 Transferred to section 60-6,337.
- 60-2016 Transferred to section 60-6,338.
- 60-2017 Transferred to section 60-6,339.
- 60-2018 Transferred to section 60-6,340.
- 60-2018.01 Transferred to section 60-6,341.
- 60-2019 Transferred to section 60-6,344.
- 60-2020 Transferred to section 60-6,342.
- 60-2021 Transferred to section 60-6,343.
- 60-2022 Transferred to section 60-6,345.
- 60-2023 Transferred to section 60-6,346.

ARTICLE 21

MINIBIKES OR MOTORCYCLES

(a) GENERAL PROVISIONS

Section

- 60-2101. Repealed. Laws 1972, LB 1196, § 11.
- 60-2101.01. Transferred to section 60-6,347.
- 60-2102. Transferred to section 60-6,348.
- 60-2103. Transferred to section 60-6,349.
- 60-2104. Transferred to section 60-6,350.
- 60-2105. Transferred to section 60-6,351.
- 60-2106. Transferred to section 60-678.
- 60-2107. Transferred to section 60-6,352.
- 60-2108. Transferred to section 60-6,353.

(b) MOTORCYCLE SAFETY EDUCATION

- 60-2109. Transferred to section 60-2121.
- 60-2110. Transferred to section 60-2125.
- 60-2111. Transferred to section 60-2126.
- 60-2112. Transferred to section 60-2127.
- 60-2113. Transferred to section 60-2128.
- 60-2114. Transferred to section 60-2130.
- 60-2115. Transferred to section 60-2131.
- 60-2116. Transferred to section 60-2132.
- 60-2117. Transferred to section 60-2137.
- 60-2118. Transferred to section 60-2133.
- 60-2118.01. Transferred to section 60-2135.

Section	
60-2119.	Transferred to section 60-2139.
60-2120.	Act, how cited.
60-2121.	Terms, defined.
60-2122.	Repealed. Laws 2002, LB 93, § 27.
60-2123.	Repealed. Laws 2002, LB 93, § 27.
60-2124.	Repealed. Laws 2002, LB 93, § 27.
60-2125.	Motorcycle safety courses; requirements.
60-2126.	Motorcycle safety course; approval by director; certified instructor required.
60-2127.	Motorcycle safety instructors; permit; requirements; person certified by another state; how treated.
60-2128.	Motorcycle safety instructor preparation course; department develop; requirements for admission.
60-2129.	Chief instructors; education requirements; permits; location; person certified by another state; how treated.
60-2130.	Motorcycle safety instructor's or chief instructor's permit; term; renewal; fee.
60-2131.	Motorcycle safety instructor's or chief instructor's permit; denial, suspension, or revocation; procedure.
60-2132.	Motorcycle Safety Education Fund; created; use; investment.
60-2133.	Fund; authorized expenditures; priorities.
60-2134.	Fund; education of chief instructors; conditions; costs; reimbursement.
60-2135.	Fund; reimbursement for safety instructor course; rules and regulations.
60-2136.	Site for conducting approved course; grant; application; contents; director; duties.
60-2137.	Motorcycle safety course; cost reimbursement; conditions.
60-2138.	Fund; promotion of motorcycle safety and motorcycle awareness; expenditures allowed.
60-2139.	Rules and regulations.
60-2140.	Repealed. Laws 1989, LB 25, § 3.
60-2141.	Repealed. Laws 1989, LB 25, § 3.

## (a) GENERAL PROVISIONS

**60-2101 Repealed. Laws 1972, LB 1196, § 11.**

**60-2101.01 Transferred to section 60-6,347.**

**60-2102 Transferred to section 60-6,348.**

**60-2103 Transferred to section 60-6,349.**

**60-2104 Transferred to section 60-6,350.**

**60-2105 Transferred to section 60-6,351.**

**60-2106 Transferred to section 60-678.**

**60-2107 Transferred to section 60-6,352.**

**60-2108 Transferred to section 60-6,353.**

## (b) MOTORCYCLE SAFETY EDUCATION

**60-2109 Transferred to section 60-2121.**

**60-2110 Transferred to section 60-2125.**

**60-2111 Transferred to section 60-2126.**

**60-2112 Transferred to section 60-2127.**

**60-2113 Transferred to section 60-2128.**

**60-2114 Transferred to section 60-2130.**

**60-2115 Transferred to section 60-2131.**

**60-2116 Transferred to section 60-2132.**

**60-2117 Transferred to section 60-2137.**

**60-2118 Transferred to section 60-2133.**

**60-2118.01 Transferred to section 60-2135.**

**60-2119 Transferred to section 60-2139.**

**60-2120 Act, how cited.**

Sections 60-2120 to 60-2139 shall be known and may be cited as the Motorcycle Safety Education Act.

**Source:** Laws 1986, LB 1004, § 2; Laws 1989, LB 25, § 2.

**60-2121 Terms, defined.**

For purposes of the Motorcycle Safety Education Act, unless the context otherwise requires:

- (1) Department means the Department of Motor Vehicles;
- (2) Director means the Director of Motor Vehicles; and
- (3) Fund means the Motorcycle Safety Education Fund created in section 60-2132.

**Source:** Laws 1981, LB 22, § 1; Laws 1984, LB 1089, § 3; R.S.1943, (1984), § 60-2109; Laws 1986, LB 1004, § 3; Laws 2002, LB 93, § 5.

**60-2122 Repealed. Laws 2002, LB 93, § 27.**

**60-2123 Repealed. Laws 2002, LB 93, § 27.**

**60-2124 Repealed. Laws 2002, LB 93, § 27.**

**60-2125 Motorcycle safety courses; requirements.**

(1) The department shall establish minimum requirements for both basic and advanced motorcycle safety courses which qualify for reimbursement under the Motorcycle Safety Education Act. The courses shall be designed to develop, instill, and improve the knowledge, attitudes, habits, and skills necessary for safe operation of a motorcycle.

(2) Minimum requirements for a basic course shall include, but not be limited to:

(a) At least six hours of classroom instruction and sufficient laboratory instruction time for the student to apply and practice through observation and actual driving experience what has been learned in the classroom;

(b) At least eight hours of laboratory instruction time which includes actual driving of a motorcycle by the student; and

(c) Classroom and laboratory instruction shall be scheduled in an integrated and correlated sequence with laboratory driving experience following the relevant classroom instruction.

(3) Minimum requirements for an advanced course shall include, but not be limited to, at least six hours of coordinated classroom and laboratory instruction and driving experience specifically designed for the experienced motorcycle operator.

**Source:** Laws 1981, LB 22, § 2; R.S.1943, (1984), § 60-2110; Laws 1986, LB 1004, § 7.

**60-2126 Motorcycle safety course; approval by director; certified instructor required.**

A school, business, or organization conducting a basic or advanced motorcycle safety course for which reimbursement will be requested shall submit to the director a request for approval of such course along with the names of all certified instructors who will be teaching such course. The director shall approve such course if it meets the requirements of section 60-2125 and will be taught by a certified instructor.

**Source:** Laws 1981, LB 22, § 3; R.S.1943, (1984), § 60-2111; Laws 1986, LB 1004, § 8.

**60-2127 Motorcycle safety instructors; permit; requirements; person certified by another state; how treated.**

(1) The director shall establish minimum education requirements for motorcycle safety instructors. The director shall issue a permit in the manner and form prescribed by the director to motorcycle safety instructor applicants who meet such requirements. The minimum requirements shall include, but not be limited to:

(a) The applicant shall have a high school diploma or equivalent education;

(b) The applicant shall have a valid motorcycle operator's license or permit or a valid motor vehicle operator's license which has endorsed thereon the authorization to operate a motorcycle and shall have at least two years' motorcycle driving experience;

(c) The applicant's operator's license shall not have been suspended or revoked at any time during the immediately preceding two-year period; and

(d) The applicant shall have passed an approved motorcycle safety instructor's course established pursuant to section 60-2128.

(2) If the certification requirements are comparable to the requirements in this state, a person currently certified as a motorcycle safety instructor by another state or recognized accrediting organization may be issued a motorcycle safety instructor's permit by the department without having to take the course established in section 60-2128.

**Source:** Laws 1981, LB 22, § 4; R.S.1943, (1984), § 60-2112; Laws 1986, LB 1004, § 9.

**60-2128 Motorcycle safety instructor preparation course; department development; requirements for admission.**

(1) The department shall develop a motorcycle safety instructor preparation course. The motorcycle safety instructor preparation courses shall be offered at least once per year in each congressional district. Such course shall insure that the instructor is familiar with the material included in the particular motorcycle safety course which such instructor will be teaching.

(2) The department shall establish requirements for admission to the motorcycle safety instructor preparation course for persons who are also applying for reimbursement under section 60-2135. Such requirements shall include written agreement by the person seeking to attend the course that he or she will, upon successful completion, teach at least one approved basic motorcycle safety course and one approved advanced motorcycle safety course or at least two approved basic motorcycle safety courses in the state.

(3) To pass such course the instructor shall display knowledge of the course material which he or she will be teaching, knowledge of safe motorcycle operating practices, and an aptitude for instructing students.

**Source:** Laws 1981, LB 22, § 5; Laws 1984, LB 1089, § 4; R.S.1943, (1984), § 60-2113; Laws 1986, LB 1004, § 10.

**60-2129 Chief instructors; education requirements; permits; location; person certified by another state; how treated.**

The director shall establish minimum education requirements for chief instructors. The director shall issue permits in the manner and form prescribed by the director to at least three chief instructor applicants who meet the minimum education requirements. Chief instructors shall teach the motorcycle safety instructor preparation course in any one of the three congressional districts as assigned by the director.

If the certification requirements are comparable to the requirements in this state, a person currently certified as a chief instructor by another state or recognized accrediting organization may be issued a chief instructor's permit by the department without having to receive the training required by this section.

**Source:** Laws 1986, LB 1004, § 11.

**60-2130 Motorcycle safety instructor's or chief instructor's permit; term; renewal; fee.**

All permits issued under sections 60-2127 and 60-2129 shall be valid for three years and may be renewed upon application to the director as prescribed by the regulations of the department. If the applicant is an individual, the application for a permit shall include the applicant's social security number. Each application for a new or renewal motorcycle safety instructor's permit or chief instructor's permit shall be accompanied by a fee of five dollars. The fees collected under this section shall be placed in the state treasury and by the State Treasurer credited to the General Fund. No fee shall be refunded in the event that the permit is rejected, suspended, or revoked.

**Source:** Laws 1981, LB 22, § 6; R.S.1943, (1984), § 60-2114; Laws 1986, LB 1004, § 12; Laws 1997, LB 752, § 148.

**60-2131 Motorcycle safety instructor's or chief instructor's permit; denial, suspension, or revocation; procedure.**

The director may cancel, suspend, revoke, or refuse to issue or renew a motorcycle safety instructor's permit or chief instructor's permit in any case when the director finds the permittee or applicant has not complied with or has violated the Motorcycle Safety Education Act or any rule or regulation adopted and promulgated by the director. A suspended or revoked permit shall be returned to the director by the permittee, and its holder shall not be eligible to apply for a permit under section 60-2127 or 60-2129 until twelve months have elapsed since the date of such suspension or revocation. Any action taken by the director to cancel, suspend, revoke, or refuse to issue or renew a permit shall comply with the Administrative Procedure Act.

**Source:** Laws 1981, LB 22, § 7; R.S.1943, (1984), § 60-2115; Laws 1986, LB 1004, § 13; Laws 1989, LB 285, § 136; Laws 1999, LB 704, § 48.

**Cross References**

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

**60-2132 Motorcycle Safety Education Fund; created; use; investment.**

There is hereby created a Motorcycle Safety Education Fund in the state treasury which shall consist of money transferred pursuant to sections 39-2215 and 60-4,115 and such money as may be appropriated by the Legislature. The fund shall be administered by the department. The fund shall be used for the administration of the Motorcycle Safety Education Act, to reimburse approved schools, businesses, or organizations for conducting approved basic motorcycle safety courses, to provide educational assistance, to prepare sites for offering the basic motorcycle safety course, to reimburse approved schools, businesses, or organizations for conducting approved advanced motorcycle safety courses, and to promote motorcycle safety, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Motorcycle Safety Education 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 1981, LB 22, § 11; Laws 1983, LB 469, § 3; Laws 1984, LB 1089, § 5; Laws 1985, Second Spec. Sess., LB 5, § 2; R.S.1943, (1984), § 60-2116; Laws 1986, LB 1004, § 14; Laws 1989, LB 285, § 137; Laws 1994, LB 1066, § 50; Laws 2009, LB219, § 3; Laws 2009, First Spec. Sess., LB3, § 37.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**60-2133 Fund; authorized expenditures; priorities.**

On November 1 of each year, the balance of the fund after the administration expenses have been deducted shall be apportioned for use as provided in sections 60-2134 to 60-2138 according to the following priorities: (1) To the school, business, or organization conducting an approved basic motorcycle safety course on the basis of the lesser of the actual cost of the course or seventy-five dollars for each student having completed the course in the immediately preceding twelve-month period as certified by the director; (2) for educational assistance for chief instructors; (3) for educational assistance for motorcycle safety instructors; (4) to prepare sites for offering the basic motorcy-

cle safety course; (5) to the school, business, or organization conducting an approved advanced motorcycle safety course on the basis of the lesser of the actual cost of the course or up to thirty-five dollars, at the discretion of the director, for each student having completed the course in the immediately preceding twelve-month period as certified by the director; and (6) to the department for promotional materials. If the fund is insufficient to be apportioned among such priorities, the director shall allocate funds to one priority before allocating to the next priority. If the fund is insufficient to be apportioned within a priority, the director shall prorate the funds within the priority on the basis of equity.

**Source:** Laws 1981, LB 22, § 13; Laws 1984, LB 1089, § 6; R.S.1943, (1984), § 60-2118; Laws 1986, LB 1004, § 15.

**60-2134 Fund; education of chief instructors; conditions; costs; reimbursement.**

Until there are three chief instructors teaching a motorcycle safety instructor preparation course, the department shall expend amounts in the fund pursuant to the priorities provided in section 60-2133 for persons training to become chief instructors. The reimbursement shall be conditioned on the recipient agreeing to teach a motorcycle safety instructor preparation course, once chief instructor status is achieved, at least once per year for two years in any one of the three congressional districts as assigned by the director. The director shall assign the chief instructors so that the motorcycle safety instructor preparation course is taught in each of the three congressional districts. The reimbursement shall cover (1) the full cost of tuition and (2) up to two thousand dollars of actual, documented transportation and living expenses if the training is successfully completed.

**Source:** Laws 1986, LB 1004, § 16.

**60-2135 Fund; reimbursement for safety instructor course; rules and regulations.**

The department may expend amounts in the fund pursuant to the priorities provided in section 60-2133 for reimbursement to persons who successfully complete a motorcycle safety instructor preparation course. Such reimbursement shall be made to not more than twelve persons per year and shall not exceed two hundred fifty dollars per person. The reimbursement may include reimbursement for meals, housing, tuition, and similar costs. The department may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 1984, LB 1089, § 7; R.S.1943, (1984), § 60-2118.01; Laws 1986, LB 1004, § 17.

**60-2136 Site for conducting approved course; grant; application; contents; director; duties.**

Until there are ten sites in actual operation in this state created under this section which offer an approved basic motorcycle safety course, the department shall, pursuant to the priorities provided in section 60-2133, award a grant not to exceed fifteen hundred dollars to each school, business, or organization which prepares, maintains, and makes available a site for conducting an approved basic motorcycle safety course. The application for the grant shall contain: (1) A complete description of the physical facilities, equipment, and

services available at the site; (2) the cost charged for the use of the site to anyone wishing to conduct either motorcycle safety course at the site; (3) any rules and regulations governing the use of the site; (4) an agreement that the site will be maintained and available for conducting either or both of the motorcycle safety courses for a period of three years from the date the grant is received by the applicant; and (5) any additional information which the director may require. The director shall ensure that the sites are geographically diverse throughout the state and that the applicant has the competence to prepare a site and the authority to offer the site for conducting the basic motorcycle safety course.

**Source:** Laws 1986, LB 1004, § 18.

**60-2137 Motorcycle safety course; cost reimbursement; conditions.**

A school, business, or organization conducting a basic or advanced motorcycle safety course shall be eligible for reimbursement for the cost of conducting such course for any student if (1) the teacher is an approved motorcycle safety instructor, (2) the course is approved by the department, (3) the student taking the course had a learner's permit or a motor vehicle operator's license while enrolled in the class, and (4) each student for whom reimbursement is claimed completed the course. The amount of reimbursement shall be determined under section 60-2133 and pursuant to the priorities provided in such section.

**Source:** Laws 1981, LB 22, § 12; R.S.1943, (1984), § 60-2117; Laws 1986, LB 1004, § 19.

**60-2138 Fund; promotion of motorcycle safety and motorcycle awareness; expenditures allowed.**

The department may expend any amount remaining in the fund, after apportionment is made in accordance with subdivisions (1) to (5) of section 60-2133, for development, acquisition, printing, and distribution of materials which promote motorcycle safety and motorcycle awareness, including the motorcycle safety courses, except that the amount expended to promote motorcycle safety and motorcycle awareness shall not exceed fifteen percent of the total amount placed in the fund each fiscal year. The promotional materials may include brochures, posters, and booklets but shall not include billboards or radio or television promotion.

**Source:** Laws 1986, LB 1004, § 20; Laws 1990, LB 369, § 18.

**60-2139 Rules and regulations.**

The director shall adopt and promulgate such rules and regulations for the administration and enforcement of the Motorcycle Safety Education Act as are necessary. In adopting such rules and regulations, the director shall comply with the Administrative Procedure Act.

**Source:** Laws 1981, LB 22, § 14; R.S.1943, (1984), § 60-2119; Laws 1986, LB 1004, § 21.

**Cross References**

Administrative Procedure Act, see section 84-920.

**60-2140 Repealed. Laws 1989, LB 25, § 3.**

**60-2141 Repealed. Laws 1989, LB 25, § 3.**

**ARTICLE 22**

**CONTROL OF SMOKE EMISSIONS AND NOISE**

Section

60-2201. Transferred to section 60-6,363.  
60-2202. Transferred to section 60-6,364.  
60-2203. Transferred to section 60-6,365.  
60-2204. Transferred to section 60-6,366.  
60-2205. Transferred to section 60-6,367.  
60-2206. Transferred to section 60-6,368.  
60-2207. Transferred to section 60-6,369.  
60-2208. Transferred to section 60-6,370.  
60-2209. Transferred to section 60-6,371.  
60-2210. Transferred to section 60-6,372.  
60-2211. Transferred to section 60-6,373.  
60-2212. Transferred to section 60-6,374.

**60-2201 Transferred to section 60-6,363.**

**60-2202 Transferred to section 60-6,364.**

**60-2203 Transferred to section 60-6,365.**

**60-2204 Transferred to section 60-6,366.**

**60-2205 Transferred to section 60-6,367.**

**60-2206 Transferred to section 60-6,368.**

**60-2207 Transferred to section 60-6,369.**

**60-2208 Transferred to section 60-6,370.**

**60-2209 Transferred to section 60-6,371.**

**60-2210 Transferred to section 60-6,372.**

**60-2211 Transferred to section 60-6,373.**

**60-2212 Transferred to section 60-6,374.**

**ARTICLE 23**

**ODOMETERS**

Section

60-2301. Transferred to section 60-132.  
60-2302. Transferred to section 60-133.  
60-2303. Transferred to section 60-134.  
60-2304. Transferred to section 60-135.  
60-2305. Transferred to section 60-136.  
60-2306. Transferred to section 60-137.  
60-2307. Transferred to section 60-138.

**60-2301 Transferred to section 60-132.**

**60-2302 Transferred to section 60-133.**

**60-2303 Transferred to section 60-134.**

**60-2304 Transferred to section 60-135.**

**60-2305 Transferred to section 60-136.**

**60-2306 Transferred to section 60-137.**

**60-2307 Transferred to section 60-138.**

**ARTICLE 24**

**PARKING LOTS**

Section

- 60-2401. Restricted parking lots; cities of the metropolitan or primary class; vehicles towed away; when.
- 60-2401.01. Restricted parking lots; unauthorized parking; towing; violation; penalty.
- 60-2402. Restricted parking lot; signs designating.
- 60-2403. Vehicle towed away; notification to local law enforcement agency; renotification.
- 60-2404. Vehicle towed away; lien and disposition; when.
- 60-2405. Vehicle towed away; properly parked; liability.
- 60-2406. Vehicle towed away; liability for reasonably foreseeable damages.
- 60-2407. Vehicle; full possession of towing vehicle; when; effect.
- 60-2408. Owner or driver; given written statement by tower; contents.
- 60-2409. Person towing vehicle; ascertain owner or tenant of lot.
- 60-2410. Towing and storage fees; liability; lien; notice.
- 60-2411. Owner or tenant of lot; solicit or accept compensation from tower; prohibited.

**60-2401 Restricted parking lots; cities of the metropolitan or primary class; vehicles towed away; when.**

In cities of the metropolitan or primary class which have not adopted an ordinance conforming to section 60-2401.01, vehicles parked in a restricted parking lot without the consent of the owner or tenant shall be subject to being towed away, if the lot is properly posted.

**Source:** Laws 1979, LB 348, § 1; Laws 1981, LB 47, § 1; Laws 2010, LB1065, § 1.

Motor vehicles parked in a restricted parking lot without the consent of the owner or tenant shall be subject to being towed away if the lot is properly posted. *Packett v. Lincolnland Towing*, 227 Neb. 595, 419 N.W.2d 149 (1988).

**60-2401.01 Restricted parking lots; unauthorized parking; towing; violation; penalty.**

Except in cities of the metropolitan or primary class, any person parking a vehicle in a properly posted, restricted parking lot without the consent of the owner or tenant authorized to give permission shall be guilty of an infraction and the vehicle shall be subject to being towed away at the request of such lot owner or tenant. Any person found guilty under this section shall be subject to the penalties provided in section 29-436 for infractions. If the identity of the operator of a vehicle in violation of this section cannot be determined, the owner or person in whose name such vehicle is registered shall be held prima facie responsible for such infraction. When any law enforcement officer observes or is advised that a vehicle may be in violation of this section, he or she shall make a determination as to whether a violation has in fact occurred and, if so, shall personally serve or attach to such vehicle a citation pursuant to section 29-424, directed to the owner or operator of such vehicle, which shall

set forth the nature of the violation. Any person who refuses to sign the citation or otherwise comply with the command of the citation shall be punished as provided by section 29-426. As used in this section, law enforcement officer shall include any authorized representative of a law enforcement agency.

**Source:** Laws 1981, LB 47, § 2; Laws 2010, LB1065, § 2.

**60-2402 Restricted parking lot; signs designating.**

Signs designating a restricted parking lot shall be readily visible and shall state the purpose or purposes for parking on the restricted parking lot, state the hours for restricted parking, and state who to contact for information regarding a towed vehicle.

**Source:** Laws 1979, LB 348, § 2; Laws 1981, LB 47, § 3.

**60-2403 Vehicle towed away; notification to local law enforcement agency; renotification.**

Anyone towing a vehicle away pursuant to sections 60-2401 to 60-2411 shall notify the local law enforcement agency within twenty-four hours of the license number of the vehicle. Anyone towing a vehicle away pursuant to sections 60-2401 to 60-2411 and holding the vehicle for more than twenty-nine days shall, on the thirtieth day, renotify the local law enforcement agency of the vehicle's license number for the purpose of ascertaining whether the vehicle has been reported stolen or missing. Such renotification shall be repeated each thirty days while the vehicle is held by the tower or until such time as the tower has placed a lien on the vehicle as provided by section 60-2404.

**Source:** Laws 1979, LB 348, § 3; Laws 2010, LB1065, § 3.

**60-2404 Vehicle towed away; lien and disposition; when.**

A vehicle towed away under sections 60-2401 to 60-2411, which is not claimed by the owner within ninety days after towing, is subject to lien and disposition under Chapter 52, article 6, by the person who towed the vehicle.

**Source:** Laws 1979, LB 348, § 4; Laws 2005, LB 82, § 6; Laws 2010, LB1065, § 4.

**60-2405 Vehicle towed away; properly parked; liability.**

Any owner or tenant causing the towing away of a vehicle that is not improperly parked on a restricted lot shall cause the return of the vehicle to its owner or driver at no charge to such owner or driver. The person causing the vehicle to be towed shall be liable for any reasonably foreseeable damage incurred by the owner or driver of the vehicle due to loss of transportation.

**Source:** Laws 1979, LB 348, § 5; Laws 2010, LB1065, § 5.

**60-2406 Vehicle towed away; liability for reasonably foreseeable damages.**

Anyone towing away a vehicle pursuant to sections 60-2401 to 60-2411 shall be liable for any reasonably foreseeable damages to the vehicle that occur during the hookup, towing, or disengagement of the vehicle to or from the towing vehicle and anyone storing such a towed vehicle shall be liable for any

reasonably foreseeable damage to the vehicle and the personal contents therein during the storage period.

**Source:** Laws 1979, LB 348, § 6; Laws 2010, LB1065, § 6.

**60-2407 Vehicle; full possession of towing vehicle; when; effect.**

Anyone attempting to tow away a vehicle pursuant to sections 60-2401 to 60-2411 shall not be in full possession of the vehicle to be towed until the vehicle has been fully and completely attached to his or her towing vehicle. The tower shall, upon request of the owner or driver of the vehicle to be towed, disengage the towing apparatus at any time prior to taking full possession, as defined in this section, of the vehicle.

**Source:** Laws 1979, LB 348, § 7; Laws 2010, LB1065, § 7.

**60-2408 Owner or driver; given written statement by tower; contents.**

The owner or driver of any vehicle towed away pursuant to sections 60-2401 to 60-2411 shall, upon regaining possession of the vehicle from the tower, be given a written statement by the tower fully detailing: (1) The name and address of the person or persons who caused the vehicle to be towed; (2) under what statutory authority the vehicle was towed; and (3) his or her rights under sections 60-2401 to 60-2411.

**Source:** Laws 1979, LB 348, § 8; Laws 2010, LB1065, § 8.

**60-2409 Person towing vehicle; ascertain owner or tenant of lot.**

Anyone towing a vehicle pursuant to sections 60-2401 to 60-2411 shall take reasonable steps to ascertain that the person causing the vehicle to be towed is the owner or tenant of the lot from which the vehicle is to be towed.

**Source:** Laws 1979, LB 348, § 9; Laws 2010, LB1065, § 9.

**60-2410 Towing and storage fees; liability; lien; notice.**

(1) The owner or other person lawfully entitled to the possession of any vehicle towed or stored shall be charged with the reasonable cost of towing and storage fees. Any such towing or storage fee shall be a lien upon the vehicle under Chapter 52, article 6, and, except as provided in subsection (3) of this section, shall be prior to all other claims. Any person towing or storing a vehicle may retain possession of such vehicle until such charges are paid or, after ninety days, may dispose of such vehicle to satisfy the lien. Upon payment of such charges, the person towing or storing the vehicle shall return possession of the vehicle to the (a) owner, (b) lienholder, or (c) any other person lawfully entitled to the possession of such vehicle making payment of such charges. The lien provided for in this section shall not apply to the contents of any vehicle.

(2) The person towing the vehicle shall, within fifteen business days after towing, notify any lienholder appearing on the certificate of title of the vehicle and the owner of the vehicle of the towing of the vehicle. The notice shall be sent by certified mail, return receipt requested, to the last-known address of the lienholder and owner of the vehicle. The notice shall contain:

(a) The make, model, color, year, and vehicle identification number of the vehicle;

(b) The name, address, and telephone number of the person who towed the vehicle;

(c) The date of towing;

(d) The daily storage fee and the storage fee accrued as of the date of the notification; and

(e) A statement that the vehicle is subject to lien and disposition by sale or other manner ninety days after the date of towing under Chapter 52, article 6.

(3) Failure to provide notice as prescribed in subsection (2) of this section shall result in the lien of the person who towed the vehicle being subordinate to the lien of the lienholder appearing on the certificate of title and render void any disposition of the vehicle by the person who towed the vehicle.

**Source:** Laws 1979, LB 348, § 10; Laws 1988, LB 833, § 4; Laws 2005, LB 82, § 7; Laws 2010, LB1065, § 10.

This section does not provide for a lien for protection of the tow in collecting fees. The reference in this section to section 60-2405 is an obvious error because section 60-2405 does not concern a lien. Section 60-2404 was apparently intended. Packett v. Lincolnland Towing, 227 Neb. 595, 419 N.W.2d 149 (1988).

**60-2411 Owner or tenant of lot; solicit or accept compensation from tower; prohibited.**

Any owner or tenant causing the towing away of a vehicle shall not solicit or accept therefor a commission, gift, gratuity, or any form of compensation or wealth from the person or business towing away the vehicle.

**Source:** Laws 1979, LB 348, § 11; Laws 2010, LB1065, § 11.

**ARTICLE 25**

**RIDE SHARING**

Section

- 60-2501. Ride-sharing arrangement, defined.
- 60-2502. Laws not applicable.
- 60-2503. Workers' compensation law; not applicable; when.
- 60-2504. Employer not liable for injuries; when.
- 60-2505. Tax or license; prohibited.
- 60-2506. Minimum wage scale laws; not applicable.
- 60-2507. Motor vehicle; exemption from certain laws; when.
- 60-2508. Use of public vehicles authorized.

**60-2501 Ride-sharing arrangement, defined.**

For purposes of sections 60-2501 to 60-2508, ride-sharing arrangement shall mean the carrying of more than one, but not more than fifteen passengers by motor vehicle on any public road or highway, either regularly or occasionally, with or without compensation, but not for profit, and the carriage of such passengers is incidental to another purpose of the motor vehicle operator. The term shall include ride-sharing arrangements commonly known as carpools, vanpools, and buspools.

**Source:** Laws 1981, LB 50, § 1.

**60-2502 Laws not applicable.**

The following laws and regulations of this state shall not apply to any ride-sharing arrangement using a motor vehicle with a seating capacity for not more than fifteen persons, including the driver:

- (1) Chapter 75, pertaining to the regulation of motor carriers of any kind or description by the Public Service Commission;
- (2) Laws and regulations containing insurance requirements that are specifically applicable to motor carriers or commercial motor vehicles;
- (3) Laws and regulations with equipment requirements and special accident reporting requirements that are specifically applicable to motor carriers or commercial motor vehicles; and
- (4) Laws imposing a tax on fuel purchased in another state by a motor carrier.

**Source:** Laws 1981, LB 50, § 2.

**60-2503 Workers' compensation law; not applicable; when.**

The Nebraska Workers' Compensation Act shall not apply to a person injured while participating in a ride-sharing arrangement between his or her place of residence and place of employment or terminals near such places, except that if the employer owns, leases, or contracts for the motor vehicle used in such arrangement, pays for the time spent in travel, or pays the expense of travel, such act shall apply.

**Source:** Laws 1981, LB 50, § 3; Laws 1986, LB 811, § 141.

**Cross References**

Nebraska Workers' Compensation Act, see section 48-1,110.

**60-2504 Employer not liable for injuries; when.**

- (1) An employer shall not be liable for injuries to passengers and other persons resulting from the operation or use of a motor vehicle not owned, leased, or contracted for by the employer, in a ride-sharing arrangement.
- (2) An employer shall not be liable for injuries to passengers and other persons because he or she provides information, incentives, or otherwise encourages his or her employees to participate in ride-sharing arrangements, except as provided in section 60-2503.

**Source:** Laws 1981, LB 50, § 4.

**60-2505 Tax or license; prohibited.**

No county, city, village, or other municipal subdivision may impose a tax on, or require a license for, a ride-sharing arrangement using a motor vehicle with a seating capacity for not more than fifteen persons, including the driver.

**Source:** Laws 1981, LB 50, § 5.

**60-2506 Minimum wage scale laws; not applicable.**

The mere fact that an employee participates in any kind of ride-sharing arrangement shall not result in the application of Chapter 48, article 12, relating to payment of a minimum wage, overtime pay, or otherwise regulating the hours a person may work.

**Source:** Laws 1981, LB 50, § 6.

**60-2507 Motor vehicle; exemption from certain laws; when.**

A motor vehicle used in a ride-sharing arrangement that has a seating capacity for not more than fifteen persons, including the driver, shall not be a bus or commercial vehicle under the Motor Vehicle Registration Act or the Nebraska Rules of the Road.

**Source:** Laws 1981, LB 50, § 7; Laws 1993, LB 370, § 474; Laws 2005, LB 274, § 265.

**Cross References**

**Motor Vehicle Registration Act**, see section 60-301.

**Nebraska Rules of the Road**, see section 60-601.

**60-2508 Use of public vehicles authorized.**

Motor vehicles owned or operated by any state or local agency may be used in ride-sharing arrangements for public employees. Participants in any such ride-sharing arrangement shall pay the actual total costs of using the vehicle in that arrangement.

**Source:** Laws 1981, LB 50, § 8.

**ARTICLE 26**

**WRECKER OR SALVAGE DEALERS**

**Section**

60-2601. Terms, defined.

60-2602. Acquisition of vehicle or parts; duties; record; contents.

60-2603. Possession of salvage vehicle on August 26, 1983; effect.

60-2604. Possession of major component part on August 26, 1983; duties.

60-2605. Record requirements.

60-2606. Records; maintenance and location.

60-2607. Records; inspection.

60-2608. Peace officer; seize vehicle or major component part; when; disposition.

**60-2601 Terms, defined.**

As used in sections 60-2602 to 60-2607, unless the context otherwise requires:

(1) Major component part shall mean an engine, with or without accessories, a transmission, cowl, door, frame, body, rear clip, or nose;

(2) Nose shall mean that portion of the body of a vehicle from the front to the firewall when acquired or transferred as a complete unit;

(3) Frame shall mean that portion of a vehicle upon which other components are affixed, such as the engine, body, or transmission;

(4) Body shall mean that portion of a vehicle which determines its shape and appearance and is attached to the frame; and

(5) Rear clip shall mean two or more of the following, all dismantled from the same vehicle: A quarter panel or fender, floor panel assembly, or trunk lid or gate.

**Source:** Laws 1983, LB 234, § 19.

**60-2602 Acquisition of vehicle or parts; duties; record; contents.**

Whenever any wrecker or salvage dealer who is required to be licensed pursuant to the Motor Vehicle Industry Regulation Act acquires, after August 26, 1983, any material which is or may have been a vehicle or major component part:

(1) The wrecker or salvage dealer shall determine by means of a driver's license, state identification card, certificate of employer's federal identification number, or license issued by the board, the identity of the person or firm from whom such material is acquired; and

(2) Each such wrecker or salvage dealer shall maintain a record of the following information:

(a) The name and address of the person or firm from whom such material was acquired;

(b) The means by which such person or firm was identified, including the number and issuing state of any driver's license or state identification card, the federal employer's identification number, or the licensee's number issued by the board;

(c) A general description of the material acquired, including, but not limited to, if available and identifiable, the year, make, model, manufacturer's vehicle identification number, and any other identifying marks or numbers, of any vehicle or major component part; and

(d) The date of acquisition, the purchase price, including the value and description of any material traded, and the type of payment, including the number of any check or draft issued or received in exchange for such material.

**Source:** Laws 1983, LB 234, § 22; Laws 2010, LB816, § 86.

**Cross References**

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-2603 Possession of salvage vehicle on August 26, 1983; effect.**

Any wrecker or salvage dealer licensed by the board pursuant to the Motor Vehicle Industry Regulation Act having possession on August 26, 1983, of both a salvage vehicle and a certificate of title for such vehicle, either issued to or assigned to such a person, shall not be required to obtain a salvage branded certificate of title for such vehicle except upon transfer of the vehicle to a person not required to be licensed as a wrecker or salvage dealer by the board.

**Source:** Laws 1983, LB 234, § 23; Laws 2002, LB 830, § 24; Laws 2010, LB816, § 87.

**Cross References**

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-2604 Possession of major component part on August 26, 1983; duties.**

Any wrecker or salvage dealer required to be licensed by the board pursuant to the Motor Vehicle Industry Regulation Act having possession on August 26, 1983, of a major component part shall include in his or her regular business records the information required to be recorded by subdivision (2) of section 60-2602, to the extent such information is available.

**Source:** Laws 1983, LB 234, § 24; Laws 2010, LB816, § 88.

**Cross References**

Motor Vehicle Industry Regulation Act, see section 60-1401.

**60-2605 Record requirements.**

The records required by sections 60-2602 to 60-2604 shall be maintained for any vehicle of any model year, but records of major component parts shall be maintained only with respect to major component parts of vehicles five model years or less in age on the date of acquisition. The board may by rule and regulation, exempt vehicles or major component parts of vehicles from all or a portion of the record-keeping requirements, based upon the age of the vehicle or part if the board deems that such requirements would serve no substantial value.

**Source:** Laws 1983, LB 234, § 25.

**60-2606 Records; maintenance and location.**

Every record required to be maintained pursuant to sections 60-2602 to 60-2604 shall be maintained by such a wrecker or salvage dealer in the ordinary course of business and shall be maintained for five years at the principal place of business of such wrecker or salvage dealer, in such a manner that, upon request during regular business hours by any designated peace officer or investigator employed by the board, such wrecker or salvage dealer shall be able, within a reasonable time, not exceeding twelve hours, to furnish the information requested.

**Source:** Laws 1983, LB 234, § 26.

**60-2607 Records; inspection.**

Every record required to be maintained pursuant to sections 60-2602 to 60-2604 shall be open to inspection by any designated peace officer or investigator employed by the board for inspection during regular business hours. Such inspection may include examination of the subject premises and contents for the purpose of determining the accuracy of the required records.

**Source:** Laws 1983, LB 234, § 27.

**60-2608 Peace officer; seize vehicle or major component part; when; disposition.**

(1) Any peace officer shall seize and take possession of any vehicle or any major component part, as defined in section 60-2601, of a vehicle which the officer has probable cause to believe is stolen, or on which the identification number has been obscured, covered, removed, altered, or destroyed.

(2) Property seized pursuant to this section shall not be subject to a replevin action and:

(a) Shall be kept by the law enforcement agency which employs the officer who seized such property, or by its designee, for so long as it is needed as evidence in any trial; and

(b) When no longer required as evidence, such property shall be disposed of pursuant to sections 29-818 to 29-821.

(3) Property seized pursuant to this section solely on account of an obscured identification number may be restored to the owner or his or her designee without court order unless such property is required as evidence in a criminal action pending or contemplated in this or another jurisdiction.

**Source:** Laws 1983, LB 234, § 28.

## ARTICLE 27

## MANUFACTURER'S WARRANTY DUTIES

## Section

- 60-2701. Terms, defined.  
 60-2702. Motor vehicle not conforming to express warranties; duty to repair.  
 60-2703. Manufacturer's duty to replace vehicle or refund price; when; affirmative defense.  
 60-2704. Attempts to conform motor vehicle to warranties; presumption; term of warranty; how computed.  
 60-2705. Dispute settlement procedure; effect; director; duties.  
 60-2706. Statute of limitations.  
 60-2707. Attorney's fees; when allowed.  
 60-2708. Sections, how construed.  
 60-2709. Applicability of sections.

**60-2701 Terms, defined.**

As used in sections 60-2701 to 60-2709, unless the context otherwise requires:

(1) Consumer shall mean the purchaser, other than for purposes of resale, of a motor vehicle normally used for personal, family, household, or business purposes, any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty;

(2) Motor vehicle shall mean a new motor vehicle as defined in section 60-1401.30 which is sold in this state, excluding recreational vehicles as defined in section 60-347; and

(3) Manufacturer's express warranty shall mean the written warranty, so labeled, of the manufacturer of a new motor vehicle.

**Source:** Laws 1983, LB 155, § 1; Laws 1989, LB 280, § 10; Laws 2005, LB 274, § 266; Laws 2010, LB816, § 89.

A precise or specific defect does not need to be proved in order to find a product defective under either article 2 of the Uniform Commercial Code or sections 60-2701 to 60-2709. *Genetti v. Caterpillar, Inc.*, 261 Neb. 98, 621 N.W.2d 529 (2001).

An action under sections 60-2701 to 60-2709 is an action at law. *Genetti v. Caterpillar, Inc.*, 261 Neb. 98, 621 N.W.2d 529 (2001).

Under section 60-2708, a theory of recovery under sections 60-2701 to 60-2709 may be brought together with other theories of recovery. Theories of recovery for both breach of warranty and for recovery under sections 60-2701 to 60-2709 may be submitted to the jury, but once a plaintiff receives verdicts under both theories of recovery, he or she must elect between them. *Genetti v. Caterpillar, Inc.*, 261 Neb. 98, 621 N.W.2d 529 (2001).

**60-2702 Motor vehicle not conforming to express warranties; duty to repair.**

If a motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of such express warranties or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent, or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

**Source:** Laws 1983, LB 155, § 2.

**60-2703 Manufacturer's duty to replace vehicle or refund price; when; affirmative defense.**

If the manufacturer, its agents, or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all sales taxes, license fees, and registration fees and any similar governmental charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer and any previous owner prior to his or her first report of the nonconformity to the manufacturer, agent, or dealer and during any subsequent period when the vehicle is not out of service by reason of repair. It shall be an affirmative defense to any claim under sections 60-2701 to 60-2709 (1) that an alleged nonconformity does not substantially impair such use and market value or (2) that a nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by a consumer.

**Source:** Laws 1983, LB 155, § 3.

**60-2704 Attempts to conform motor vehicle to warranties; presumption; term of warranty; how computed.**

It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if (1) the same nonconformity has been subject to repair four or more times by the manufacturer, its agents, or authorized dealers within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity continues to exist or (2) the vehicle is out of service by reason of repair for a cumulative total of forty or more days during such term or during such period, whichever is the earlier date. The term of an express warranty, such one-year period, and such forty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, or strike, or fire, flood, or other natural disaster. In no event shall the presumption provided in this section apply against a manufacturer unless the manufacturer has received prior written direct notification by certified mail from or on behalf of the consumer and an opportunity to cure the defect alleged.

**Source:** Laws 1983, LB 155, § 4.

**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, in existence as of February 22, 1983.

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.

**60-2706 Statute of limitations.**

Any action brought under sections 60-2701 to 60-2709 shall be commenced within (1) one year following the expiration of the express warranty term or (2) two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date.

**Source:** Laws 1983, LB 155, § 6.

**60-2707 Attorney's fees; when allowed.**

In any action brought under sections 60-2701 to 60-2709 the court shall award reasonable attorney's fees to the prevailing party if the prevailing party is the consumer.

**Source:** Laws 1983, LB 155, § 7.

**60-2708 Sections, how construed.**

Nothing in sections 60-2701 to 60-2709 shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

**Source:** Laws 1983, LB 155, § 8.

Under this section, a theory of recovery under sections 60-2701 to 60-2709 may be brought together with other theories of recovery. Genetti v. Caterpillar, Inc., 261 Neb. 98, 621 N.W.2d 529 (2001).

**60-2709 Applicability of sections.**

Sections 60-2701 to 60-2709 shall apply to motor vehicles beginning with the manufacturer's 1984 model year.

**Source:** Laws 1983, LB 155, § 9.

**ARTICLE 28****ALL-TERRAIN VEHICLES**

## Section

- 60-2801. Transferred to section 60-6,355.
- 60-2802. Transferred to section 60-6,356.
- 60-2803. Transferred to section 60-6,357.
- 60-2804. Transferred to section 60-6,358.
- 60-2805. Transferred to section 60-6,359.
- 60-2806. Transferred to section 60-6,360.
- 60-2807. Transferred to section 60-6,361.
- 60-2808. Transferred to section 60-6,362.

**60-2801 Transferred to section 60-6,355.**

**60-2802 Transferred to section 60-6,356.**

**60-2803 Transferred to section 60-6,357.**

**60-2804 Transferred to section 60-6,358.**

**60-2805 Transferred to section 60-6,359.**

**60-2806 Transferred to section 60-6,360.**

**60-2807 Transferred to section 60-6,361.**

**60-2808 Transferred to section 60-6,362.**

## ARTICLE 29

## UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT

## Section

60-2901.	Act, how cited.
60-2902.	Purpose of act.
60-2903.	Legislative findings and intent.
60-2904.	Terms, defined.
60-2905.	Disclosure of personal information prohibited.
60-2906.	Personal information; disclosure pursuant to federal law.
60-2907.	Motor vehicle record; disclosure; authorized purposes.
60-2908.	Fees.
60-2909.	Conditions for disclosure.
60-2909.01.	Disclosure; purposes authorized.
60-2910.	Resale or redisclosure of information.
60-2911.	Rules and regulations.
60-2912.	False statement; disclosure of sensitive personal information; penalty.
60-2913.	Repealed. Laws 2000, LB 1317, § 18.

**60-2901 Act, how cited.**

Sections 60-2901 to 60-2912 shall be known and may be cited as the Uniform Motor Vehicle Records Disclosure Act.

**Source:** Laws 1997, LB 635, § 1; Laws 2000, LB 1317, § 10.

**60-2902 Purpose of act.**

The purpose of the Uniform Motor Vehicle Records Disclosure Act is to implement the federal Driver's Privacy Protection Act of 1994, Title XXX of Public Law 103-322, in order to protect the interest of individuals in their personal privacy by prohibiting the disclosure and use of personal information contained in their motor vehicle records except as authorized by such individuals or by law.

**Source:** Laws 1997, LB 635, § 2.

**60-2903 Legislative findings and intent.**

(1) The Legislature hereby finds that the federal Driver's Privacy Protection Act of 1994, with an effective date of September 13, 1997, provides for mandatory release in some instances and restrictions on release and use in other instances of certain personal information from state motor vehicle records and also provides numerous exceptions from those restrictions. Some of the exceptions are dependent on state legislation, and the purpose of the Uniform Motor Vehicle Records Disclosure Act is to enact choices permitted under the federal legislation in the interest of ensuring that motor vehicle record information which is a matter of public record shall remain a matter of public record in this state to the maximum extent permitted under the federal law.

(2) The Legislature intends that to the extent permitted by the federal law, Nebraska law pertaining to motor vehicle records should continue to recognize such records as public records to the extent it has done so prior to the effective date of the federal legislation and the terms of the Uniform Motor Vehicle Records Disclosure Act should be construed liberally to effect that purpose.

**Source:** Laws 1997, LB 635, § 3.

**60-2904 Terms, defined.**

For purposes of the Uniform Motor Vehicle Records Disclosure Act:

(1) Department means the Department of Motor Vehicles or the duly authorized agents or contractors of the department responsible to compile and maintain motor vehicle records;

(2) Disclose means to engage in any practice or conduct to make available and make known personal information contained in a motor vehicle record about a person to any other person, organization, or entity by any means of communication;

(3) Individual record means a motor vehicle record containing personal information about a designated person who is the subject of the record as identified in a request;

(4) Motor vehicle record means any record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle certificate of title, motorboat certificate of title, or state identification card issued by the department or any other state or local agency authorized to issue any of such forms of credentials;

(5) Person means an individual, organization, or entity;

(6) Personal information means information that identifies a person, including an individual's driver identification number, name, address excluding zip code, and telephone number, but does not include information on vehicular accidents, driving or equipment-related violations, and driver's license or registration status; and

(7) Sensitive personal information means an individual's operator's license photograph, social security number, and medical or disability information.

**Source:** Laws 1997, LB 635, § 4; Laws 2000, LB 1317, § 11; Laws 2001, LB 574, § 32.

**60-2905 Disclosure of personal information prohibited.**

(1) Notwithstanding any other provision of state law to the contrary, except as provided in sections 60-2906 and 60-2907, the department and any officer, employee, agent, or contractor of the department shall not disclose personal information about any person obtained by the department in connection with a motor vehicle record.

(2) Notwithstanding any other provision of state law to the contrary, except as provided in sections 60-483, 60-484, and 60-2909.01, the department and any officer, employee, agent, or contractor of the department shall not disclose sensitive personal information about any person obtained by the department in connection with a motor vehicle record without the express written consent of the person to whom such information pertains.

**Source:** Laws 1997, LB 635, § 5; Laws 2000, LB 1317, § 12.

**60-2906 Personal information; disclosure pursuant to federal law.**

Personal information referred to in section 60-2905 shall be disclosed by the department or any officer, employee, agent, or contractor of the department to carry out the purposes of Titles I and IV of the Anti-Car Theft Act of 1992, 15 U.S.C. 2021 et seq., the Automobile Information Disclosure Act, 15 U.S.C. 1231 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., and 49 U.S.C. chapters 301,

305, and 321 to 331, as amended, and all federal regulations enacted or adopted to implement such federal laws.

**Source:** Laws 1997, LB 635, § 6.

**60-2907 Motor vehicle record; disclosure; authorized purposes.**

The department and any officer, employee, agent, or contractor of the department having custody of a motor vehicle record shall, upon the verification of identity and purpose of a requester, disclose and make available the requested motor vehicle record, including the personal information in the record, for the following purposes:

(1) For use by any federal, state, or local governmental agency, including any court or law enforcement agency, in carrying out the agency's functions or by a private person or entity acting on behalf of a governmental agency in carrying out the agency's functions;

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers;

(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors but only:

(a) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(b) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or governmental agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court, an administrative agency, or a self-regulatory body;

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals;

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting;

(7) For use in providing notice to the owners of abandoned, towed, or impounded vehicles;

(8) For use only for a purpose permitted under this section either by a private detective, plain clothes investigator, or private investigative agency licensed under sections 71-3201 to 71-3213;

(9) For use by an employer or the employer's agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is

**UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT § 60-2909.01**

required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301 et seq., or pursuant to sections 60-4,132 and 60-4,141;

(10) For use in connection with the operation of private toll transportation facilities;

(11) For bulk distribution for surveys of, marketing to, or solicitations of persons who have expressly consented to such disclosure if the requester has obtained the notarized written consent of the individual who is the subject of the personal information being requested and has provided proof of receipt of such written consent to the department or an officer, employee, agent, or contractor of the department on a form prescribed by the department;

(12) For any use if the requester has obtained the notarized written consent of the individual who is the subject of the personal information being requested and has provided proof of receipt of such written consent to the department or an officer, employee, agent, or contractor of the department;

(13) For use, including redisclosure through news publication, of a member of a medium of communication as defined in section 20-145 who requests such information in connection with preparing, researching, gathering, or confirming news information involving motor vehicle or driver safety or motor vehicle theft;

(14) For use by the federally designated organ procurement organization for Nebraska to establish and maintain the Donor Registry of Nebraska as provided in section 71-4822; and

(15) For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety.

**Source:** Laws 1997, LB 635, § 7; Laws 2000, LB 1317, § 13; Laws 2004, LB 559, § 6; Laws 2010, LB1036, § 34.

**60-2908 Fees.**

Disclosure of personal information required or permitted under section 60-2906 or 60-2907 shall be subject to payment by the requester to the department of all fees for the information prescribed by statute.

**Source:** Laws 1997, LB 635, § 8.

**60-2909 Conditions for disclosure.**

In addition to provision for payment of applicable fees, the department may, prior to the disclosure of personal information as permitted under section 60-2906 or 60-2907, require the meeting of conditions by the requester for the purposes of obtaining reasonable assurance concerning the identity of the requester and, to the extent required, that the information will only be used as authorized or that the consent of the person who is the subject of the information has been obtained. Such conditions shall include, but need not be limited to, the making and filing of a form containing such information and verification as the department may prescribe.

**Source:** Laws 1997, LB 635, § 9.

**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 verifica-

tion 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; and

(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 that is required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301 et seq., or pursuant to sections 60-4,132 and 60-4,141.

**Source:** Laws 2000, LB 1317, § 14.

#### **60-2910 Resale or redisclosure of information.**

(1) An authorized recipient of personal information disclosed under section 60-2906 or 60-2907, except a recipient under subdivision (11) of section 60-2907, may resell or redisclose the information only for the uses permitted under section 60-2907, but not including the use for bulk distribution for surveys, marketing, or solicitations as set forth in subdivision (11) of such section.

(2) An authorized recipient of personal information for bulk distribution for surveys, marketing, or solicitations under subdivision (11) of section 60-2907 may resell or redisclose personal information only in accordance with the terms of such subdivision concerning the right of individuals who have so consented to such disclosure.

(3) An authorized recipient who resells or rediscloses personal information shall (a) make and keep for a period of not less than five years records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained and (b) make such records available for inspection and copying by a representative of the department upon request.

(4) The department may implement any safeguard which the department considers reasonable or necessary, including a bond requirement, in a memorandum of understanding executed under this section to ensure that the information provided or sold is used only for a permissible purpose and that the rights of individuals and the interest of the state are protected.

**Source:** Laws 1997, LB 635, § 10; Laws 2000, LB 1317, § 15.

#### **60-2911 Rules and regulations.**

The department is authorized to adopt and promulgate rules and regulations to carry out the Uniform Motor Vehicle Records Disclosure Act. The rules and regulations may include procedures under which the department, upon receiving a request for personal information that is not subject to disclosure in accordance with the exception provisions of sections 60-2906 and 60-2907, may mail a copy of such request to each individual who is the subject of the information, informing each such individual of the request, together with a statement to the effect that disclosure is prohibited and will not be made unless the individual affirmatively elects to waive his or her right to privacy under the act.

**Source:** Laws 1997, LB 635, § 11.

**60-2912 False statement; disclosure of sensitive personal information; penalty.**

(1) Any person requesting the disclosure of personal information from department records who misrepresents his or her identity or makes a false statement to the department on any application required to be submitted pursuant to the Uniform Motor Vehicle Records Disclosure Act shall be guilty of a Class IV felony.

(2) Any officer, employee, agent, or contractor of the department that knowingly discloses or knowingly permits disclosure of sensitive personal information in violation of the act shall be guilty of a Class I misdemeanor and shall be subject to removal from office or discharge in the discretion of the Governor or agency head, as appropriate.

**Source:** Laws 1997, LB 635, § 12; Laws 2001, LB 574, § 33.

**60-2913 Repealed. Laws 2000, LB 1317, § 18.**

**ARTICLE 30**

**FEES AND TAXATION**

Section

- 60-3001. Repealed. Laws 2005, LB 274, § 286.
- 60-3002. Repealed. Laws 2005, LB 274, § 286.
- 60-3003. Repealed. Laws 2005, LB 274, § 286.
- 60-3004. Repealed. Laws 2005, LB 274, § 286.
- 60-3005. Repealed. Laws 2005, LB 274, § 286.
- 60-3005.01. Repealed. Laws 2005, LB 274, § 286.
- 60-3006. Repealed. Laws 2005, LB 274, § 286.
- 60-3007. Repealed. Laws 2005, LB 274, § 286.
- 60-3008. Repealed. Laws 2005, LB 274, § 286.
- 60-3009. Repealed. Laws 2005, LB 274, § 286.

**60-3001 Repealed. Laws 2005, LB 274, § 286.**

**60-3002 Repealed. Laws 2005, LB 274, § 286.**

**60-3003 Repealed. Laws 2005, LB 274, § 286.**

**60-3004 Repealed. Laws 2005, LB 274, § 286.**

**60-3005 Repealed. Laws 2005, LB 274, § 286.**

**60-3005.01 Repealed. Laws 2005, LB 274, § 286.**

§ 60-3006

**MOTOR VEHICLES**

**60-3006 Repealed. Laws 2005, LB 274, § 286.**

**60-3007 Repealed. Laws 2005, LB 274, § 286.**

**60-3008 Repealed. Laws 2005, LB 274, § 286.**

**60-3009 Repealed. Laws 2005, LB 274, § 286.**