

LEGISLATIVE BILL 1105

Approved by the Governor April 19, 2002

Introduced by Transportation and Telecommunications Committee:
 Bromm, 23, Chairperson; Baker, 44; Brown, 6; Byars, 30;
 Hudkins, 21; Jones, 43; Dw. Pedersen, 39; Robak, 22;
 Connealy, 16

AN ACT relating to transportation and telecommunications; to amend sections 2-3917.02, 25-2503, 28-109, 28-515, 28-711, 28-1310, 39-101, 43-158, 60-102, 60-471, 60-501, 60-636, 60-638, 60-639, 60-640, 60-678, 60-6,142, 60-6,144, 60-6,226, 60-6,241, 60-6,304, 60-6,349, 60-6,351, 70-301, 75-101, 75-117, 75-128, 75-133, 75-155, 75-605, 75-607, 75-608, 75-611 to 75-616, 76-2301, 76-2321, 81-1117, 81-1120.17, 81-1120.19, 81-1576, 81-1849, 81-2301 to 81-2303, 81-2305, 81-2306, 81-2308, 81-2309 to 81-2313, 81-2601, 81-2603 to 81-2605, 86-101 to 86-107, 86-109, 86-111, 86-112, 86-301 to 86-309, 86-329, 86-331.01 to 86-331.04, 86-334 to 86-338, 86-401 to 86-412, 86-502, 86-601, 86-701 to 86-712, 86-801, 86-802, 86-805 to 86-807, 86-809, 86-810, 86-1001 to 86-1004, 86-1006 to 86-1009, 86-1101 to 86-1109, 86-1201 to 86-1218, 86-1221, 86-1301 to 86-1305, 86-1307, 86-1401, 86-1402, 86-1404, 86-1406 to 86-1410, 86-1501 to 86-1514, 86-1601 to 86-1606, 86-1803 to 86-1811, 86-1901 to 86-1904, 86-1906, 86-1910, 86-1911, 86-2002 to 86-2007, and 86-2009 to 86-2013, Reissue Revised Statutes of Nebraska, sections 2-1570, 25-2602.01, 49-14,141, 52-1307, 52-1314, 60-311.14, 60-680, 60-1417.01, 75-122.01, 75-126, 75-134, 75-137, 75-156, 75-606, 75-609 to 75-610, 75-617, 81-1120.35 to 81-1120.38, 81-1120.40, 81-1190 to 81-1192, 81-1194, 81-1195, 81-1196.01, 81-1199, 81-11,102, 81-2304, 81-2307, 81-2308.01, 81-2602, 86-803, 86-811, 86-1005, 86-1110, 86-1111, 86-1219, 86-1222, 86-1306, 86-1701, and 86-2101 to 86-2116, Revised Statutes Supplement, 2000, sections 18-419, 28-401, 60-301, 60-4,182, 60-601, 70-625, 70-704, 70-1409, 71-1,142, 75-132.01, 75-604, 79-215, 79-1241.02, 86-804, 86-808, 86-1403, 86-1405, 86-1905, 86-1907 to 86-1909, 86-2001, 86-2008, 86-2014, 86-2201 to 86-2214, and 86-2301 to 86-2307, Revised Statutes Supplement, 2001, sections 9-812 and 79-1328, Revised Statutes Supplement, 2001, as amended by sections 1 and 8, respectively, Legislative Bill 3, Ninety-seventh Legislature, First Special Session, 2001, and section 75-109, Revised Statutes Supplement, 2000, as amended by section 9, Legislative Bill 435, Ninety-seventh Legislature, Second Session, 2002; to reorganize statutory provisions relating to telecommunications and technology; to transfer, combine, and eliminate sections; to eliminate obsolete and expired provisions and penalties; to provide and change powers and duties of the Public Service Commission; to change provisions relating to application for and issuance of plates for handicapped or disabled persons; to authorize the use of electric personal assistive mobility devices as prescribed; to define and redefine terms; to prescribe rights and duties under the Nebraska Rules of the Road; to provide penalties; to change provisions relating to motor vehicle and trailer auction dealers; to harmonize provisions; to provide duties for the Revisor of Statutes; to provide operative dates; to repeal the original sections; and to outright repeal sections 86-108, 86-110, 86-113, 86-201, 86-202, 86-203, 86-208 to 86-211, 86-330, 86-331, 86-503, 86-602, 86-603, and 86-1220, Reissue Revised Statutes of Nebraska.

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

Section 1. (1) This legislative bill is a reorganization of telecommunications and technology statutes as codified in Chapter 86 and is the result of interim studies conducted from 1999 through 2001 by the Transportation and Telecommunications Committee of the Legislature and the Public Service Commission. In 1999, the committee began to examine the statutory and regulatory authority of the commission. Although the commission's jurisdiction covers several diverse subjects, the committee and the commission jointly decided to examine the communications jurisdiction first since this subject matter represents a significant portion of the commission's workload and has been the topic of a recent volume of legislation in response to the federal Telecommunications Act of 1996, Public Law 104-104. Upon a review of the telecommunications and technology statutes, the committee

found that the statutes were scattered based upon both subject matter (placement within Chapter 86) and jurisdiction or agency (placement within Chapters 75 and 81). The committee recommended that all substantive telecommunications and technology statutes be placed by subject matter instead of by jurisdiction or agency. As a result, it is the intent of the Legislature that Chapter 86 encompass all telecommunications and technology statutes. In addition the committee recommended that the telecommunications and technology statutes be reorganized by topic and restructured to aid readability and ease of use by the public.

(2) This legislative bill is a simple restructuring and basic reorganization of the telecommunications and technology statutes and does not contain any change in substantive law or public policy as such law or policy existed prior to the operative date of this section. Aside from reorganization, this legislative bill does contain grammar changes and language changes to conform with current stylistic bill drafting conventions. Such grammar and language changes include dividing lengthy sentences into shorter sentences, dividing lengthy statutes into multiple statutes or subsections, using the active voice and present verb tense, using gender neutral terminology, deleting obsolete date references, and naming groups of statutes as named acts.

(3) Sections 2 to 415 of this act represent the "recodified Chapter 86". The committee recommends that the "recodified Chapter 86" be categorized as follows:

(a) Article 1 - Telecommunications Regulation (sections 2 to 62 of this act);

(b) Article 2 - Telecommunications Consumer Protection (sections 63 to 178 of this act);

(c) Article 3 - Universal Service (sections 179 to 207 of this act);

(d) Article 4 - Public Safety Systems (sections 208 to 270 of this act);

(e) Article 5 - Public Technology Infrastructure (sections 271 to 362 of this act);

(f) Article 6 - Electronic Information (sections 363 to 405 of this act); and

(g) Article 7 - Telecommunications Rights-of-way (sections 406 to 415 of this act).

Sections 416 to 426, 428 to 435, 437 to 441, 467 to 481, 483, 485 to 487, 489, 490, and 492 to 510 of this act are harmonization sections. These harmonization sections fall into three basic categories: Statutes outside Chapter 86 which contain internal references to statutes reorganized within Chapter 86; statutes outside Chapter 86 which contain terminology that requires changes to conform with statutes reorganized within Chapter 86; and statutes formerly within Chapter 86 which are transferred outside of Chapter 86 because the subject matter lies outside the scope of telecommunications and technology.

(4) This section terminates on January 1, 2003.

Sec. 2. Sections 2 to 62 of this act shall be known and may be cited as the Nebraska Telecommunications Regulation Act.

Sec. 3. Section 86-801, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-801.~~ The Legislature declares that it is the policy of the state to:

(1) Preserve affordable telecommunications services;

(2) Maintain and advance the efficiency and availability of telecommunications services;

(3) Ensure that consumers pay only reasonable charges for telecommunications services;

(4) Promote diversity in the supply of telecommunications services and products throughout the state; and

(5) Promote fair competition in all Nebraska telecommunications markets in a manner consistent with the federal act.

Sec. 4. Section 86-802, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-802.~~ For purposes of ~~sections 75-109, 75-604, 75-609, 75-609.01, and 86-801 to 86-811~~ the Nebraska Telecommunications Regulation Act, unless the context otherwise requires, the definitions found in sections 5 to 22 of this act apply. +

(1) Basic local exchange rate means the flat monthly charge for an access line, whether the service is provided on a flat or measured basis, imposed by a telecommunications company for basic local exchange service, but does not include any charges or taxes imposed by or resulting from action by a governmental body which are billed by a telecommunications company to its

customers;

(2) ~~Basic local exchange service means the access and transmission of two-way switched voice communications within a local exchange area;~~

(3) ~~Business service means telecommunications service which is used for occupational, professional, or institutional purposes;~~

(4) ~~Class of subscribers means a group of customers for which a telecommunications company has established a distinct pricing plan for telecommunications service;~~

(5) ~~Commission means the Public Service Commission;~~

(6) ~~Extended area service means a telecommunications service which groups two or more exchanges to allow subscribers of one exchange in the group to place and receive two-way switched communications to and from subscribers in one or more other exchanges in the group without an interexchange toll charge;~~

(7) ~~Federal act means the federal Communications Act of 1934, as amended, including the federal Telecommunications Act of 1996, Public Law 104-104;~~

(8) ~~Interexchange service means the access and transmission of communications between two or more local exchange areas, except for two-way switched communications between local exchanges that are grouped for extended area service;~~

(9) ~~Inter-LATA interexchange service means interexchange service originating and terminating in different LATAs;~~

(10) ~~Intra-LATA interexchange service means interexchange service originating and terminating within the same LATA;~~

(11) ~~LATA means local access transport area as defined by applicable federal law, rules, or regulations;~~

(12) ~~Local exchange area means a territorial unit established by a telecommunications company for the administration of telecommunications service within a specific area generally encompassing a city, town, or village and its environs as described in maps filed with and approved by the Public Service Commission;~~

(13) ~~Residence service means telecommunications service which is furnished to a dwelling and which is used for personal or domestic purposes and not for business, professional, or institutional purposes;~~

(14) ~~Telecommunications means the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without a change in the form or content of the information as sent or received;~~

(15) ~~Telecommunications common carrier means a provider of telecommunications services for hire which offers its services to the general public at large in Nebraska intrastate commerce;~~

(16) ~~Telecommunications company means any person, firm, partnership, limited liability company, corporation, association, or governmental entity offering telecommunications service for a fee in Nebraska intrastate commerce;~~

(17) ~~Telecommunications contract carrier means a provider of telecommunications services for hire, other than as a common carrier, in Nebraska intrastate commerce; and~~

(18) ~~Telecommunications service means the offering of telecommunications for a fee.~~

Sec. 5. Basic local exchange rate means the flat monthly charge for an access line, whether the telecommunications service is provided on a flat or measured basis, imposed by a telecommunications company for basic local exchange service but does not include any charge or tax imposed by or resulting from action by a governmental body which is billed by a telecommunications company to its customers.

Sec. 6. Basic local exchange service means the access and transmission of two-way switched voice communications within a local exchange area.

Sec. 7. Business service means telecommunications service which is used for occupational, professional, or institutional purposes.

Sec. 8. Class of subscribers means a group of customers for which a telecommunications company has established a distinct pricing plan for telecommunications service.

Sec. 9. Commission means the Public Service Commission.

Sec. 10. Extended area service means a telecommunications service which groups two or more exchanges to allow subscribers of one exchange in the group to place and receive two-way switched communications to and from subscribers in one or more other exchanges in the group without an interexchange toll charge.

Sec. 11. Federal act means the federal Communications Act of 1934, as amended, including the federal Telecommunications Act of 1996, as such acts

existed on January 1, 2002.

Sec. 12. Interexchange service means the access and transmission of communications between two or more local exchange areas, except for two-way switched communications between local exchanges that are grouped for extended area service.

Sec. 13. Inter-LATA interexchange service means interexchange service originating and terminating in different LATAs.

Sec. 14. Intra-LATA interexchange service means interexchange service originating and terminating within the same LATA.

Sec. 15. LATA means local access and transport area as defined by 47 U.S.C. 153(25), as such section existed on January 1, 2002.

Sec. 16. Local exchange area means a territorial unit established by a telecommunications company for the administration of telecommunications service within a specific area generally encompassing a city or village and its environs as described in maps filed with and approved by the commission.

Sec. 17. Residence service means telecommunications service which is furnished to a dwelling and which is used for personal or domestic purposes and not for business, professional, or institutional purposes.

Sec. 18. Telecommunications means the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without a change in the form or content of the information as sent or received.

Sec. 19. Telecommunications common carrier means a provider of telecommunications service for hire which offers telecommunications service to the general public at large in Nebraska intrastate commerce.

Sec. 20. Telecommunications company means any person, firm, partnership, limited liability company, corporation, association, or governmental entity offering telecommunications service in Nebraska intrastate commerce.

Sec. 21. Telecommunications contract carrier means a provider of telecommunications service for hire, other than as a common carrier, in Nebraska intrastate commerce.

Sec. 22. Telecommunications service means the offering of telecommunications for a fee.

Sec. 23. (1) The commission shall implement the federal Telecommunications Act of 1996, as such act existed on January 1, 2002, including section 252 of the act which establishes specific procedures for negotiation and arbitration of interconnection agreements between telecommunications companies. Interconnection agreements approved by the commission pursuant to section 252 of the act may contain such enforcement mechanisms and procedures that the commission determines to be consistent with the establishment of fair competition in Nebraska telecommunications markets.

(2) The commission shall not mandate any arrangement that requires interconnecting telecommunications companies to engage in mutual recovery of costs through offsetting of reciprocal obligations. This subsection shall not prohibit telecommunications companies from entering into voluntary agreements to engage in such an agreement.

(3) In addition, the commission may administratively fine pursuant to section 75-156 any person who violates any enforcement mechanism or procedure established pursuant to this section. The authority granted to the commission pursuant to this section shall be broadly construed in a manner consistent with the federal Telecommunications Act of 1996.

Sec. 24. Section 86-809, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-809. Sections 75-109, 75-604, 75-609, 75-609.01, and 86-801 to 86-811~~ (1) The commission shall regulate the quality of telecommunications service provided by telecommunications companies and shall investigate and resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and disconnection of telecommunications service. If such a complaint cannot be resolved informally, then, upon petition by the subscriber, the commission shall set the matter for hearing in accordance with the commission's rules and regulations for notice and hearing. The commission may by order grant or deny, in whole or in part, the subscriber's petition or provide such other relief as is reasonable based on the evidence presented at the hearing. Any such order of the commission may be enforced against any telecommunications company as provided in sections 75-140 to 75-144, and such order may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(2) The commission may regulate telecommunications company rates pursuant to sections 38 to 56 of this act.

(3) The Nebraska Telecommunications Regulation Act shall preempt and prohibit any regulation of a telecommunications company by counties, cities,

villages, townships, or any other local governmental entity.

Sec. 25. Section 86-808, Revised Statutes Supplement, 2001, is amended to read:

~~86-808.~~ The commission shall not regulate the following:

- (1) One-way broadcast or cable television transmission of television or radio signals; and
- (2) Mobile radio services, radio paging services, and wireless telecommunications service.

Sec. 26. Section 86-807, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-807.~~ (1) Except for requirements established by statute, the commission may limit, remove, or waive regulatory requirements for telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may revoke any waivers it grants or reinstate regulations if such revocation or reinstatement would protect the public interest upon a finding that the telecommunications company is restricting market output, impairing customer interest, or engaging in unlawful anticompetitive activity.

~~(2) A telecommunications company shall at a minimum:~~

~~(a) Keep its accounts according to rules and regulations adopted and promulgated by the commission;~~

~~(b) File financial reports with the commission as required by and in a form and at times prescribed by the commission;~~

~~(c) Keep on file at the commission such current price lists and service standards as the commission may require; and~~

~~(d) Cooperate with commission investigations of customer complaints.~~

Sec. 27. Section 75-604, Revised Statutes Supplement, 2001, is amended to read:

~~75-604.~~ (1) (a) To preserve the integrity of a ubiquitous network, to preserve and advance universal service, and to ensure the delivery of essential and emergency telecommunications service, telecommunications common carriers and telecommunications contract carriers in Nebraska are subject to regulation by the commission. In addition to the requirements of ~~Except as provided in section 86-805, ne 28 of this act, a person, firm, partnership, limited liability company, corporation, cooperative, or association shall file an application and receive either a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier before such person may~~ (i) offer any telecommunications service or shall (ii) construct new telecommunications facilities in, or extend existing telecommunications facilities into, the territory of another telecommunications company ~~for the purpose of providing to provide any telecommunications service.~~

(b) The commission may only issue a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier as either a telecommunications common carrier or telecommunications contract carrier without first making an application for and receiving from the commission a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier, after due notice and hearing under the pursuant to commission rules and regulations. The commission shall not issue a certificate or a permit to an agency or political subdivision of the state. of the commission. The required certificate for telecommunications common carriers and required permit for telecommunications contract carriers are necessary to preserve the integrity of a ubiquitous network, to preserve and advance universal service, and to ensure the delivery of essential and emergency telecommunications services.

(2) If a telecommunications company holds a certificate of convenience and necessity as a telecommunications common carrier, it shall not be required to obtain a permit as a telecommunications contract carrier.

(3) ~~The commission may waive applicability of subsection (1) of this section as to the provision of intra-LATA interexchange services by duly adopted and promulgated rules and regulations applicable to all telecommunications companies providing such services, and after such waiver, certification for and provision of intra-LATA interexchange services shall be governed by the statutes, rules, and regulations for certification for and provision of inter-LATA interexchange services.~~

(4) The commission may establish such just and reasonable classifications of groups of telecommunications common carriers and telecommunications contract carriers taking into consideration the special nature of the services telecommunications service performed by such carriers. The commission may adopt and promulgate such just and reasonable rules, regulations, and requirements to be observed by a carrier so classified or

grouped as the commission deems necessary or desirable and in the public interest.

(4) The commission may waive applicability of subsection (1) of this section as to the provision of intra-LATA interexchange service under rules and regulations applicable to all telecommunications companies providing such interexchange service. After such waiver, the certificate or permit for and provision of intra-LATA interexchange service shall be governed by the statutes, rules, and regulations for a certificate or permit for and provision of inter-LATA interexchange service.

~~(5) The commission shall not issue a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier to an agency or political subdivision of the state.~~

Sec. 28. Section 86-805, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-805.~~ (1) The commission may issue a certificate or permit authorizing any telecommunications company which ~~se~~ applies to the commission files an application to offer and provide inter-LATA interexchange service. The ~~services, which~~ application shall include such information as may be required by the commission under duly adopted and promulgated rules and regulations of the commission. The commission may as a precondition to certification issuing a certificate or permit: (a) Require the procurement of a performance bond sufficient to cover amounts due or to become due to other telecommunications companies providing access to the local exchange networks for the applicant; and (b) require the procurement of a performance bond sufficient to protect any advances or deposits the telecommunications company may collect from its customers or order that such advances or deposits be held in escrow or trust.

(2) The commission may deny certification a certificate or permit to any telecommunications company which:

(a) Does not provide the information required by the commission;

(b) Fails to provide a performance bond, if required;

(c) Does not possess adequate financial resources to provide the proposed interexchange service; or

(d) Does not possess adequate technical competency to provide the proposed interexchange service.

(3) The ~~Within thirty days after receiving an application, the commission shall take action to approve a certificate or permit or issue a notice of hearing concerning any application for certification within thirty days after receiving the application. A hearing is only required to deny an application. The commission may approve an application with or without a hearing. The commission may deny an application only after a hearing.~~

(4) Any telecommunications company or an its affiliate thereof that has been authorized by the commission to offer an interexchange service prior to January 1, 1987, shall continue to have such authority. Such ~~and it~~ shall not be necessary for such telecommunications company to make or affiliate need not file a new application to provide the interexchange service previously authorized by the commission.

Sec. 29. Section 75-605, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-605.~~ Any person who operates telephone service (1) Every telecommunications company in Nebraska shall file with the commission (a) maps of the territory in Nebraska in which ~~it~~ the telecommunications company offers local exchange telephone service and shall file (b) amended maps from time to time to continuously keep current the information shown on such maps.

(2) Rules and regulations of the commission shall include: The style, size, and kind of maps; ~~and~~ together with the information to be shown on such maps; ~~and~~ shall be that required by rules and regulations of the commission. The rules and regulations shall indicate the time and place for filing the maps; and shall require a requirement that the maps be kept current.

(3) The commission may revoke or suspend the certificate of convenience and necessity as a telecommunications common carrier or the permit as a telecommunications contract carrier of any telecommunications company who violates this section.

Sec. 30. Section 75-607, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-607.~~ Any telephone carrier Every telecommunications company shall take the calls or messages coming from any other telephone carrier telecommunications company and switch and connect its equipment so that any telephone message from any point in Nebraska may be delivered to any subscriber served by its telephone exchange or switched through and so that

any message may be passed on to another exchange over such trunk or toll lines as may be available and designated by the exchange or switching station where the call originated, regardless of the ownership of such lines. Such ~~telephone carrier~~ telecommunications company shall also take calls from its subscribers and public pay stations and pass such calls through its exchange toward destination and over the lines and the route designated by the person making such telephone call if there are competing lines existing between such points. If the person making such telephone call does not designate a route for such message or no competing lines exist between points of origination and destination, the ~~carrier~~ telecommunications company may, by its operator at originating point, make such designation of route, but calls or messages shall be switched through to destination if the point can be reached by any connecting equipment.

Sec. 31. Section 75-608, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-608.~~ Whenever any competing telephone plant or exchange has been consolidated with or absorbed by another so that the remaining plant or exchange has a monopoly of or exclusive telephone business of any city or village, the ~~operator~~ of telecommunications company operating the exclusive exchange or plant shall cause all toll or trunk lines formerly terminating in the eliminated exchange to be placed on or connected to its exclusive exchange, shall make and keep such connection in a good and efficient manner, and shall maintain an interchange of business with such trunk or toll lines the same as its own, in a fair and impartial manner, upon the terms set forth in this section and sections 75-607 to 75-609 30, 39, and 52 of this act. During the period intervening between the time when the first subscribers are taken from the eliminated exchange until the time all have been removed, if such period is more than thirty days, a temporary trunk line shall be established between the two exchanges so that calls may come into both exchanges from the trunk or toll lines of the exchange so absorbed or eliminated and that calls from both exchanges may go out over the lines.

Sec. 32. Section 75-611, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-611.~~ An existing telephone exchange or central office shall not be abandoned or removed to another city or village except by the written consent of at least sixty percent of the subscribers who had rental service contracts with the ~~carrier~~ telecommunications company which seeks to change service six months before an application to change telecommunications service is filed with the commission. The commission shall hold a hearing and issue an order before the change is effected.

Sec. 33. Section 86-806, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-806.~~ A telecommunications company may offer special incentives, discounts, packaged offerings, temporary price waivers, or other promotions and may introduce new services and discontinue existing services by filing rate lists which shall be effective after ten days' notice to the commission. ~~However, no~~ No telecommunications company which provides intrastate interexchange service or basic local exchange service may abandon or otherwise discontinue such service in or to a local exchange area which it serves unless:

(1) The commission finds upon application and hearing that one or more other telecommunications companies are furnishing comparable telecommunications service to the subscribers in such local exchange area at the time of abandonment; and

(2) The telecommunications company discontinuing telecommunications service to such local exchange area:

(a) Notifies its subscribers in the local exchange area in writing of the abandonment, which notice shall be sent at least thirty days prior to the effective date of such abandonment;

(b) Refunds any unused prepaid subscription charges or other unused prepaid charges to each customer in the local exchange area prior to the effective date of the abandonment; and

(c) Prior to the effective date of the abandonment, reimburses its customers in the local exchange area for service charges which its customers incur in obtaining substitute service from another telecommunications company or, in lieu thereof, pays other telecommunications companies directly for such service charges on behalf of its customers making changes in their ~~services~~ telecommunications service as a result of the abandonment.

Sec. 34. Section 75-612, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-612.~~ Any one or more persons person may file an application with the commission to obtain the ~~telephone~~ telecommunications service furnished in

the exchange service area adjacent to the territory in which the applicant ~~or applicants reside or operate~~ resides or operates. The commission shall serve upon each ~~telephone carrier~~ telecommunications company directly affected a copy of the application and notice of the hearing at least thirty days prior to the hearing on the application, which shall be held if all of the ~~telephone carriers~~ telecommunications companies involved do not consent to the application.

Sec. 35. Section 75-613, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-613.~~ Upon the completion of the hearing on such an application made pursuant to section ~~75-612~~ 34 of this act, if a hearing is required, the commission may grant the application, in whole or in part, if the evidence establishes all of the following:

(1) That such applicant ~~or applicants are~~ is not receiving, and will not within a reasonable time receive, reasonably adequate exchange telephone service from the ~~carrier~~ telecommunications company which furnishes such service in the exchange service area in which the applicant ~~or applicants reside or operate~~ resides or operates. The fact that an applicant is required to pay toll charges for long-distance telephone calls to an exchange service area adjacent to the territory in which the applicant resides or operates shall not be deemed to constitute inadequate exchange telephone service from the ~~carrier~~ telecommunications company which furnishes such service;

(2) The revision of the exchange service area required to grant the application will not create a duplication of facilities, is economically sound, and will not impair the capability of any ~~telephone carrier~~ telecommunications company affected to serve the remaining subscribers in any affected exchanges;

(3) The community of interest in the general territory is such that the public offering of each ~~telephone carrier~~ telecommunications company in its own exchange service area involved should include all the territory in its service area as revised by the commission's order; and

(4) The applicant ~~or applicants are~~ is willing and will be required to pay such construction and other costs and rates as are fair and equitable and will reimburse the affected ~~carrier~~ telecommunications company for any necessary loss of investment in existing property as determined by the commission.

Sec. 36. Section 75-614, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-614.~~ After the commission has lawfully granted an application pursuant to section ~~75-613~~ 35 of this act, the ~~telephone carrier~~ telecommunications company ordered to provide the exchange telephone service shall be issued a certificate of convenience and necessity to serve that portion of the territory added to its exchange service area by the commission. The commission shall set the date when the exchange telephone service granted shall take effect and, in doing so, shall take into consideration any construction or major repair which will be required of the ~~carriers~~ telecommunications company involved.

Sec. 37. Section 75-615, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-615.~~ When the commission refuses to grant an application made pursuant to section ~~75-612~~ 34 of this act, no new application for the same exchange telephone service shall be filed or shall be considered by the commission until one year has elapsed after the date of mailing of the commission order.

Sec. 38. Section 86-803, Revised Statutes Supplement, 2000, is amended to read:

~~86-803.~~ (1) Telecommunications Except as provided in the Nebraska Telecommunications Regulation Act, telecommunications companies shall not be subject to rate regulation by the commission except as provided in sections 75-609.01 and 86-801 to 86-811 and shall not be subject to provisions as to rates and charges prescribed in sections 75-101 to 75-158. and 75-604 to 75-616, except as otherwise provided in sections 75-609.01 and 86-801 to 86-811. In an exchange in which local competition exists, telecommunications companies shall file rate lists for all telecommunications services which shall be effective after ten days' notice to the commission.

(2) In an exchange in which local competition does not exist, telecommunications companies shall file rate lists which, for all telecommunications service except for basic local exchange rates, shall be effective after ten days' notice to the commission. In such exchanges, basic local exchange rates may be increased by a telecommunications company only after ninety days' notice to all affected subscribers. Such notice of increase shall include (a) the reasons for the rate increase, (b) a

description of the affected service, (c) an explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase, (d) a list of exchanges which are affected by the proposed rate increase, and (e) the dates, times, and places for the public informational meetings required by this section. A telecommunications company which proposes to increase its basic local exchange rates shall hold at least one public informational meeting in each public service commissioner district as established by section 75-101.01 in which there is an exchange affected by the increase.

(3) Basic local exchange rates increased by any telecommunications company pursuant to subsection (2) of this section shall be reviewed by the commission only upon formal complaint signed by (a) five percent of all affected subscribers if the telecommunications company has up to fifty thousand access lines affected by the increase, (b) three percent of all affected subscribers if the telecommunications company has fifty thousand but not more than two hundred fifty thousand access lines affected by the increase, or (c) two percent of all affected subscribers if the telecommunications company has more than two hundred fifty thousand access lines affected by the increase. The complaint shall specifically set forth the particular rate or charge as to which review is requested, the reasons for the requested review, and the relief which the complainants desire. If a proper complaint is presented to the commission within ninety days from the date notice of the rate change was sent to affected subscribers of a telecommunications company that has up to fifty thousand access lines in service or within one hundred twenty days from the date notice of the rate change was sent to affected subscribers of a telecommunications company that has fifty thousand or more access lines in service, the commission shall accept and file the complaint and, upon proper notice, may suspend the rates and charges at issue during the pendency of the proceedings and reinstate the rates and charges previously in effect and shall hold and complete a hearing thereon within ninety days after filing to determine if the rates as proposed are fair, just, and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates and charges at issue, except that the commission shall not set any rate or charge below the actual cost of providing such service, which may include a reasonable profit, as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing which may be paid as a credit against billings for future services.

In an exchange in which local competition does not exist, a telecommunications company shall not increase its basic local exchange rates without the approval of the commission for six months from the date the commission enters such order. If the complaint is denied, the commission shall enter an order denying the complaint within sixty days after the close of the hearing, and the rates and charges shall be deemed approved for all purposes, including for purposes of appeal.

For purposes of this section, actual cost shall also include a ratable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs.

(4) Notwithstanding the provisions of subsections (2), (3), and (8) of this section, a telecommunications company may at any time file an application with the commission requesting the commission to prescribe fair, just, and reasonable rates for the company or such telecommunications company may elect to proceed, if eligible, under section 75-609.01. Such proceedings shall be governed by sections 75-101 to 75-158 and 75-604 to 75-616 and shall not be limited by subsection (2) of this section. Any rate so set may thereafter be adjusted as provided in subsections (2) and (3) of this section.

(5) In setting rates for interexchange services, telecommunications companies that provide such services shall continue to average their rates for all such services on a statewide basis unless the commission, upon application and hearing, orders otherwise. This subsection shall not prohibit volume discounts or other discounts based on reasonable business purposes. With regard to interexchange telecommunications services, nothing in sections 86-801 to 86-811 shall preempt or affect any right, liability, cause of action, duty, or obligation arising from any law with regard to unfair business practices or anticompetitive activity.

(6) No telecommunications company shall be required to deaverage its wholesale basic local exchange rates to reflect the differences in the costs of providing basic local exchange service in the various exchanges that the company serves until the retail basic local exchange rates for those exchanges are also deaveraged or until funds are disbursed to that telecommunications

company from federal or state universal service or high-cost funds to offset the higher-than-average costs which that company incurs in serving high-cost exchanges.

(7) The commission shall retain quality of service regulation over the services provided by all telecommunications companies and shall investigate and resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and disconnection of service. If such complaint cannot be resolved informally, then, upon petition by the subscriber, the commission shall set the matter for hearing in accordance with the commission's rules and regulations for notice and hearing and may by order render its decision granting or denying in whole or in part the subscriber's petition or provide such other relief as is reasonable based on the evidence presented to the commission at the hearing. Any such order of the commission may be enforced against any telecommunications company as provided in sections 75-140 to 75-144 and may be appealed in accordance with the Administrative Procedure Act.

(8) In an exchange where local competition does not exist, the commission may, on its own motion, review basic local exchange rates of any telecommunications company if the company has increased such rates by more than ten percent within any consecutive twelve-month period. The commission shall hold and complete a hearing on such rates within ninety days after first giving notice of such hearing to the telecommunications company to determine if the rates as proposed are fair, just, and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates and charges at issue, except that the commission shall not set any rate or charge below the actual cost of providing such service, which may include a reasonable profit, as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing which may be paid as a credit against billings for future services. If the commission fails to enter any order within sixty days after the close of the hearing, the rates and charges shall be deemed approved for all purposes, including for purposes of appeal. For purposes of this subsection, actual cost shall also include a ratable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs.

(9) Notwithstanding any other provisions of this section providing procedures governing review of basic local exchange rate increases, when a telecommunications company files a rate list to increase its basic local exchange rates by more than ten percent within any consecutive twelve-month period, the commission shall conduct only the limited review provided in this subsection if (a) such increase, when considered together with all other rate changes which the telecommunications company proposes to implement simultaneously with the basic local exchange rate increase, does not increase the telecommunications company's aggregate annual revenue resulting from such rate changes in this state by more than one percent and (b) the basic local exchange rates specified in the rate list do not exceed the telecommunications company's actual cost of providing basic local exchange service to the affected subscribers.

A telecommunications company filing rate lists in accordance with the procedures provided in this subsection shall submit to the commission with such filing: (i) Documentation to demonstrate that the combined effect of the proposed rate changes, in the aggregate, will not increase such company's annual revenue resulting from such rate changes in this state by more than one percent and (ii) if the commission so requires, documentation to demonstrate that the proposed basic local exchange rates do not exceed such company's actual cost of providing such service to the affected subscribers.

The commission shall hold a public hearing to receive evidence concerning the basic local exchange rate increase proposed by the telecommunications company. Unless an extension is granted, such hearing shall be held within sixty days after the date on which the rate list providing for such increase was filed with the commission or, if the commission requires further documentation to be filed with the rate list filing, within sixty days after the date of receipt by the telecommunications company of notice for further documentation from the commission. The commission upon its own motion may grant a one-time, thirty-day extension for the hearing date. If the telecommunications company presents evidence at the hearing that such increase is in accordance with the requirements of this subsection, not more than sixty days after the close of such hearing the commission shall enter an order approving or disapproving the proposed basic local exchange rate increase and, if approved, the revised basic local exchange rates shall become effective upon the entry of such order.

(10) The commission may order that flat rate services shall be available whenever measured service is implemented and that for such services the price restrictions prescribed in sections 86-801 to 86-811 shall be retained. Measured service means basic local exchange service, the rate for which is a combination of a flat rate access line charge plus usage charges which may be based upon number of calls, length of call, distance, and time of day.

(11) The commission shall approve the disposition of revenue resulting from decreases in federal or state income taxes or property taxes due to a tax law change that results in a reduction in the tax liability of a telecommunications company of twenty percent or more in any taxable year. Any telecommunications company so affected shall file a plan with the commission proposing the disposition of the revenue at the same time that it files its annual report with the commission. The commission shall schedule a public hearing within thirty days after the filing of the plan or the plan shall be deemed approved.

(12) No telecommunications company may change its basic local exchange rate within ninety days after entry of a final order adjusting such rate pursuant to subsections (4) and (8) of this section.

(13) Any order of the commission entered pursuant to authority granted in sections 86-801 to 86-811 may be appealed by any party to the proceeding in accordance with the Administrative Procedure Act.

(14) No telecommunications company that obtains at wholesale rates basic local exchange service from another telecommunications company that is available at retail to a specific class of subscribers shall offer such service to a different class of subscribers.

(15) The commission shall not mandate any arrangement that requires interconnecting telecommunications companies to engage in mutual recovery of costs through offsetting of reciprocal obligations. This subsection shall not prohibit telecommunications companies from entering voluntary agreements to engage in such an agreement.

(16) Local competition shall be deemed to exist in an exchange if a telecommunications company files an application with the commission requesting a determination as to whether local competition exists in one or more exchanges specified in the application and the commission enters an order after public notice and a hearing which determines that local competition exists in such exchange or exchanges. The commission may, on its own motion at any time after a determination as to whether local competition exists, reexamine and redetermine the determination after notice and a hearing on the issue. Notwithstanding any other provision of sections 86-801 to 86-811, the commission may consider any wireless telecommunications services provided in the exchange or exchanges when determining whether local competition exists. The notice of the hearing on the telecommunications company's application shall be given once each week for two consecutive weeks in a newspaper of general circulation in the affected area and shall state that a determination of local competition may result in the freeing of the telecommunications company from rate regulation by the commission. The notice of the hearing on the commission's motion shall be sent to the telecommunications company by certified mail, return receipt requested, and notice of such hearing shall be published in a newspaper of general circulation in the exchange area. The hearing on the commission's motion shall be held no sooner than ten days after the receipt of notice to the telecommunications company.

Sec. 39. Section 75-609, Revised Statutes Supplement, 2000, is amended to read:

75-609. (1) When two or more telephone carriers jointly furnish interexchange service or extended area service, the revenue from such jointly furnished service shall be divided in such manner as may be agreed upon by the carriers furnishing such service. In the event of inability to agree, any one of the carriers jointly furnishing such service may file an application with the commission requesting that the commission enter an order prescribing an equitable division of revenue from such jointly furnished service.

(2) Access charges imposed by telephone carriers telecommunications companies for access to a local exchange network for interexchange services service shall be negotiated by the carriers telecommunications companies involved. Any affected carrier telecommunications company may apply for review of such charges by the commission, or the commission may make a motion to review such charges. Upon such application or motion and unless otherwise agreed to by all parties thereto, the commission shall, upon proper notice, hold and complete a hearing thereon within sixty days of the filing. The commission may, within sixty days after the close of the hearing, enter an order setting access charges which are fair and reasonable. The commission shall set an access charge structure for each local exchange carrier but may

order discounts where there is not available access of equal type and quality for all interexchange carriers, except that the commission shall not order access charges which would cause the annual revenue to be realized by the local exchange carrier from all interexchange carriers to be less than the annual costs, as determined by the commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange carrier in providing such access services. Any actions taken pursuant to this subsection shall be substantially consistent with the federal act and federal actions taken under its authority.

~~(3)~~ (2) Reductions made to access charges pursuant to subsection ~~(2)~~ (1) of this section shall be passed on to the customers of interexchange service carriers in Nebraska whose payment of charges have been reduced. The commission shall have the power and authority to (a) ensure that any access charge reductions made pursuant to subsection ~~(2)~~ (1) of this section are passed on in a manner that is fair and reasonable. ~~The commission shall have the power to~~ and (b) review actions taken by any ~~telephone carrier~~ telecommunications company to ensure that this subsection is carried out.

~~(4) Any party to a proceeding under this section may appeal an order of the commission in accordance with the Administrative Procedure Act.~~

~~(5)~~ (3) For purposes of this section, access charges means the charges paid by ~~telephone carriers~~ telecommunications companies to local exchange carriers in order to originate and terminate calls using local exchange facilities.

Sec. 40. Section 75-609.01, Revised Statutes Supplement, 2000, is amended to read:

~~75-609.01.~~ (1) ~~Telephone carriers~~ Telecommunications companies which serve less than five percent of the state's subscriber lines in the aggregate statewide shall not be subject to rate regulation by the commission pursuant to ~~section 75-609~~ sections 39 and 52 of this act unless (a) the ~~carrier~~ telecommunications company elects by action of its board of directors to be subject to such rate regulation by the commission, (b) the proposed rate increase exceeds thirty percent in any one year, (c) five percent of the subscribers petition the commission to regulate rates pursuant to subsections (2) through (4) of this section, or (d) the commission declares that the ~~carrier~~ telecommunications company shall be subject to rate regulation by the commission pursuant to subsection (5) of this section.

(2) Each such ~~telephone carrier~~ telecommunications company not subject to rate regulation shall, at least ninety days before the effective date of any proposed rate change, notify the commission and each of the ~~carrier's~~ telecommunications company's subscribers of the proposed rate change. Notice to the commission shall include a list of the ~~carrier's~~ telecommunications company's published subscribers. Notice by the ~~carrier~~ telecommunications company to all subscribers shall be in a form prescribed by the commission, shall be by first-class mail, and shall include a schedule of the proposed rates, the effective date of the rates, and the procedure necessary for the subscribers to petition the commission to determine rates in lieu of the proposed rates.

(3) The subscribers of a ~~telephone carrier~~ telecommunications company not subject to the commission's rate regulation may petition the commission to determine rates in lieu of any rate change proposed by the ~~carrier~~ telecommunications company pursuant to subsection (2) of this section. A petition substantially in compliance with the rules and regulations of the commission shall not be deemed invalid due to minor errors in its form.

(4) If, by the effective date of the ~~carrier's~~ telecommunications company's proposed rate change, the commission has received petitions from less than five percent of the subscribers requesting that the commission determine rates, the commission shall certify such fact to the ~~carrier~~ telecommunications company and the ~~carrier's~~ telecommunications company's proposed rates shall become effective as published in the notice to subscribers. If, on or before the effective date of the proposed rate change, the commission has received petitions from five percent or more of the subscribers requesting that the commission determine rates, the commission shall notify the ~~carrier~~ telecommunications company that it will determine rates for the ~~carrier~~ telecommunications company in lieu of the ~~carrier's~~ telecommunications company's proposed rate change. Rates established by the commission or by a ~~telephone carrier~~ telecommunications company pursuant to subsections (2) through (4) of this section shall be in force for at least one year.

(5) In addition to the procedure for petition prior to any proposed rate change pursuant to subsections (2) through (4) of this section, the subscribers of a ~~telephone carrier~~ telecommunications company not subject to the commission's rate regulation may at any time petition the commission to

declare that the carrier telecommunications company shall be subject to such rate regulation. If the commission determines that at least fifty-one percent of a carrier's telecommunications company's subscribers have properly petitioned that the carrier telecommunications company be subject to the commission's rate regulation, the commission shall certify such fact to the carrier telecommunications company and thereafter the carrier telecommunications company shall be subject to rate regulation by the commission until at least fifty-one percent of the carrier's telecommunications company's subscribers properly petition that the carrier telecommunications company no longer shall be subject to the commission's rate regulation. This section shall not be construed to exempt any local exchange carrier from regulation of its access charges pursuant to ~~subsection (2) or (3) of section 75-609~~ 39 of this act.

Sec. 41. A telecommunications company may offer special incentives, discounts, packaged offerings, temporary price waivers, or other promotions and may introduce new telecommunications service and discontinue existing telecommunications service by filing rate lists which shall be effective after ten days' notice to the commission.

Sec. 42. (1) In an exchange in which local competition exists, telecommunications companies shall file rate lists for each telecommunications service which shall be effective after ten days' notice to the commission.

(2) Local competition shall be deemed to exist in an exchange if a telecommunications company files an application with the commission requesting a determination as to whether local competition exists in one or more exchanges specified in the application and the commission enters an order after public notice and a hearing which determines that local competition exists in such exchange or exchanges. Notwithstanding any other provision of the Nebraska Telecommunications Regulation Act, the commission may consider any wireless telecommunications service provided in the exchange or exchanges when determining whether local competition exists.

(3) The notice of the hearing on the telecommunications company's application shall be given once each week for two consecutive weeks in a newspaper of general circulation in the affected area and shall state that a determination of local competition may result in the freeing of the telecommunications company from rate regulation by the commission. The notice of the hearing on the commission's motion shall be sent to the telecommunications company by certified mail, return receipt requested, and notice of such hearing shall be published in a newspaper of general circulation in the exchange area. The hearing on the commission's motion shall be held no sooner than ten days after the receipt of notice by the telecommunications company.

(4) The commission may, on its own motion at any time after a determination as to whether local competition exists, reexamine and redetermine the determination after notice and a hearing on the issue.

Sec. 43. (1) In an exchange in which local competition does not exist, telecommunications companies shall file rate lists which, for all telecommunications service except for basic local exchange rates, shall be effective after ten days' notice to the commission.

(2) In an exchange in which local competition does not exist, basic local exchange rates may be increased by a telecommunications company only after ninety days' notice to all affected subscribers. Such notice of increase shall include (a) the reasons for the rate increase, (b) a description of the affected telecommunications service, (c) an explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase, (d) a list of exchanges which are affected by the proposed rate increase, and (e) the dates, times, and places for the public informational meetings required by this section.

(3) A telecommunications company which proposes to increase its basic local exchange rates shall hold at least one public informational meeting in each public service commissioner district as established by section 75-101.01 in which there is an exchange affected by the proposed rate increase.

Sec. 44. (1) Basic local exchange rates increased by any telecommunications company pursuant to section 43 of this act shall be reviewed by the commission only upon formal complaint. The complaint shall specifically set forth the particular rate as to which review is requested, the reasons for the requested review, and the relief which the complainants desire. The complaint shall be signed by (a) five percent of all affected subscribers if the telecommunications company has up to fifty thousand access lines affected by the rate increase, (b) three percent of all affected subscribers if the telecommunications company has fifty thousand but not more than two hundred fifty thousand access lines affected by the rate increase, or

(c) two percent of all affected subscribers if the telecommunications company has more than two hundred fifty thousand access lines affected by the rate increase.

(2) If a proper complaint is presented to the commission within ninety days from the date notice of the rate change was sent to affected subscribers of a telecommunications company that has up to fifty thousand access lines in service or within one hundred twenty days from the date notice of the rate change was sent to affected subscribers of a telecommunications company that has fifty thousand or more access lines in service, the commission (a) shall accept and file the complaint, (b) upon proper notice, may suspend the rates at issue during the pendency of the proceedings and reinstate the rates previously in effect, and (c) shall hold and complete a hearing thereon within ninety days after filing to determine if the rates as proposed are fair, just, and reasonable.

(3) The commission may, within sixty days after close of the hearing, enter an order adjusting the rates at issue, except that the commission shall not set any rate below the actual cost of providing such service, which may include a reasonable profit, as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates as approved at the hearing which may be reimbursed as a credit against billings for future services.

(4) A telecommunications company shall not increase its basic local exchange rates without the approval of the commission for six months from the date the commission enters an order pursuant to subsection (3) of this section. If the complaint is denied, the commission shall enter an order denying the complaint within sixty days after the close of the hearing, and the rates proposed by the telecommunications company shall be deemed approved for all purposes, including for purposes of appeal.

(5) For purposes of this section, actual cost includes a ratable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs.

Sec. 45. (1) In an exchange in which local competition does not exist, the commission may, on its own motion, review basic local exchange rates of any telecommunications company if the company has increased such rates by more than ten percent within any consecutive twelve-month period. The commission shall hold and complete a hearing on such rates within ninety days after first giving notice of such hearing to the telecommunications company to determine if the rates as proposed are fair, just, and reasonable.

(2) The commission may, within sixty days after close of the hearing, enter an order adjusting the rates at issue, except that the commission shall not set any rate for providing such telecommunications service below its actual cost as defined in section 44 of this act, which may include a reasonable profit, as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates as approved at the hearing which may be reimbursed as a credit against billings for future services.

(3) If the commission fails to enter any order within sixty days after the close of the hearing, the rates proposed by the telecommunications company shall be deemed approved for all purposes, including for purposes of appeal.

(4) No telecommunications company may change its basic local exchange rates within ninety days after entry of a final order adjusting such rates pursuant to this section.

Sec. 46. Notwithstanding the provisions of sections 43 to 45 of this act, a telecommunications company may at any time file an application with the commission requesting the commission to prescribe fair, just, and reasonable rates for the telecommunications company or a telecommunications company may elect to proceed, if eligible, under section 40 of this act. Such proceedings shall be governed by sections 75-101 to 75-158 and sections 39, 40, and 52 of this act and shall not be limited by section 43 of this act. Any rate so set may thereafter be adjusted as provided in sections 43 and 44 of this act, however no telecommunications company may change its basic local exchange rate within ninety days after entry of a final order adjusting such rate pursuant to this section.

Sec. 47. (1) Notwithstanding the procedures governing review of basic local exchange rate increases in sections 43 to 45 of this act, when a telecommunications company files a rate list to increase its basic local exchange rates by more than ten percent within any consecutive twelve-month period, the commission shall conduct only the limited review provided in this section if (a) such increase, when considered together with all other rate changes which the telecommunications company proposes to implement

simultaneously with the basic local exchange rate increase, does not increase the telecommunications company's aggregate annual revenue resulting from such rate changes in this state by more than one percent and (b) the basic local exchange rates specified in the rate list do not exceed the telecommunications company's actual cost as defined in section 44 of this act of providing basic local exchange service to the affected subscribers.

(2) A telecommunications company filing rate lists in accordance with the procedures provided in this section shall submit to the commission with such filing: (a) Documentation to demonstrate that the combined effect of the proposed rate changes, in the aggregate, will not increase the telecommunications company's annual revenue resulting from such rate changes in this state by more than one percent and (b) if the commission so requires, documentation to demonstrate that the proposed basic local exchange rates do not exceed the telecommunications company's actual cost as defined in section 44 of this act of providing basic local exchange service to the affected subscribers.

(3) The commission shall hold a public hearing to receive evidence concerning the basic local exchange rate increase proposed by the telecommunications company. Unless an extension is granted, such hearing shall be held within sixty days after the date on which the rate list providing for such increase was filed with the commission or, if the commission requires further documentation to be filed with the rate list filing, within sixty days after the date of receipt by the telecommunications company of notice for further documentation from the commission. The commission upon its own motion may grant a one-time, thirty-day extension for the hearing date. If the telecommunications company presents evidence at the hearing that such increase is in accordance with this section, not more than sixty days after the close of such hearing the commission shall enter an order approving or disapproving the proposed basic local exchange rate increase and, if approved, the revised basic local exchange rates shall become effective upon the entry of such order.

Sec. 48. In setting rates for interexchange service, telecommunications companies that provide interexchange service shall continue to average their rates for all interexchange service on a statewide basis unless the commission, upon application and hearing, orders otherwise. This section shall not prohibit volume discounts or other discounts based on reasonable business purposes. With regard to interexchange service, nothing in the Nebraska Telecommunications Regulation Act shall preempt or affect any right, liability, cause of action, duty, or obligation arising from any law with regard to unfair business practices or anticompetitive activity.

Sec. 49. No telecommunications company shall be required to deaverage its wholesale basic local exchange rates to reflect the differences in the costs of providing basic local exchange service in the various exchanges that the telecommunications company serves until the retail basic local exchange rates for those exchanges are also deaveraged or until funds are disbursed to such telecommunications company from federal or state universal service or high-cost funds to offset the higher-than-average costs which such telecommunications company incurs in serving high-cost exchanges.

Sec. 50. A telecommunications company that obtains at wholesale rates basic local exchange service from another telecommunications company that is available at retail to a specific class of subscribers shall not offer such basic local exchange service to a different class of subscribers.

Sec. 51. The commission may order that flat rate service shall be available whenever measured service is implemented and that for such service the price restrictions prescribed in the Nebraska Telecommunications Regulation Act shall be retained. Measured service means basic local exchange service, the rate for which is a combination of a flat rate access line charge plus usage charges which may be based upon number of calls, length of calls, distance of calls, and time of day.

Sec. 52. When two or more telecommunications companies jointly furnish interexchange service or extended area service, the revenue from such jointly furnished service shall be divided in such manner as may be agreed upon by the telecommunications companies furnishing such service. In the event of inability to agree, any one of the telecommunications companies jointly furnishing such service may file an application with the commission requesting that the commission enter an order prescribing an equitable division of revenue from such jointly furnished service.

Sec. 53. The commission shall approve the disposition of revenue resulting from decreases in federal or state income taxes or property taxes due to a tax law change that results in a reduction in the tax liability of a telecommunications company of twenty percent or more in any taxable year. Any telecommunications company so affected shall file a plan with the commission

proposing the disposition of the revenue at the same time that it files its annual report with the commission. The commission shall schedule a public hearing within thirty days after the filing of the plan or the plan shall be deemed approved.

Sec. 54. Applications for commission approval of specific new rates or charges or changes in existing rates or charges for telecommunications service which have not been heard and determined within six months and thirty days from the date the application was filed may be put into effect by the telecommunications company, in an amount not to exceed seventy-five percent of the total amount of the application, subject to refund of any amount collected in excess of the amount which would have been collected under the new or changed rates or charges as finally approved by the commission. The refund shall include an interest payment at a rate of interest determined by the commission, except that the rate of interest shall not exceed the overall rate of return which the telecommunications company is authorized to earn. When making its final determination on the application, the commission shall not consider the rates and charges of the telecommunications company put into effect pending such final determination. This section shall not apply to tariffs placed into effect under section 55 of this act.

Sec. 55. Section 75-616, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-616.~~ Whenever any ~~telephone carrier~~ telecommunications company files a specific tariff for any new equipment, new telecommunications service feature of existing equipment, or rate not previously offered and the commission has not finally determined the tariff within sixty days thereafter, it shall become effective as filed. The tariff shall remain in effect until the commission determines an appropriate interim tariff or finally determines the matter. This section shall not apply to services of a type offered only by regulated ~~telephone carriers~~ telecommunications companies.

Sec. 56. Section 86-810, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-810.~~ Whenever any municipality or any other local governmental entity imposes upon a telecommunications company any tax or fee as described in section 409 of this act, such tax or fee shall, insofar as practicable, be billed pro rata to the telecommunications company's customers receiving ~~communications services~~ telecommunications service within the territorial limits of such municipality or other local governmental entity.

Sec. 57. Section 86-811, Revised Statutes Supplement, 2000, is amended to read:

~~86-811.~~ (1) Except as otherwise provided in section 24 of this act, any order of the commission entered pursuant to authority granted in the Nebraska Telecommunications Regulation Act may be appealed by any party to the proceeding. The appeal shall be in accordance with the Administrative Procedure Act.

(2) An original action or appeal concerning a violation of ~~any provision of section 75-109, 75-604, 75-609, 75-609.01, or 86-801 to 86-810~~ the Nebraska Telecommunications Regulation Act by a telecommunications company shall follow the procedures set forth in section 75-132.01.

~~(2) In addition, the commission may administratively fine pursuant to section 75-156 any person who violates subsection (2) of section 75-109 or section 75-604, 75-609, 75-609.01, or 86-801 to 86-810.~~

Sec. 58. A telecommunications company shall:

(1) Keep accounts according to commission rules and regulations;
(2) File financial reports in a form and at times prescribed by the commission;

(3) File current price lists and service standards prescribed by the commission; and

(4) Cooperate with commission investigations of customer complaints.

Sec. 59. Section 75-617, Revised Statutes Supplement, 2000, is amended to read:

~~75-617.~~ The commission may administratively fine pursuant to section 75-156 any person who violates ~~sections 75-611 to 75-616~~ the Nebraska Telecommunications Regulation Act.

Sec. 60. Section 75-606, Revised Statutes Supplement, 2000, is amended to read:

~~75-606.~~ The commission may revoke or suspend the certificate of convenience of any violator of section 75-605. Any person who violates any provision of such section 29 of this act is shall be guilty of a Class V misdemeanor. The commission shall enforce such section, and the Attorney General or any county attorney shall, upon request of the commission, assist in the prosecution of any violations of such section. ~~In addition, the commission may administratively fine pursuant to section 75-156 any person who~~

violates section 75-605.

Sec. 61. Section 75-610, Revised Statutes Supplement, 2000, is amended to read:

~~75-610.~~ Any ~~telephone carrier~~ telecommunications company or its agent who fails or neglects to comply with ~~sections 75-607 to 75-609.01~~ section 30, 31, 39, 40, or 52 of this act or who violates any of the provisions of such sections shall be is guilty of a Class IV misdemeanor. ~~In addition, the commission may administratively fine pursuant to section 75-156 any such carrier or agent who violates sections 75-607 to 75-609.01.~~

Sec. 62. Section 86-804, Revised Statutes Supplement, 2001, is amended to read:

~~86-804.~~ The commission shall file with the Clerk of the Legislature an annual report on or before September 30 of each year on the status of the Nebraska telecommunications industry. The report may be submitted in electronic format. The report shall: ~~address:~~

(1) ~~The~~ Describe the quality of telecommunications ~~services~~ service being provided to the citizens of Nebraska;

(2) Describe the availability of diverse and affordable telecommunications ~~services~~ service to all of the people of Nebraska;

(3) Describe the level of telecommunications service rates;

(4) Describe the use and continued need for the Nebraska Telecommunications Universal Service Fund;

(5) Describe the availability and location of 911 service and E-911 service as required by section ~~86-1005~~ 238 of this act; ~~and~~

(6) Describe the availability and location of wireless 911 service or enhanced wireless 911 service as required by section ~~86-2205~~. The report also shall address the question of 261 of this act; and

(7) Address the need for further legislation to achieve the purposes of ~~sections 86-801 to 86-811~~ the Nebraska Telecommunications Regulation Act.

Sec. 63. Section 86-1901, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1901.~~ Sections ~~86-1901 to 86-1911~~ 63 to 73 of this act shall be known and may be cited as the Telephone Consumer Slamming Prevention Act.

Sec. 64. Section 86-1902, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1902.~~ It is the policy of this state to ensure that all subscribers are protected from the unauthorized switching of a telecommunications company selected by the subscriber to provide telecommunications service.

Sec. 65. Section 86-1903, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1903.~~ For purposes of the Telephone Consumer Slamming Prevention Act, the definitions found in ~~section 86-802~~ shall be used the Nebraska Telecommunications Regulation Act apply.

Sec. 66. Section 86-1904, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1904.~~ Except as provided in section ~~86-808~~ 25 of this act, the Telephone Consumer Slamming Prevention Act shall apply to all telecommunications companies providing basic local exchange service, intra-LATA interexchange service, inter-LATA interexchange service, and any other telecommunications ~~services~~ service to subscribers in this state.

Sec. 67. Section 86-1905, Revised Statutes Supplement, 2001, is amended to read:

~~86-1905.~~ (1) (a) Except as provided in subsection (2) of this section, no telecommunications company shall submit on behalf of a subscriber a change ~~in~~ of the subscriber's provider of basic local exchange service, intra-LATA interexchange service, or inter-LATA interexchange service without:

~~(a)~~ (i) Written change authorization from the subscriber;

~~(b)~~ (ii) Toll-free electronic authorization placed from the telephone number which is the subject of the change of service order; or

~~(c)~~ (iii) Oral authorization obtained by an independent third party.

(b) A separate and distinct authorization shall be required to submit a change of service order for any or all of the following telecommunications services provided to subscribers in this state: Basic local exchange service, intra-LATA interexchange service, inter-LATA interexchange service, or any other telecommunications ~~services~~ service.

(2) The requirements of this section shall not apply to a change ~~in~~ of a subscriber's provider of basic local exchange service, intra-LATA interexchange service, or inter-LATA interexchange service that results from any merger or sale of exchanges or transfer of authority approved by the commission.

Sec. 68. Section 86-1906, Reissue Revised Statutes of Nebraska, is

amended to read:

~~86-1906.~~ Within thirty days after a subscriber changes his or her authorized provider of basic local exchange service, intra-LATA interexchange service, or inter-LATA interexchange service, the new authorized service provider shall provide to such subscriber written confirmation of such change of service. The written confirmation shall (1) describe clearly and simply the nature of the ~~subscription~~ change of service, (2) not be a part of, or attached to, any other document, (3) not contain any promotion, offer, or inducement, and (4) be mailed to the subscriber's billing address.

Sec. 69. Section 86-1907, Revised Statutes Supplement, 2001, is amended to read:

~~86-1907.~~ (1) Nothing in the Telephone Consumer Slamming Prevention Act shall preclude a subscriber from electing to resolve an unauthorized change ~~in~~ of service directly with the unauthorized telecommunications company. If the subscriber is unsatisfied with the resolution from the unauthorized telecommunications company, the subscriber may file a complaint with the commission. The complaint may be made by letter, fax, on-line notification, or telephone call to the commission. The subscriber may be required to provide a copy of the subscriber's telephone bill that contains the alleged unauthorized telecommunications company's charges.

(2) The commission, consistent with ~~applicable federal rules and regulations including rules and regulations of the Federal Communications Commission which implement section 258 of the federal act~~ federal regulations for changing long distance service under subpart K of 47 C.F.R. part 64, as such regulations existed on January 1, 2002, shall adopt and promulgate rules and regulations necessary for resolution of subscriber complaints of an unauthorized change ~~in~~ of service.

Sec. 70. Section 86-1908, Revised Statutes Supplement, 2001, is amended to read:

~~86-1908.~~ If the commission finds that a telecommunications company has violated section ~~86-1905~~ 67 of this act, the commission shall order the telecommunications company to take corrective action as necessary and consistent with 47 C.F.R. 64.1150, as such regulation existed on January 1, 2002, and rules and regulations adopted and promulgated by the commission. ~~and the Federal Communications Commission.~~

Sec. 71. Section 86-1909, Revised Statutes Supplement, 2001, is amended to read:

~~86-1909.~~ (1) The commission may, after hearing, impose an administrative penalty for a violation of the Telephone Consumer Slamming Prevention Act. The penalty for a violation shall not exceed two thousand dollars. Every violation associated with a specific access line within the state shall be considered a separate and distinct violation.

(2) The amount of an administrative penalty shall be based on:

(a) The nature, circumstances, extent, and gravity of a prohibited act;

(b) The history of previous violations;

(c) The amount necessary to deter future violations; and

(d) Any efforts to correct the violation.

(3) Any money collected by the commission pursuant to this section shall be remitted to the State Treasurer for credit to the permanent school fund.

(4) Any administrative penalty may be appealed. ~~The~~ and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 72. Section 86-1910, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1910.~~ The ~~Public Service Commission~~ commission shall adopt and promulgate competitively neutral rules and regulations necessary to implement the Telephone Consumer Slamming Prevention Act, including rules and regulations that:

(1) Ensure that subscribers are protected from deceptive practices in the obtaining of authorizations and verifications required by section ~~86-1905~~ 67 of this act;

(2) Are applicable to all basic local exchange service, intra-LATA interexchange service, inter-LATA interexchange service, and any other telecommunications services service provided by telecommunications companies in this state;

(3) Maintain records, provide procedures, and establish performance standards for telecommunications companies with respect to changes ~~in~~ of an authorized telecommunications company pursuant to the act;

(4) Establish and administer a slamming complaint system for subscribers of telecommunications service and enforce the provisions of the act; and

(5) Are consistent with the rules and regulations prescribed by the Federal Communications Commission 47 C.F.R. 64.1100, 64.1120, 64.1130, and 64.1190, as such regulations existed on January 1, 2002, for the selection of telecommunications companies. The Public Service Commission may adopt and promulgate rules and regulations consistent with any regulations of the Federal Communications Commission which are consistent with the purposes of the act the federal regulations for changing long distance service under subpart K of 47 C.F.R. part 64, as such regulations existed on January 1, 2002.

Sec. 73. Section 86-1911, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1911.~~ (1) No telecommunications company shall initiate or bill additional telecommunications services not required by the Public Service Commission commission to be offered and for which the subscriber did not explicitly request or subscribe. ~~If~~ The providing telecommunications company shall initiate a refund of a charge or apply the charge as a credit to the subscriber's next monthly bill if (a) a charge is assessed on a per-use basis for a telecommunications service described in this subsection and (b) the subscriber notifies the providing telecommunications company that the subscriber did not utilize the telecommunications service or the subscriber did not authorize the utilization of the telecommunications service. ~~the providing telecommunications company shall initiate a refund of the charge or apply the charge as a credit to the subscriber's next monthly bill.~~

(2) If a providing telecommunications company receives a notification pursuant to subdivision (1)(b) of this section, the telecommunications company shall inform the subscriber of the ability to block the telecommunications service services from future use by the subscriber and shall block the telecommunications service services from future use by the subscriber if the subscriber so requests. If a subscriber requests that the company not block the service or later requests to have the block lifted, the subscriber shall be responsible for charges caused by the future utilization of such the telecommunications service. The company shall not charge a recurring fee for blocking such the telecommunications service.

Sec. 74. Section 86-2001, Revised Statutes Supplement, 2001, is amended to read:

~~86-2001.~~ Sections ~~86-2001 to 86-2014~~ 74 to 97 of this act shall be known and may be cited as the Telemarketing and Prize Promotions Act.

Sec. 75. Section 86-2002, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-2002.~~ For purposes of the Telemarketing and Prize Promotions Act, the definitions found in sections 76 to 85 of this act apply. +

~~(1) Consumer means an actual or prospective purchaser, lessee, or recipient of consumer goods or services bought primarily for use for personal, family, or household purposes;~~

~~(2) Consumer goods or services means any tangible personal property, merchandise, or services normally used for personal, family, or household purposes and not for resale or for use or consumption in trade or business;~~

~~(3) Consumer telephone call means a call made by a seller for the purpose of soliciting a sale of any consumer goods or services to the person called, for the purpose of soliciting an extension of credit for consumer goods or services to the person called, or for the purpose of obtaining information that may be used for the direct solicitation of a sale of consumer goods or services to the person called or an extension of credit for such purposes;~~

~~(4) Prize means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. Prize does not include an item offered in a promotion for a book, recording, video, multimedia, or similar club in compliance with 16 C.F.R. 425 or a continuity plan or single sale of merchandise or service where there is no minimum purchase required;~~

~~(5) Prize promotion means (a) sweepstakes or other game of chance or (b) an oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize;~~

~~(6) Seller means any person or organization who individually or through salespersons initiates unsolicited consumer telephone calls in order to (a) sell, lease, or rent consumer goods or services, (b) offer gifts or prizes with the intent to sell, lease, or rent consumer goods or services, or (c) represent to a consumer that the consumer has won or will receive a prize by telephonic means or by written notice sent through the mail in which the goods and services and all the material terms of the transaction are not fully described and which require that the consumer contact the seller by telephone to learn about or initiate the transaction. Seller does not include a~~

telecommunications company as defined in section 86-802 when the company is offering telecommunications services of any kind which are subject to the verification provisions of the Telephone Consumer Slamming Prevention Act or 47 C.F.R. 64.1100 through 64.1190;

(7) Solicitor means any person who is not the seller of goods and services offering a prize promotion who represents to an individual that the individual has won or will receive a prize;

(8) Sponsor means any person on whose behalf a solicitor gives a prize but who is not the seller of goods and services offering a prize promotion;

(9) Unsolicited consumer telephone call means a consumer telephone call other than a call made:

(a) In response to an express request of the person called;

(b) Primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such a call;

(c) To any person with whom the seller has a clearly established business relationship; or

(d) By a magazine or newspaper publisher or such publisher's agent or employee in connection with such publisher's business; and

(10) Verifiable retail value means the price at which the solicitor or sponsor can demonstrate that a substantial number of prizes have been sold within the prior twelve months by a person other than the solicitor in the trade area in which the prize notice is given, or no more than one and one-half times the amount the solicitor or sponsor paid for the prize.

Sec. 76. Consumer means an actual or prospective purchaser, lessee, or recipient of consumer goods or services bought primarily for use for personal, family, or household purposes.

Sec. 77. Consumer goods or services means any tangible personal property, merchandise, or services normally used for personal, family, or household purposes and not for resale or for use or consumption in trade or business.

Sec. 78. Consumer telephone call means a telephone call made by a seller for the purpose of soliciting a sale of any consumer goods or services to the person called, for the purpose of soliciting an extension of credit for consumer goods or services to the person called, or for the purpose of obtaining information that may be used for the direct solicitation of a sale of consumer goods or services to the person called or an extension of credit for such purposes.

Sec. 79. Prize means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. Prize does not include an item offered in a promotion for a book, recording, video, multimedia, or similar club in compliance with 16 C.F.R. part 425, as such regulations existed on January 1, 2002, or a continuity plan or single sale of merchandise or service where there is no minimum purchase required.

Sec. 80. Prize promotion means (1) a sweepstakes or other game of chance or (2) an oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

Sec. 81. Seller means any person or organization who individually or through salespersons initiates unsolicited consumer telephone calls in order to (1) sell, lease, or rent consumer goods or services, (2) offer gifts or prizes with the intent to sell, lease, or rent consumer goods or services, or (3) represent to a consumer that the consumer has won or will receive a prize by telephonic means or by written notice sent through the mail in which the goods and services and all the material terms of the transaction are not fully described and which require that the consumer contact the seller by telephone to learn about or initiate the transaction. Seller does not include a telecommunications company as defined in section 20 of this act when the telecommunications company is offering telecommunications service of any kind which are subject to the verification provisions of (i) the Telephone Consumer Slamming Prevention Act or (ii) the federal regulations for changing long distance service under subpart K of 47 C.F.R. part 64, as such regulations existed on January 1, 2002.

Sec. 82. Solicitor means any person, who is not the seller offering a prize promotion, who represents to an individual that the individual has won or will receive a prize.

Sec. 83. Sponsor means any person on whose behalf a solicitor gives a prize but who is not the seller offering a prize promotion.

Sec. 84. Unsolicited consumer telephone call means a consumer telephone call other than a call made:

(1) In response to an express request of the person called;

(2) Primarily in connection with an existing debt or contract, for which payment or performance has not been completed at the time of such a call;

(3) To any person with whom the seller has a clearly established business relationship; or

(4) By a magazine or newspaper publisher or such publisher's agent or employee in connection with such publisher's business.

Sec. 85. Verifiable retail value means the price (1) at which the solicitor or sponsor can demonstrate that a substantial number of prizes have been sold within the prior twelve months by a person other than the solicitor in the trade area in which the prize notice is given or (2) no more than one and one-half times the amount the solicitor or sponsor paid for the prize.

Sec. 86. Section 86-2003, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-2003.~~ A seller may not obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a consumer's checking, savings, share, or similar account, without that consumer's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(1) Express written authorization by the consumer, which may include the consumer's signature on the negotiable instrument;

(2) Express oral authorization which is tape recorded and made available upon request to the consumer's financial institution or to the consumer and which evidences clearly both the consumer's authorization of payment for the goods and services that are the subject of the sales offer and the consumer's receipt of all of the following information:

(a) The date of the check, draft, or other form of negotiable paper;

(b) The amount of the check, draft, or other form of negotiable paper;

(c) The payor's name;

(d) The number of check, draft, or negotiable paper payments, if more than one;

(e) A telephone number for consumer inquiry that is answered during normal business hours; and

(f) The date of the consumer's oral authorization; or

(3) Written confirmation of the transaction, sent to the consumer prior to submission for payment of the consumer's check, draft, or other form of negotiable paper that includes:

(a) All of the information contained in subdivision (2) of this section; and

(b) The procedures by which the consumer can obtain a refund from the seller in the event the confirmation is inaccurate.

Sec. 87. Section 86-2004, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-2004.~~ (1) In addition to any other right to revoke an offer:

(a) The consumer obligated for any part of the purchase price may cancel the telephone sale until midnight of the fifth business day after the day on which the consumer has received written notice from the seller notifying the consumer of his or her right to cancel the telephone sale. Written notice shall include all of the information included in subdivision (2) of section ~~86-2003~~ 86 of this act and the procedures by which a consumer may obtain a refund; and

(b) The seller shall disclose the refund policy to the consumer orally by telephone, in writing with advertising or promotional material, or with delivery of the products or services, and shall issue a refund within thirty days after the date on which the seller receives returned merchandise or notice of cancellation. A seller who discloses in writing that a sale is made or provided "satisfaction guaranteed", "with free inspection", "no-risk guarantee", or similar words or phrases shall be deemed to meet the requirements of the review and return for refund policy.

(2) Subdivision (1)(a) of this section does not apply to a sale in which the seller at a minimum has a policy of giving the consumer the right to review goods or services for a period of at least seven days after the date of delivery, accepting returns or canceling services, and providing a refund for the return of its unused and undamaged merchandise or canceled services.

Sec. 88. Section 86-2005, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-2005.~~ It shall be is unlawful for a seller to procure the services of any third-party delivery, courier, or other pickup service to obtain a consumer's payment for goods, unless the goods are delivered and can be inspected.

Sec. 89. Section 86-2006, Reissue Revised Statutes of Nebraska, is

amended to read:

~~86-2006.~~ It ~~shall be~~ is unlawful for a seller to request or receive payment or other consideration, in advance, from a consumer to recover or otherwise aid in the return of money or any other item lost by the consumer in a prior telemarketing transaction. This section ~~shall~~ does not apply to services provided to a consumer by an attorney licensed to practice law.

Sec. 90. Section 86-2007, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-2007.~~ In the case of prize promotions, it ~~shall be~~ is unlawful for a seller to fail to provide the following information:

(1) The odds of winning or receiving the prize and, if the odds are not calculable in advance, the factors used in calculating the odds;

(2) That no purchase and no payment is necessary to win;

(3) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(4) The no-purchase or no-payment method of participating in the prize promotion, with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(5) The true name and address of the solicitor, sponsor, or seller offering a prize when the consumer is told he or she has won or will receive a prize; and

(6) The verifiable retail value of each prize the consumer is told he or she has won or will receive.

Sec. 91. Section 86-2008, Revised Statutes Supplement, 2001, is amended to read:

~~86-2008.~~ A solicitor, sponsor, or seller ~~may not do any of the following~~ shall not:

(1) Misrepresent the source of any written prize notice;

(2) Represent directly or by implication that the number of individuals eligible for the prize is limited or that an individual has won or will receive a particular prize unless that representation is true;

(3) Misrepresent the value of a prize; or

(4) Request or accept any payment, or create an impression that any payment is required, from an individual prior to the receipt of a written prize notice by such individual if the solicitor, sponsor, or seller represents to such individual that he or she has won or will receive a prize. A written prize notice under this subdivision shall contain all the information required in section ~~86-2007~~ 90 of this act.

Sec. 92. Section 86-2009, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-2009.~~ Sellers ~~must~~ shall maintain records for twenty-four months in compliance with 16 C.F.R. 310.5, as such regulation existed on January 1, 2002.

Sec. 93. Section 86-2010, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-2010.~~ In any civil proceeding alleging a violation of the Telemarketing and Prize Promotions Act, the burden of proving an exemption from the act or an exemption from a definition in the act is upon the person claiming it. In any criminal proceeding alleging a violation of the act, the burden of producing evidence pertaining to a definition or an exemption is upon the person claiming it.

Sec. 94. Section 86-2011, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-2011.~~ Nothing in the The Telemarketing and Prize Promotions Act shall not be construed to limit the remedies available to consumers, the Attorney General, or any county attorney under the Uniform Deceptive Trade Practices Act or any other state or federal law.

Sec. 95. Section 86-2012, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-2012.~~ Any consumer that suffers a loss or harm as a result of a violation of the Telemarketing and Prize Promotions Act may recover actual damages, attorney's fees, court costs, and any other remedies provided by law. The state, on behalf of its residents who have suffered a loss or harm as a result of a violation of the act, may seek actual damages or other remedies provided by law.

Sec. 96. Section 86-2013, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-2013.~~ A violation of the Telemarketing and Prize Promotions Act is a Class I misdemeanor.

Sec. 97. Section 86-2014, Revised Statutes Supplement, 2001, is amended to read:

~~86-2014.~~ Any person who violates the Telemarketing and Prize Promotions Act shall be subject to a civil penalty of not more than two thousand dollars for each violation. The Attorney General, acting in the name of the state, may seek recovery of such civil penalties in a civil action.

Sec. 98. Sections 98 to 119 of this act shall be known and may be cited as the Automatic Dialing-Announcing Devices Act.

Sec. 99. Section 86-1201, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1201.~~ For purposes of ~~sections 86-1201 to 86-1222~~ the Automatic Dialing-Announcing Devices Act, the definitions found in ~~sections 86-1202 to 86-1207~~ shall be used 100 to 105 of this act apply.

Sec. 100. Section 86-1202, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1202.~~ Automatic dialing-announcing device ~~shall mean~~ means a device which selects and dials telephone numbers and automatically plays a recorded message.

Sec. 101. Section 86-1203, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1203.~~ Commission ~~shall mean~~ means the Public Service Commission.

Sec. 102. Section 86-1204, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1204.~~ Emergency purposes ~~shall mean~~ means any situation affecting the health and safety of a consumer.

Sec. 103. Section 86-1205, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1205.~~ Established business relationship ~~shall mean~~ means a prior or existing relationship formed by a voluntary two-way communication between a person and a residential or business telephone subscriber, with or without an exchange of consideration, on the basis of an inquiry, application, purchase, or transaction by the subscriber regarding products or services offered by the person, which relationship has not been previously terminated by either party.

Sec. 104. Section 86-1206, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1206.~~ Telephone solicitation ~~shall mean~~ means a telephone call or message using an automatic dialing-announcing device for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which call or message is transmitted to any person. The term shall Telephone solicitation does not include a call or message (1) made to any person with the person's prior express invitation or permission, (2) made to any person with whom the caller has an established business relationship, (3) made by a tax-exempt nonprofit organization, (4) not made for commercial purposes, (5) made for a commercial purpose but which does not include the transmission of an unsolicited advertisement, or (6) placed by a live operator and a prerecorded message is not utilized.

Sec. 105. Section 86-1207, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1207.~~ Unsolicited advertisement ~~shall mean~~ means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

Sec. 106. Section 86-1208, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1208.~~ A person shall not initiate a telephone solicitation, other than a call made for emergency purposes, using an automatic dialing-announcing device to: (1) An emergency telephone line, including 911 or any emergency or business line of a hospital, physician or medical service office, health care facility, poison control center, fire protection agency, or law enforcement agency; (2) the telephone line of any guest room or patient room of a hospital, health care facility, nursing home, or similar facility; (3) any telephone number assigned to a paging service, a cellular telephone service, a specialized mobile radio service, any other radio common carrier service, or any service for which the person called is charged for the call; or (4) a residential or business telephone line unless the telephone solicitation is otherwise permitted by ~~sections 86-1201 to 86-1222~~ the Automatic Dialing-Announcing Devices Act.

Sec. 107. Section 86-1209, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1209.~~ A person shall not use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.

Sec. 108. Section 86-1210, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1210.~~ A person shall not use an automatic dialing-announcing device in such a way that two or more telephone lines of a business with a multiline telephone system are engaged simultaneously.

Sec. 109. Section 86-1211, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1211.~~ All telephone solicitation messages delivered by an automatic dialing-announcing device shall:

(1) At the beginning of the message, state clearly the identity of the person making the call; and

(2) During or after the message, state clearly the telephone number, other than that of the device which made the call, or address of such person.

Sec. 110. Section 86-1212, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1212.~~ (1) A person shall not make a telephone solicitation using an automatic dialing-announcing device to a residential telephone line (a) before 8 a.m. or after 9 p.m. at the location of the person called and (b) unless the caller has instituted procedures for maintaining a list of telephone subscribers who do not wish to receive telephone solicitations made by or on behalf of the caller.

(2) The procedures instituted pursuant to subdivision (1)(b) of this section shall meet the following minimum standards:

(a) A written policy, available upon demand, for maintaining a do-not-call list must be established;

(b) Personnel engaged in any aspect of telephone solicitation must be informed of the existence of and trained in the use of the do-not-call list;

(c) If a person making a telephone solicitation, or on whose behalf a solicitation is made, receives a request from a residential or business telephone subscriber not to receive calls from that person, the person shall record the request and place the subscriber's name and telephone number on the do-not-call list and the time the request is made. If the requests are recorded or maintained by someone other than the person on whose behalf the telephone solicitation is made, the person on whose behalf the solicitation is made shall be liable for any failure to honor the do-not-call request. In order to protect a telephone subscriber's privacy, a person making telephone solicitations shall obtain a telephone subscriber's prior express consent to share the telephone subscriber's request not to be called with, or to forward such request to, someone other than the person on whose behalf a telephone solicitation is made or an affiliated entity;

(d) A person making a telephone solicitation shall provide the person called with the identity of the person making the call and a telephone number, other than that of the device which placed the call, or address at which the person may be contacted;

(e) In the absence of a specific request by a telephone subscriber to the contrary, a residential or business telephone subscriber's do-not-call request shall apply to the particular person making the call or on whose behalf a call is made and shall not apply to affiliated entities unless the telephone subscriber reasonably would expect them to be included given the identification of the caller and the product being advertised; and

(f) A person making telephone solicitations shall maintain a do-not-call list for the purpose of any future telephone solicitations.

Sec. 111. Section 86-1213, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1213.~~ An automatic dialing-announcing device delivering a recorded message to a person shall release the telephone line of the person called within five seconds of the time notification is transmitted to the device that the person called has hung up, or as soon thereafter as the serving telephone company's central office equipment permits, to allow the telephone line of the person called to be used to make or receive other calls.

Sec. 112. Section 86-1214, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1214.~~ (1) A person shall not connect or operate an automatic dialing-announcing device for the purpose of making telephone solicitations on any telephone line unless the person has a current permit from the commission for the device. An applicant for a permit shall make a written application to the commission. The application shall be in a form prescribed by the commission and shall require information about the type of device proposed for connection and operation, the time of day telephone solicitations will be made using the device, the anticipated number of calls proposed to be placed during the specified calling period, the average length of a completed call, or such alternative or additional information as the commission may require. If the applicant is an individual, the application shall include the applicant's

social security number. The applicant shall remit a fee of five hundred dollars for each device with the application.

(2) Upon receiving an application for a permit, the commission may grant, grant as modified, or deny the application. The commission may modify or deny the permit if the commission determines that (a) the applicant is unwilling or unable to meet the requirements placed on such operations by law, rule, or regulation or has failed to comply with the requirements in the past, (b) the connection or operation of the device will result in a significant decline in the quality of service or access to service for other telephone users, (c) the applicant's equipment is unable to meet the requirements of law, rule, or regulation, or (d) the application does not contain adequate information.

(3) If a permit is granted, the permit shall remain in force for two years from the date of issuance, and each application for the renewal of a permit shall be treated as a new application.

(4) After receiving a permit but prior to connecting or operating an automatic dialing-announcing device on any telephone line, the permit holder shall notify the telephone company of the telephone line on which the device is proposed to be connected or operated. The telephone line shall be considered a business telephone line. The telephone company shall release to the commission the identity of any person connecting or operating an automatic dialing-announcing device when requested to do so by the commission pursuant to an investigation.

Sec. 113. Section 86-1215, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1215.~~ A person shall not connect or operate an automatic dialing-announcing device in such a manner as to allow it to dial telephone numbers sequentially which means in any manner other than a random manner. A detectable, predictable pattern which can be used to accurately project the device's number dialing shall satisfy a finding that sequential number dialing is taking place in violation of this section.

Sec. 114. Section 86-1216, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1216.~~ The commission shall adopt and promulgate rules and regulations necessary to carry out ~~sections 86-1201 to 86-1222~~ the Automatic Dialing-Announcing Devices Act. The rules and regulations shall include limitations on the length of calls and messages and the days of the week, holidays, and time of day when calls can be made.

Sec. 115. Section 86-1217, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1217.~~ The commission may conduct investigations and shall enforce ~~sections 86-1201 to 86-1222~~ the Automatic Dialing-Announcing Devices Act. Upon written complaint and supporting affidavit that an applicable law, rule, or regulation has been or is being violated, the commission may enter a cease and desist order on an ex parte basis against the party named in the complaint. The order shall have duration of no more than twenty days, and a hearing upon the complaint shall be held no later than twenty days after the order is entered. In addition to any criminal or other penalties, failure to comply with an applicable law, rule, or regulation shall constitute grounds for revocation or suspension of a permit.

Sec. 116. Section 86-1218, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1218.~~ The commission, its agents or employees, or any peace officer of this state at the direction of the commission may, at any place in the state, seize without a warrant any automatic dialing-announcing device the operation of which does not conform in all respects to requirements imposed by subdivisions (1) and (2) of section ~~86-1208~~ 106 of this act or any rules or regulations. The seized device shall constitute contraband. The commission may, upon satisfactory proof, direct return of a seized device when the evidence establishes the owner did not willfully or intentionally fail to comply with the applicable law, rules, or regulations. The commission may, upon finding that the owner of a seized device has willfully or intentionally failed to comply with the applicable law, rules, or regulations, confiscate the device. Any device so confiscated may be destroyed. Destruction of a device shall not occur before all statutory appeal periods available to the owner have been exhausted. The seizure and destruction of an automatic dialing-announcing device shall not relieve any person from a fine, imprisonment, or other penalty for violation of the applicable law, rules, or regulations. The commission, its agents and employees, or any peace officer of this state shall not be liable for negligence for the seizure, confiscation, or destruction of any contraband pursuant to this section.

Sec. 117. Section 86-1219, Revised Statutes Supplement, 2000, is

amended to read:

~~86-1219.~~ Any decision of the commission made pursuant to ~~sections 86-1201 to 86-1222~~ the Automatic Dialing-Announcing Devices Act or the rules and regulations may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 118. Section 86-1221, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1221.~~ Any person using an automatic dialing-announcing device other than for telephone solicitations shall register the device with the commission pursuant to the application process, without a fee, and shall include with the application a detailed explanation of the use planned and the script to be used.

Sec. 119. Section 86-1222, Revised Statutes Supplement, 2000, is amended to read:

~~86-1222.~~ The commission may administratively fine pursuant to section 75-156 any person who violates ~~sections 86-1201 to 86-1222~~ the Automatic Dialing-Announcing Devices Act or the rules and regulations adopted and promulgated under ~~such sections~~ the act.

Sec. 120. Section 86-1101, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1101.~~ Sections ~~86-1101 to 86-1111~~ 120 to 132 of this act shall be known and may be cited as the Intrastate Pay-Per-Call Regulation Act.

Sec. 121. Section 86-1102, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1102.~~ For purposes of the Intrastate Pay-Per-Call Regulation Act, the definitions found in sections 122 and 123 of this act apply. +

~~(1) Commission shall mean the Public Service Commission; and~~

~~(2) Pay-per-call services shall mean telecommunications services which permit simultaneous calling by a large number of callers to a single telephone number and for which the calling party is assessed, by virtue of completing the call, a charge that is not dependent on the existence of a presubscription relationship and for which the caller pays a per-call or per-time-interval charge that is greater than or in addition to the charge for transmission of the call.~~

Sec. 122. Commission means the Public Service Commission.

Sec. 123. Pay-per-call services means telecommunications services which permit simultaneous calling by a large number of callers to a single telephone number and for which the calling party is assessed, by virtue of completing the call, a charge that is not dependent on the existence of a presubscription relationship and for which the caller pays a per-call or per-time-interval charge that is greater than or in addition to the charge for transmission of the call.

Sec. 124. Section 86-1103, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1103.~~ Common carriers may provide intrastate transmission, under either contract or tariff, for pay-per-call services only under the terms and conditions set forth by the Intrastate Pay-Per-Call Regulation Act.

Sec. 125. Section 86-1104, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1104.~~ In addition to the general requirements set forth in subsection (1) of section ~~86-1110~~ 131 of this act, the commission specifically shall adopt and promulgate rules and regulations as necessary regarding preambles to intrastate pay-per-call programs consistent with the rules and regulations of the Federal Trade Commission 16 C.F.R. 308.1 through 308.9, as such regulations existed on January 1, 2002, pertaining to preamble requirements for interstate pay-per-call programs.

Sec. 126. Section 86-1105, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1105.~~ The common carrier providing intrastate transmission for pay-per-call services shall provide to consumers upon request the name, address, and customer service telephone number of any information provider to whom the common carrier provides such transmission service, either directly or through another entity such as a service bureau. The common carrier shall provide the information at no charge and within a reasonable time upon verbal or written request.

Sec. 127. Section 86-1106, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1106.~~ (1) Local exchange carriers shall offer to their subscribers, when technically feasible, an option to block intrastate nine hundred ~~services~~ service. Blocking shall be offered at no charge on a one-time basis to all residential telephone subscribers. For blocking requests not within the one-time option and for commercial subscribers, the

local exchange carrier may charge a reasonable one-time fee for each blocking request. Requests by subscribers to remove a previously blocked intrastate nine hundred service shall be in writing to the local exchange carrier. The commission may adopt and promulgate rules and regulations to implement procedures for local exchange carriers to place involuntary blocks on subscribers who fail to pay for pay-per-call services.

(2) For purposes of this section, technically feasible ~~shall mean means~~ when the existing switch will accommodate the request for blocking.

Sec. 128. Section 86-1107, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1107.~~ No common carrier shall disconnect or order the disconnection of a subscriber's basic ~~communications~~ telecommunications service as a result of the subscriber's failure to pay interstate or intrastate pay-per-call service charges.

Sec. 129. Section 86-1108, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1108.~~ No common carrier shall provide transmission services for pay-per-call services originated by an information provider and charged to the consumer unless the called party has taken affirmative action clearly indicating that it accepts the charges for the collect pay-per-call service. This restriction includes eight hundred number call-back services service.

Sec. 130. Section 86-1109, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1109.~~ No common carrier shall provide transmission services for any pay-per-call service which employs broadcast advertising that generates the audible tones necessary to complete a call to a pay-per-call service.

Sec. 131. Section 86-1110, Revised Statutes Supplement, 2000, is amended to read:

~~86-1110.~~ (1) The commission shall adopt and promulgate rules and regulations necessary to carry out the Intrastate Pay-Per-Call Regulation Act.

(2) The commission may conduct investigations and shall enforce the act.

(3) Upon written complaint and supporting affidavit that an applicable rule or regulation or any provision of the act has been or is being violated, the commission may enter a cease and desist order on an ex parte basis against a party named in a complaint alleging violation of the act. The order shall have duration of no more than twenty days, and a hearing upon the complaint shall be held no later than twenty days after the order is entered by the commission.

(4) A decision of the commission made pursuant to the act and rules and regulations of the commission may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 132. Section 86-1111, Revised Statutes Supplement, 2000, is amended to read:

~~86-1111.~~ After notice and a hearing, the commission may administratively fine pursuant to section 75-156 violators of the Intrastate Pay-Per-Call Regulation Act or the applicable rules and regulations adopted and promulgated under the act.

Sec. 133. Section 86-701, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-701.~~ As used in sections ~~86-701 to 86-707.15~~ For purposes of sections 133 to 177 of this act, unless the context otherwise requires, the definitions found in sections 134 to 151 of this act apply. +

~~(1) Aggrieved person shall mean a person who was a party to any intercepted wire, electronic, or oral communication or a person against whom the interception was directed;~~

~~(2) Aural transfer shall mean a transfer containing the human voice at any point between and including the point of origin and the point of reception;~~

~~(3) Contents, when used with respect to any wire, electronic, or oral communication, shall include any information concerning the substance, purport, or meaning of that communication;~~

~~(4) Electronic, mechanical, or other device shall mean any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than (a) any telephone or telegraph instrument, equipment, or facility, or any component thereof, (i) furnished to the subscriber or user by a provider in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used by the subscriber or user in the ordinary course of its business or (ii) being used by a provider in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of his or her~~

duties or (b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(5) Electronic communication shall mean any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system but shall not include:

(a) The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

(b) Any wire or oral communication;

(c) Any communication made through a tone-only mobile paging device;

or

(d) Any communication from a mobile tracking device as defined in section 86-707.08;

(6) Electronic communication service shall mean any service which provides to users thereof the ability to send or receive wire or electronic communications;

(7) Electronic communications system shall mean any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications and any computer facilities or related electronic equipment for the electronic storage of such communications;

(8) Electronic storage shall mean:

(a) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(b) Any storage of such communication by an electronic communication service for purposes of backup protection of such communication;

(9) Intercept shall mean the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device;

(10) Investigative or law enforcement officer shall mean a law enforcement officer as defined in section 81-1401 and shall include the Attorney General and his or her deputies or assistants, a county attorney and his or her deputies, and agents of the United States Federal Bureau of Investigation, Drug Enforcement Administration, Marshals Service, Secret Service, Bureau of Alcohol, Tobacco, and Firearms, Treasury Department, Customs Service, Justice Department, and Internal Revenue Service;

(11) Mobile phone communication shall mean a radio communication that is transmitted on frequencies allocated under the rules of the Federal Communications Commission;

(12) Oral communication shall mean any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but shall not include any electronic communication;

(13) Pen register shall mean a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached but shall not include any device used by a provider or customer of an electronic communication service for billing or recording as an incident to billing for communications services provided by such provider or any device used by a provider or customer of an electronic communication service for cost accounting or other like purposes in the ordinary course of its business;

(14) Provider shall mean any person who provides an electronic communication service and who has authorized access to or possession or control of the facilities or equipment necessary to implement the order to intercept a wire or electronic communication or the order to install a pen register or a trap-and-trace device;

(15) Readily accessible to the general public shall mean, with respect to a radio communication, that such communication is not:

(a) Scrambled or encrypted;

(b) Transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication;

(c) Carried on a subcarrier or other signal subsidiary to a radio transmission;

(d) Transmitted over an electronic communications system by a provider unless the communication is a tone-only paging system communication;

or

(e) Transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the rules of the Federal Communications Commission unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by

~~radio;~~

~~(16) Trap and trace device shall mean a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted;~~

~~(17) User shall mean any person or entity who:~~

~~(a) Uses an electronic communication service; and~~

~~(b) Is duly authorized by the provider of such service to engage in such use; and~~

~~(18) Wire communication shall mean any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection, including the use of such connection in a switching station, between the point of origin and the point of reception furnished or operated by any person engaged in providing or operating such facilities for the transmission of communications. Wire communication shall include any electronic storage of such communication but shall not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.~~

Sec. 134. Aggrieved person means a person who was a party to any intercepted wire, electronic, or oral communication or a person against whom the interception was directed.

Sec. 135. Aural transfer means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

Sec. 136. Contents, when used with respect to any wire, electronic, or oral communication, includes any information concerning the substance, purport, or meaning of such communication.

Sec. 137. Electronic, mechanical, or other device means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than:

(1) Any telephone or telegraph instrument, equipment, or facility, or any component thereof, (a) furnished to the subscriber or user by a provider in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used by the subscriber or user in the ordinary course of its business or (b) being used by a provider in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of his or her duties; or

(2) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

Sec. 138. Electronic communication means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system but does not include:

(1) The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

(2) Any wire or oral communication;

(3) Any communication made through a tone-only mobile paging device;

or

(4) Any communication from a mobile tracking device as defined in section 165 of this act.

Sec. 139. Electronic communication service means any service which provides to users thereof the ability to send or receive wire or electronic communication.

Sec. 140. Electronic communication system means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications and any computer facilities or related electronic equipment for the electronic storage of such communication.

Sec. 141. Electronic storage means:

(1) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(2) Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

Sec. 142. Intercept means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

Sec. 143. Investigative or law enforcement officer means a law enforcement officer as defined in section 81-1401 and includes the Attorney General and his or her deputies or assistants, a county attorney and his or her deputies, and agents of the United States Federal Bureau of Investigation, Drug Enforcement Administration, Marshals Service, Secret Service, Bureau of

Alcohol, Tobacco, and Firearms, Treasury Department, Customs Service, Justice Department, and Internal Revenue Service.

Sec. 144. Mobile telephone communication means a radio communication that is transmitted on frequencies allocated under 47 C.F.R. 26.301, as such regulation existed on January 1, 2002.

Sec. 145. Oral communication means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but does not include any electronic communication.

Sec. 146. Pen register means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached but does not include (1) any device used by a provider or customer of an electronic communication service for billing or recording as an incident to billing for communication service provided by such provider or (2) any device used by a provider or customer of an electronic communication service for cost accounting or other like purposes in the ordinary course of its business.

Sec. 147. Provider means any person who provides an electronic communication service and who has authorized access to or possession or control of the facilities or equipment necessary to implement (1) the order to intercept a wire or electronic communication or (2) the order to install a pen register or a trap-and-trace device.

Sec. 148. Readily accessible to the general public means, with respect to a radio communication, that such communication is not:

- (1) Scrambled or encrypted;
 - (2) Transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication;
 - (3) Carried on a subcarrier or other signal subsidiary to a radio transmission;
 - (4) Transmitted over an electronic communication system by a provider unless the communication is a tone-only paging system communication;
- or

(5) Transmitted on frequencies allocated for satellite communications under 47 C.F.R. part 25, for remote pickup broadcast stations under subpart D of 47 C.F.R. part 74, for aural broadcast auxiliary stations under subpart E of 47 C.F.R. part 74, for television broadcast auxiliary stations under subpart F of 47 C.F.R. part 74, or for fixed microwave services under 47 C.F.R. part 101, as such regulations existed on January 1, 2002, unless, in the case of a communication transmitted on a frequency allocated under 47 C.F.R. part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

Sec. 149. Trap-and-trace device means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

Sec. 150. User means any person or entity who:

- (1) Uses an electronic communication service; and
- (2) Is duly authorized by the provider of such service to engage in such use.

Sec. 151. Wire communication means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection, including the use of such connection in a switching station, between the point of origin and the point of reception furnished or operated by any person engaged in providing or operating such facilities for the transmission of communications. Wire communication includes any electronic storage of such communication but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

Sec. 152. Section 86-702, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-702.~~ (1) Except as otherwise specifically provided in sections ~~86-701 to 86-707~~ 133 to 157 of this act, it shall be is unlawful to:

(a) Intentionally intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept any wire, electronic, or oral communication;

(b) intentionally Intentionally use, endeavor to use, or procure any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when (i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication or (ii) such device transmits

communications by radio or interferes with the transmission of such communication;

(c) ~~intentionally~~ Intentionally disclose or endeavor to disclose to any other person the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this subsection;

(d) ~~intentionally~~ Intentionally use or endeavor to use the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this subsection; or

(e) ~~having~~ Having knowledge that an investigative or law enforcement officer has been authorized or has applied for authorization under sections ~~86-701 to 86-712~~ 133 to 177 of this act to intercept a wire, oral, or electronic communication, give notice or attempt to give notice of the possible interception to any person in order to obstruct, impede, or prevent such interception.

Except as provided in subdivisions (4)(a) and (5)(b) of this section, any person who violates this subsection ~~shall be~~ is guilty of a Class IV felony.

(2)(a) It ~~shall not be~~ is not unlawful under sections ~~86-701 to 86-707~~ 133 to 157 of this act for an employer on his, her, or its business premises, for an operator of a switchboard, or for an officer, employee, or agent of any provider, the facilities of which are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his, her, or its employment while engaged in any activity which is a necessary incident to the rendition of his, her, or its service or to the protection of the rights or property of the carrier or provider of such communication services. Such employers and providers shall not utilize service observing or random monitoring except for mechanical, service quality, or performance control checks as long as reasonable notice of the policy of random monitoring is provided to their employees.

(b) It ~~shall not be~~ is not unlawful under sections ~~86-701 to 86-707~~ 133 to 157 of this act for a person acting under color of law to intercept a wire, electronic, or oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(c) It ~~shall not be~~ is not unlawful under sections ~~86-701 to 86-707~~ 133 to 157 of this act for a person not acting under color of law to intercept a wire, electronic, or oral communication when such person is a party to the communication or when one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state.

(d) It ~~shall not be~~ is not unlawful under sections ~~86-701 to 86-707~~ 133 to 157 of this act:

(i) To intercept or access an electronic communication made through an electronic communications system that is configured so that such electronic communication is readily accessible to the general public;

(ii) To intercept any radio communication which is transmitted:

(A) By any station for the use of the general public or that relates to ships, aircraft, vehicles, or persons in distress;

(B) By any governmental, law enforcement, emergency management, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

(C) By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(D) By any marine or aeronautical communications system;

(iii) To ~~engage in any conduct which~~

~~(A) Is prohibited by section 633 of the federal Communications Act of 1934, 47 U.S.C. 151 et seq., or~~

~~(B) Is excepted from the application of section 705(a) of the federal Communications Act of 1934, 47 U.S.C. 151 et seq., by section 705(b) of such act~~ intercept or receive, or to assist in the interception or receipt of:

(A) Any communications service offered over a cable system as provided in 47 U.S.C. 553, as such section existed on January 1, 2002; or

(B) Any satellite cable programming for private viewing as provided in 47 U.S.C. 605, as such section existed on January 1, 2002;

(iv) To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully

operating station or consumer electronic equipment to the extent necessary to identify the source of such interference; or

(v) For other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system if such communication is not scrambled or encrypted.

(e) It ~~shall not be~~ is not unlawful under sections ~~86-701 to 86-707 and 86-707.03 to 86-707.06~~ 133 to 157 and 160 to 163 of this act:

(i) To use a pen register or a trap-and-trace device; or

(ii) For a provider of an electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service from fraudulent, unlawful, or abusive use of such service.

(3)(a) Except as provided in subsection (1) of this section and subdivision (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication, other than one to such person or entity or an agent thereof, while in transmission on such service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

(b) A person or entity providing an electronic communication service to the public may divulge the contents of any such communication:

(i) As otherwise authorized in subdivision (a) of this subsection or section ~~86-704~~ 154 of this act;

(ii) With the lawful consent of the originator or any addressee or intended recipient of such communication;

(iii) To a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

(iv) Which was inadvertently obtained by the provider and which appears to pertain to the commission of a crime if such divulgence is made to a law enforcement officer.

(4)(a) If the offense is a first offense under subsection (1) of this section and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain and the wire or electronic communication with respect to the offense under subsection (1) of this section is a radio communication that is not scrambled or encrypted, then:

(i) If the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication, or a paging service communication and the conduct is not that described in subsection (5) of this section, the ~~offender shall be guilty of offense~~ is a Class I misdemeanor; or

(ii) If the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication, or a paging service communication, the ~~offender shall be guilty of offense~~ is a Class III misdemeanor.

(b) Conduct, otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted: (i) To a broadcasting station for purposes of retransmission to the general public; or (ii) as an audio subcarrier intended for redistribution to facilities open to the public but not including data transmissions or telephone calls, ~~shall not be~~ is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

(5)(a) If the communication is: (i) A private satellite video communication that is not scrambled or encrypted and the conduct in violation of sections ~~86-701 to 86-707~~ 133 to 157 of this act is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or (ii) a radio communication that is transmitted on frequencies allocated ~~under subpart D of part 74 of the rules of the Federal Communications Commission~~ for remote pickup broadcast stations under subpart D of 47 C.F.R. part 74, as such regulations existed on January 1, 2002, and that is not scrambled or encrypted and the conduct in violation of sections ~~86-701 to 86-707~~ 133 to 157 of this act is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the person who engages in such conduct shall be subject to suit by the state in a court of competent jurisdiction.

(b) In an action under this subsection:

(i) If the violation is a first offense by the person under subsection (1) of this section and such person has not been found liable in a

civil action under section ~~86-707.02~~ 159 of this act, the state shall be entitled to appropriate injunctive relief; and

(ii) If the violation is a second or subsequent offense under subsection (1) of this section or such person has been found liable in any prior civil action under section ~~86-707.02~~ 159 of this act, the person shall be subject to a mandatory five-hundred-dollar civil fine.

(c) The court may use any means within its authority to enforce an injunction issued under this subsection and shall impose a civil fine of not less than five hundred dollars for each violation of such an injunction.

Sec. 153. Section 86-703, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-703.~~ The Attorney General or any county attorney may make application to any district court of this state for an order authorizing or approving the interception of wire, electronic, or oral communications, and such court may grant, subject to sections ~~86-701 to 86-707~~ 133 to 157 of this act, an order authorizing or approving the interception of wire, electronic, or oral communications by law enforcement officers having responsibility for the investigation of the offense as to which application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, robbery, bribery, extortion, dealing in narcotic or other dangerous drugs, or any conspiracy to commit any such offenses.

At the same time a county attorney first makes application to the district court for an initial order authorizing or approving the interception of wire, electronic, or oral communications, the county attorney shall submit the application to the Attorney General or his or her designated deputy or assistant. Within twenty-four hours of receipt by the office of the Attorney General of the application from the county attorney, the Attorney General or his or her designated deputy or assistant, as the case may be, shall state to the district court where the order is sought his or her recommendation as to whether the order should be granted. The court shall not issue the order until it has received the recommendation or until seventy-two hours after receipt of the application from the county attorney, whichever is sooner, unless the court finds exigent circumstances existing which necessitate the immediate issuance of the order. The court may issue the order and disregard the recommendation of the Attorney General or his or her designated deputy or assistant.

Sec. 154. Section 86-704, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-704.~~ (1) Any investigative or law enforcement officer who, by any means authorized by sections ~~86-701 to 86-707~~ 133 to 157 of this act, has obtained knowledge of the contents of any wire, electronic, or oral communication or evidence derived therefrom may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by sections ~~86-701 to 86-707~~ 133 to 157 of this act, has obtained knowledge of the contents of any wire, electronic, or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his or her official duties.

(3) Any person who has received, by any means authorized by sections ~~86-701 to 86-707~~ 133 to 157 of this act, any information concerning a wire, electronic, or oral communication or evidence derived therefrom intercepted in accordance with sections ~~86-701 to 86-707~~ 133 to 157 of this act may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding held under the authority of the United States, of this state, or of any other state.

(4) No otherwise privileged wire, electronic, or oral communication intercepted in accordance with, or in violation of, sections ~~86-701 to 86-707~~ 133 to 157 of this act shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, electronic, or oral communications in the manner authorized herein, intercepts wire, electronic, or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof and evidence derived therefrom may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of a district court when such judge finds on subsequent application that the contents were otherwise intercepted in accordance with sections ~~86-701 to 86-707~~ 133 to 157 of this act. Such application shall be made as soon as practicable.

Sec. 155. Section 86-705, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-705.~~ (1) Each application for an order authorizing or approving the interception of a wire, electronic, or oral communication shall be made in writing upon oath or affirmation to a judge of a district court and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the applicant;

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, including details as to the particular offense that has been, is being, or is about to be committed, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted except as otherwise provided in subsection (13) of this section, a particular description of the type of communications sought to be intercepted, and the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application made to any judge for authorization to intercept or for approval of interceptions of wire, electronic, or oral communications involving any of the same persons, facilities, or places specified in the application and the action taken by the judge on each such application; and

(f) When the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, electronic, or oral communications or mobile ~~phone~~ telephone communications within the territorial jurisdiction of the court if the judge determines on the basis of the facts submitted by the applicant that: (a) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section ~~86-703~~ 153 of this act; (b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception; (c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and (d) except as otherwise provided in subsection (13) of this section, there is probable cause for belief that the facilities from which or the place where the wire, electronic, or oral communications are to be intercepted are being used or are about to be used in connection with the commission of such offense or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire, electronic, or oral communication shall specify: (a) The identity of the person, if known, whose communications are to be intercepted; (b) except as otherwise provided in subsection (13) of this section, the nature and location of the communications facilities as to which or the place where authority to intercept is granted; (c) a particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates; (d) the identity of the agency authorized to intercept the communications and of the person authorizing the application; and (e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(5) Each order authorizing the interception of a wire, electronic, or oral communication shall, upon request of the applicant, direct that a provider, landlord, custodian, or other person furnish to the applicant all information, facilities, and technical assistance necessary to accomplish the interception inconspicuously and with a minimum of interference with the services that such provider, landlord, custodian, or person is giving to the

person whose communications are to be intercepted. Any provider, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for expenses incurred in providing such facilities or assistance at the prevailing rates. A provider that has received an order as provided in this subsection may, under seal, move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the Attorney General or county attorney as the case may be, shall decide such a motion expeditiously.

(6) No order entered under this section may authorize or approve the interception of any wire, electronic, or oral communication for any period longer than is necessary to achieve the objective of the authorization nor in any event longer than thirty days. Extensions of an order may be granted but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to avoid and prevent interception of confidential communications to or from persons of the classes described in sections 20-146 and 27-503 to 27-506 unless there exists probable cause to believe such persons have committed, are committing, or are conspiring to commit offenses specified in section ~~86-703~~ 153 of this act, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under sections ~~86-701 to 86-707~~ 133 to 157 of this act, and shall terminate upon attainment of the authorized objective or in any event in thirty days. Upon a showing of good cause as set forth in the application, in the event the intercepted communication is in a foreign language and an expert in that foreign language is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception.

(7) (a) Whenever an order authorizing interception is entered pursuant to sections ~~86-701 to 86-707~~ 133 to 157 of this act, the order shall, at a minimum, require reports to be filed with the judge who issued the order no earlier than the twelfth day and no later than the sixteenth day after the order is issued and twelve to sixteen days thereafter showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Additional reports shall be filed at such other intervals as the judge may require. Time computed under this subdivision shall commence on the first calendar day after the order is issued.

(b) If the required reports are not filed, the judge shall exclude from evidence any communication intercepted after that date otherwise authorized by the order unless the person required to file the reports establishes that the failure was for good cause.

(8) (a) The contents of any wire, electronic, or oral communication intercepted by any means authorized by sections ~~86-701 to 86-707~~ 133 to 157 of this act shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic, or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his or her directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to subsections (1) and (2) of section ~~86-704~~ 154 of this act for investigations. The presence of the seal provided for by this subsection or a satisfactory explanation for the absence thereof shall be a prerequisite for the use or disclosure of the contents of any wire, electronic, or oral communication or evidence derived therefrom under subsection (3) of section ~~86-704~~ 154 of this act.

(b) Applications made and orders granted under sections ~~86-701 to 86-707~~ 133 to 157 of this act shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of a district court, shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of this subsection may be punished as contempt of the issuing or denying judge.

(9) (a) Within a reasonable time, but not longer than ninety days

after the termination of the period of an order or extensions thereof, the issuing judge shall cause the applicant to serve on the persons named in the order or the application and such other parties to intercepted communications which the judge may determine to be in the interest of justice an inventory which shall include: (i) The entry of the order of application; (ii) the date of such entry and the period of authorized or approved interception or the denial of the application; and (iii) whether, during such period, wire, electronic, or oral communications were or were not intercepted.

(b) The judge, upon the filing of a motion by a person whose communications were intercepted, may make available to such person or his or her counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On application to a judge of a district court, the serving of the inventory required by this subsection shall be postponed for ninety days. Thereafter, on an ex parte showing of good cause to a judge of a district court, the serving of the inventory required by this subsection may be further postponed.

(c) If the inventory is not served as required by this subsection, any communication intercepted under an order or extension thereof shall be excluded as evidence before all courts of this state unless the failure to serve such inventory was for good cause, the failure to serve the inventory did not substantially affect the rights of the defendant in the matter, or the serving of the inventory was postponed as allowed and ordered pursuant to subdivision (b) of this subsection.

(d) Nothing in this subsection shall be construed to limit the judge's power of contempt.

(10) The contents of any intercepted wire, electronic, or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a federal or state court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order and accompanying application under which the interception was authorized or approved. This ten-day period may be waived by the judge if he or she finds that it was not possible to furnish the party with such information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(11) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this state may move to suppress the contents of any intercepted wire, electronic, or oral communication or evidence derived therefrom on the grounds that the communication was unlawfully intercepted, the order of authorization or approval under which it was intercepted is insufficient on its face, or the interception was not made in conformity with the order of authorization or approval. Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, electronic, or oral communication or evidence derived therefrom shall be treated as having been obtained in violation of sections ~~86-701 to 86-707~~ 133 to 157 of this act. The judge, upon the filing of such motion by the aggrieved person, may in his or her discretion make available to the aggrieved person or his or her counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(12) In addition to any other right to appeal, the Attorney General or any county attorney shall have the right to appeal from an order granting a motion to suppress made under subsection (11) of this section or the denial of an application for an order of approval if the Attorney General or the county attorney certifies to the judge granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

(13) The requirements of subdivisions (1)(b), (3)(d), and (4)(b) of this section relating to the specification of the facilities from which or the place where the communication is to be intercepted shall not apply if:

(a) In the case of an application with respect to the interception of an oral communication:

(i) The application is approved by both the Attorney General and the county attorney where the application is sought or a deputy attorney general or designated deputy county attorney if the Attorney General or county attorney is outside of his or her respective jurisdiction;

(ii) The application contains a full and complete statement as to why such specification is not practical and identifies the person believed to

be committing the offense and whose communications are to be intercepted; and
 (iii) The judge finds that such specification is not practical; and
 (b) In the case of an application with respect to a wire or electronic communication:

(i) The application is approved by both the Attorney General and the county attorney where the application is sought or a deputy attorney general or designated deputy county attorney if the Attorney General or county attorney is outside of his or her respective jurisdiction;

(ii) The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(iii) The judge finds that such purpose has been adequately shown.

(14) An interception of a communication under an order with respect to which the requirements of subdivisions (1)(b), (3)(d), and (4)(b) of this section do not apply by reason of subsection (13) of this section shall not begin until the facility from which or the place where the communication is to be intercepted is ascertained by the person implementing the interception order.

(15) As used in subdivisions (7)(b) and (9)(c) of this section, good cause shall include a showing that the failure to file the report or serve the inventory was not intentional and that a substantial reason or special circumstance, including an act of God, reasonable unavailability of the applicant or necessary law enforcement officer due to death, medical condition, incapacitation, inaccessibility, or location, or other substantial reason or special circumstance as the court in its discretion determines, excused the failure to file the report or serve the inventory.

Sec. 156. Section 86-706, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-706.~~ In January of each year the Attorney General and each county attorney shall report to the Administrative Office of the United States Courts:

(1) The following information with respect to each application for an order or extension made during the preceding calendar year: (a) The fact that an order or extension was applied for; (b) the kind of order or extension applied for; (c) the fact that the order or extension was granted as applied for, was modified, or was denied; (d) the period of interceptions authorized by the order, and the number and duration of any extensions of the order; (e) the offense specified in the order or application, or extension of an order; (f) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and (g) the nature of the facilities from which or the place where communications were to be intercepted;

(2) A general description of the interceptions made under such order or extension, including ~~(i)~~ (a) the approximate nature and frequency of incriminating communications intercepted, ~~(ii)~~ (b) the approximate nature and frequency of other communications intercepted, ~~(iii)~~ (c) the approximate number of persons whose communications were intercepted, and ~~(iv)~~ (d) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(3) The number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(4) The number of trials resulting from such interceptions;

(5) The number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(6) The number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(7) The information required by subdivisions (2) ~~to~~ through (6) of this section with respect to orders or extensions obtained in ~~a~~ the preceding calendar year.

Sec. 157. Section 86-707, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.~~ It ~~shall be~~ is unlawful for any person to (1) intentionally and without lawful authority cut, break, tap, or make connection with any telegraph or telephone line, wire, cable, or instrument or electronic, mechanical, or other device or read or copy in any unauthorized manner any message, communication, or report passing over it, in this state, (2) intentionally and without lawful authority prevent, obstruct, or delay, by any means or contrivance whatsoever, the sending, transmission, conveyance, or delivery in this state of any authorized message, communication, or report by or through any telegraph or telephone line, wire, or cable under the control

of any telegraph or telephone company doing business in this state, (3) aid, agree with, employ, or conspire with any person or persons to unlawfully do or perform, or cause to be done, any of the acts described in subdivisions (1) and (2) of this section, or (4) occupy, use a line, or knowingly permit another to occupy, use a line, room, table, establishment, or apparatus to unlawfully do or cause to be done any of the acts described in this section. Any person who violates this section ~~shall be~~ is guilty of a Class IV felony.

Sec. 158. Section 86-707.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.01.~~ (1) Except as otherwise specifically provided in sections ~~86-701 to 86-707~~ 133 to 157 of this act and this section, any person who intentionally:

(a) Sends in intrastate commerce any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the unlawful surreptitious interception of wire, electronic, or oral communications, ~~shall be~~ is guilty of a Class IV felony; or

(b) Manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the unlawful surreptitious interception of wire, electronic, or oral communications and that such device or any component thereof has been or will be transported in intrastate commerce, ~~shall be~~ is guilty of a Class IV felony.

(2) This section shall not be construed to prohibit the exchange of electronic, mechanical, or other devices between law enforcement officers or federally funded law enforcement associations.

(3) It ~~shall be~~ is unlawful for a provider or an officer, agent, or employee of or a person under contract with a provider, in the normal course of the business of providing electronic communication service, to send or carry in intrastate commerce, manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the unlawful surreptitious interception of wire, oral, or electronic communications. Any person who violates this subsection ~~shall be~~ is guilty of a Class IV felony.

(4) It ~~shall be~~ is lawful for an officer, agent, or employee of or a person under contract with the United States, a state, or a political subdivision thereof, in the normal course of the activities of the United States, a state, or a political subdivision thereof, to send or carry in intrastate commerce, manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the unlawful surreptitious interception of wire, electronic, or oral communications.

Sec. 159. Section 86-707.02, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.02.~~ (1) Any person whose wire, electronic, or oral communication is intercepted, disclosed, or intentionally used in violation of sections ~~86-701 to 86-707 and 86-707.03 to 86-707.08~~ 133 to 157 and 160 to 165 of this act may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

(2) In an action under this section, appropriate relief ~~shall include~~ includes:

(a) Such preliminary and other equitable or declaratory relief as may be appropriate;

(b) Damages under subsection (3) of this section; and

(c) Reasonable attorney's fees and other litigation costs reasonably incurred.

(3) (a) In an action under this section, if the conduct in violation of sections ~~86-701 to 86-707 and 86-707.03 to 86-707.08~~ 133 to 157 and 160 to 165 of this act is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission for remote pickup broadcast stations under subpart D of 47 C.F.R. part 74, as such regulations existed on January 1, 2002, that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

(i) If the person who engaged in such conduct has not previously been enjoined under subsection (5) of section ~~86-702~~ 152 of this act and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the

plaintiff or statutory damages of not less than fifty dollars and not more than five hundred dollars; or

(ii) If on one prior occasion the person who engaged in such conduct has been enjoined under subsection (5) of section ~~86-702~~ 152 of this act or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff or statutory damages of not less than one hundred dollars and not more than one thousand dollars.

(b) In any other action under this section, the court may assess as damages whichever is the greater of:

(i) The sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

(ii) Statutory damages of whichever is the greater of one hundred dollars a day for each day of violation or ten thousand dollars.

(4) A good faith reliance on (a) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization, (b) a request of an investigative or law enforcement officer under section ~~86-705~~ 155 of this act, or (c) a good faith determination that section ~~86-702~~ 152 of this act permitted the conduct complained of shall be a complete defense against any civil or criminal action brought under sections ~~86-701 to 86-707 and 86-707.03 to 86-707.08~~ 133 to 157 and 160 to 165 of this act or any other law.

(5) A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

Sec. 160. Section 86-707.03, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.03.~~ (1) Except as provided in this section, no person may install or use a pen register or a trap-and-trace device without first obtaining a court order under section ~~86-707.05~~ 162 of this act. Nothing in sections ~~86-701 to 86-707.14~~ 133 to 172 of this act shall be construed to prohibit an emergency operator from conducting a trap or trace of a ~~phone~~ telephone number during an emergency.

(2) The prohibition of subsection (1) of this section shall not apply with respect to the use of a pen register or a trap-and-trace device by a provider:

(a) Relating to the operation, maintenance, and testing of an electronic communication service, to the protection of the rights or property of such provider or to the protection of users of that service from abuse of service or unlawful use of service;

(b) To record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of such service from fraudulent, unlawful, or abusive use of service; or

(c) When the consent of the user of such service has been obtained.

(3) ~~Whoever~~ Any person who knowingly violates subsection (1) of this section ~~shall be~~ is guilty of a Class I misdemeanor.

Sec. 161. Section 86-707.04, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.04.~~ (1) An investigative or law enforcement officer may make application for an order or an extension of an order under section ~~86-707.05~~ 162 of this act authorizing or approving the installation and use of a pen register or a trap-and-trace device under sections ~~86-707.03 to 86-707.06~~ 160 to 163 of this act to a county or district court. Such application shall be in writing and shall be under oath or affirmation.

(2) An application under subsection (1) of this section shall include:

(a) The identity of the investigative or law enforcement officer making the application and the identity of the law enforcement agency conducting the investigation; and

(b) A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

Sec. 162. Section 86-707.05, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.05.~~ (1) Upon an application made under section ~~86-707.04~~ 161 of this act, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap-and-trace device within the jurisdiction of the court if the court finds that the investigative or law enforcement officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal

investigation.

(2) An order issued under this section:

(a) Shall specify:

(i) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap-and-trace device is to be attached;

(ii) The identity, if known, of the person who is the subject of the criminal investigation;

(iii) The number and, if known, physical location of the telephone line to which the pen register or trap-and-trace device is to be attached and, in the case of a trap-and-trace device, the geographic limits of the order; and

(iv) A statement of the offense to which the information likely to be obtained by the pen register or trap-and-trace device relates; and

(b) Shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap-and-trace device.

(3) (a) An order issued under this section shall authorize the installation and use of a pen register or a trap-and-trace device for a period not to exceed sixty days.

(b) Extensions of such an order may be granted but only upon an application for an order under section ~~86-707.04~~ 161 of this act and upon the judicial finding required by subsection (1) of this section. The period of extension shall be for a period not to exceed sixty days.

(4) An order issued under this section shall direct that:

(a) The order be sealed until otherwise ordered by the court; and

(b) The person owning or leasing the line to which the pen register or a trap-and-trace device is attached or the person who has been ordered by the court to provide assistance to the applicant not disclose the existence of the pen register or trap-and-trace device or the existence of the investigation to the listed subscriber or to any other person unless or until otherwise ordered by the court.

Sec. 163. Section 86-707.06, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.06.~~ (1) Upon the request of an investigative or law enforcement officer authorized to install and use a pen register under sections ~~86-707.03 to 86-707.06~~ 160 to 163 of this act, a provider, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place if such assistance is directed by a court order as provided in section ~~86-707.05~~ 162 of this act.

(2) Upon the request of an investigative or law enforcement officer authorized to receive the results of a trap-and-trace device under sections ~~86-707.03 to 86-707.06~~ 160 to 163 of this act, a provider, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities, and technical assistance, including installation and operation of the device, unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place if such installation and assistance is directed by a court order as provided in section ~~86-707.05~~ 162 of this act. Unless otherwise ordered by the court, the results of the trap-and-trace device shall be furnished to the investigative or law enforcement officer, designated in the court order, at reasonable intervals during regular business hours for the duration of the order.

(3) A provider, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

(4) No cause of action shall lie in any court against any provider, its officers, employees, or agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under sections ~~86-707.03 to 86-707.06~~ 160 to 163 of this act.

(5) A good faith reliance on a court order, a legislative authorization, or a statutory authorization shall be a complete defense against any civil or criminal action brought under sections ~~86-707.03 to 86-707.06~~ 160 to 163 of this act or any other law.

Sec. 164. Section 86-707.07, Reissue Revised Statutes of Nebraska,

is amended to read:

~~86-707.07.~~ (1) ~~Whoever~~ Any person who, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission ~~shall be~~ is guilty of a Class IV felony.

(2) This section shall not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States or this state.

Sec. 165. Section 86-707.08, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.08.~~ (1) A district court may issue a warrant or other order for the installation of a mobile tracking device, and such order may authorize the use of that device within the jurisdiction of the court and outside that jurisdiction if the device is installed in that jurisdiction.

(2) ~~As used in~~ For purposes of this section, mobile tracking device ~~shall mean~~ means an electronic or mechanical device which permits the tracking of the movement of a person or object.

Sec. 166. Section 86-707.09, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.09.~~ (1) Except as provided in subsection (3) of this section, ~~whoever~~ any person who (a) intentionally accesses without authorization a facility through which an electronic communication service is provided or (b) intentionally exceeds an authorization to access the facility and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such service ~~shall be punished as~~ is subject to the penalties provided in subsection (2) of this section.

(2) The ~~punishment~~ penalty for an offense under subsection (1) of this section ~~shall be~~ is (a) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain (i) a Class I misdemeanor for the first offense and (ii) a fine or imprisonment for not more than two years, or both, for any subsequent offense and (b) a Class IV felony for any other offense.

(3) Subsection (1) of this section shall not apply with respect to conduct authorized (a) by the person or entity providing an electronic communication service, (b) by a user of that service with respect to a communication of or intended for that user, or (c) by section ~~86-705 or 86-707.12~~ 155 or 169 of this act.

Sec. 167. Section 86-707.10, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.10.~~ (1) Except as provided in subsection (2) of this section, (a) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by the service and (b) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on the service (i) on behalf of, and received by means of electronic transmission from or created by means of computer processing of communications received by means of electronic transmission from, a subscriber to or customer of such service and (ii) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage of computer processing.

(2) A person or entity may divulge the contents of a communication:

(a) To an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

(b) As otherwise authorized in section ~~86-702, 86-704, or 86-707.11~~ 152, 154, or 168 of this act;

(c) With the lawful consent of the originator or an addressee or intended recipient of such communication or the subscriber in the case of remote computing service;

(d) To a person employed or authorized or whose facilities are used to forward such communication to its destination;

(e) As may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of the service; or

(f) To a law enforcement officer if such contents (i) were inadvertently obtained by the provider and (ii) appear to pertain to the commission of a crime.

Sec. 168. Section 86-707.11, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.11.~~ (1) A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred eighty days or less, only pursuant to a warrant. A governmental entity may require the disclosure by a provider of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred eighty days by the means available under subsection (2) of this section.

(2)(a) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this subsection is made applicable by subdivision (2)(b) of this section (i) without required notice to the subscriber or customer if the governmental entity obtains a warrant or (ii) with prior notice from the governmental entity to the subscriber or customer if the governmental entity (A) uses an administrative subpoena or (B) obtains a court order for such disclosure under subsection (4) of this section, except that delayed notice may be given pursuant to section ~~86-707.13~~ 170 of this act.

(b) Subdivision (2)(a) of this section shall apply to any electronic communication that is held or maintained on that service (i) on behalf of, and received by means of electronic transmission from or created by means of computer processing of communications received by means of electronic transmission from, a subscriber to or customer of such remote computing service and (ii) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

(3)(a)(i) Except as provided in subdivision (3)(a)(ii) of this section, a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service not including the contents of communications covered by subsection (1) or (2) of this section to any person other than a governmental entity.

(ii) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service not including the contents of communications covered by subsection (1) or (2) of this section to a governmental entity only when the governmental entity (A) uses an administrative subpoena, (B) obtains a warrant, (C) obtains a court order for such disclosure under subsection (4) of this section, or (D) has the consent of the subscriber or customer to such disclosure.

(b) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(4) A court order for disclosure under subsection (2) or (3) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication or the records or other information sought are relevant to a legitimate law enforcement inquiry. A court issuing an order pursuant to this section, on a motion made promptly by the provider, may quash or modify such order if the information or records requested are unusually voluminous in nature or compliance with such order would otherwise cause an undue burden on such provider.

(5) No cause of action shall lie in any court against any provider, its officers, employees, or agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under sections ~~86-707.09 to 86-707.15~~ 166 to 172 of this act.

Sec. 169. Section 86-707.12, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.12.~~ (1)(a) A governmental entity acting under subsection (2) of section ~~86-707.11~~ 168 of this act may include in its subpoena or court order a requirement that the provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the provider of the subpoena or court order.

(b) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation unless such notice is delayed pursuant to section ~~86-707.13~~ 170 of this act.

(c) The provider shall not destroy such backup copy until the later of (i) the delivery of the information or (ii) the resolution of any

proceedings including appeals of any proceeding concerning the subpoena or court order.

(d) The provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such provider (i) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request and (ii) has not initiated proceedings to challenge the request of the governmental entity.

(e) A governmental entity may seek to require the creation of a backup copy under subdivision (a) of this subsection if in its sole discretion such entity determines that there is reason to believe that notification under this section and section ~~86-707.11~~ 168 of this act of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination shall not be subject to challenge by the subscriber, customer, or provider.

(2)(a) Within fourteen days after notice by the governmental entity to the subscriber or customer under subdivision (1)(b) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate court. Such motion or application shall contain an affidavit or sworn statement (i) stating that the applicant is a subscriber to or customer of the service from which the contents of electronic communications maintained for him or her have been sought and (ii) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with sections ~~86-707.09~~ ~~to~~ ~~86-707.15~~ 166 to 172 of this act in some other respect.

(b) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the subscriber or customer has received pursuant to sections ~~86-707.11~~ ~~to~~ ~~86-707.13~~ 168 to 170 of this act. For purposes of this section, ~~the term delivery shall have the meaning given that term in the Nebraska Rules of Civil Procedure~~ has the same meaning as in section 25-534.

(c) If the court finds that the subscriber or customer has complied with subdivisions (a) and (b) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

(d) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained or that there is reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained and that there is not reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with sections ~~86-707.09~~ ~~to~~ ~~86-707.15~~ 166 to 172 of this act, it shall order the process quashed.

(e) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the subscriber or customer.

Sec. 170. Section 86-707.13, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.13.~~ (1)(a) A governmental entity acting under subsection (2) of section ~~86-707.11~~ 168 of this act shall (i) when a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under such subsection for a period not to exceed ninety days if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result or (ii) when an administrative subpoena is obtained, delay the notification required under such subsection for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result.

(b) For purposes of this section:

(i) Adverse result ~~shall mean~~ means:

(A) Endangering the life or physical safety of an individual;

(B) Flight from prosecution;

(C) Destruction of or tampering with evidence;

(D) Intimidation of potential witnesses; or

(E) Otherwise seriously jeopardizing an investigation or unduly delaying a trial; and

(ii) Supervisory official ~~shall mean~~ means the investigative agent in charge, the assistant investigative agent in charge, an equivalent of an investigating agency's headquarters or regional office, the chief prosecuting attorney, the first assistant prosecuting attorney, or an equivalent of a prosecuting attorney's headquarters or regional office.

(c) The governmental entity shall maintain a true copy of certification under subdivision (a) (ii) of this subsection.

(d) Extensions of the delay of notification provided in sections ~~86-707.11 and 86-707.12~~ 168 and 169 of this act of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (2) of this section.

(e) Upon expiration of the period of delay of notification under subdivision (a) or (d) of this subsection, the governmental entity shall serve upon or deliver by registered or first-class mail to the customer or subscriber a copy of the process or request together with notice that:

(i) States with reasonable specificity the nature of the law enforcement inquiry; and

(ii) Informs such customer or subscriber:

(A) That information maintained for such customer or subscriber by the provider named in such process or request was supplied to or requested by that governmental entity and the date on which the supplying or request took place;

(B) That notification of such customer or subscriber was delayed;

(C) What governmental entity or court made the certification or determination pursuant to which that delay was made; and

(D) Which provision of sections ~~86-707.09 to 86-707.14~~ 166 to 171 of this act allowed such delay.

(2) A governmental entity acting under section ~~86-707.11~~ 168 of this act, when it is not required to notify the subscriber or customer under subdivision (2)(a) of section ~~86-707.11~~ 168 of this act or to the extent that it may delay such notice pursuant to subsection (1) of this section, may apply to a court for an order commanding a provider of electronic communication service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in an adverse result.

Sec. 171. Section 86-707.14, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.14.~~ (1) Except as otherwise provided in subsection (3) of this section, a governmental entity obtaining the contents of communications, records, or other information under sections ~~86-707.09 to 86-707.15,~~ 166 to 172 of this act shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs ~~shall~~ include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

(2) The amount of the fee provided by subsection (1) of this section shall be as mutually agreed by the governmental entity and the person or entity providing the information or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information or the court before which a criminal prosecution relating to such information would be brought if no court order was issued for production of the information.

(3) The requirement of subsection (1) of this section shall not apply with respect to records or other information maintained by a provider that relate to telephone toll records and telephone listings obtained under section ~~86-707.11~~ 168 of this act. The court may, however, order a payment as described in subsection (1) of this section if the court determines the information required is unusually voluminous in nature or otherwise caused an

undue burden on the provider.

Sec. 172. Section 86-707.15, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-707.15.~~ (1) Except as provided in subsection (5) of section ~~86-707.11~~ 168 of this act, any provider, subscriber, or customer aggrieved by any violation of sections ~~86-707.09 to 86-707.15~~ 166 to 172 of this act in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

(2) In a civil action under this section, appropriate relief ~~shall include~~ includes:

(a) Such preliminary and other equitable or declaratory relief as may be appropriate;

(b) Damages under subsection (3) of this section; and

(c) Reasonable attorney's fees and other litigation costs reasonably incurred.

(3) The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of one thousand dollars.

(4) A good faith reliance on (a) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization, (b) a request of an investigative or law enforcement officer under section ~~86-705~~ 155 of this act, or (c) a good faith determination that section ~~86-702~~ 152 of this act permitted the conduct complained of shall be a complete defense to any civil or criminal action brought under sections ~~86-707.09 to 86-707.15~~ 166 to 172 of this act.

(5) A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

Sec. 173. Section 86-708, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-708.~~ (1) If the Attorney General or any county attorney ~~shall~~ reasonably ~~determine~~ determines that the testimony of any witness or the production of books, papers, or other evidence by any witness is necessary to the public interest in any proceeding before the grand jury of the district court of the State of Nebraska involving any violation or conspiracy to violate the provisions of subsection (1) of section ~~86-702~~ 152 of this act or involving the offenses enumerated in section ~~86-703~~ 153 of this act, the Attorney General or county attorney, upon the approval of the Attorney General, shall make application to the court that the witness be instructed to testify or produce evidence subject to the provisions of this section. Upon an order of the court, such witness shall not be excused from testifying or from producing books, papers, or other evidence on the grounds that the testimony or evidence required by him or her may incriminate him or her or subject him or her to a penalty or forfeiture. Nothing in this section shall be construed to suspend or otherwise interfere with the operation of the provisions of the Free Flow of Information Act or sections 27-503 to 27-506 and 27-605.

(2) Except as otherwise provided in this section, no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the witness is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding against the witness in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion pursuant to this section.

Sec. 174. Section 86-709, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-709.~~ The Attorney General or any county attorney may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of records including books, papers, documents, and tangible things which constitute or contain evidence relevant or material to the investigation or enforcement of the laws of this state pertaining to offenses enumerated in section ~~86-703~~ 153 of this act when it ~~shall~~ reasonably ~~appear~~ appears that such action is necessary and proper. The attendance of witnesses and the production of records shall be required from any place within the State of Nebraska. Witnesses summoned by the Attorney General or a county attorney shall be paid the same fees that are paid witnesses in the courts of the State of Nebraska and mileage at the rate

provided in section 81-1176. ~~for state employees.~~

Sec. 175. Section 86-710, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-710.~~ A subpoena of the Attorney General or a county attorney may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to him or her. Service may be made upon a domestic or foreign corporation, upon a partnership, upon a domestic or foreign limited liability company, or upon any other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, a managing or general agent, a member, or any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

Sec. 176. Section 86-711, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-711.~~ (1) If any person ~~shall refuse~~ refuses to obey a subpoena issued to such person, the Attorney General or a county attorney may invoke the aid of any court of the State of Nebraska within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, carries on business, or may otherwise be found, to compel compliance with such subpoena.

(2) The court may issue an order requiring the subpoenaed person to appear before the Attorney General or a county attorney to produce records, if so ordered, or to give testimony concerning the matter under investigation. Nothing in this section shall be construed to suspend or otherwise interfere with the operation of the provisions of the Free Flow of Information Act or sections 27-503 to 27-506 and 27-605.

(3) Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district in which the subpoenaed person is an inhabitant or may otherwise be found.

Sec. 177. Section 86-712, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-712.~~ No part of the contents of any intercepted wire or oral communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a state, or a political subdivision thereof if the disclosure of that information would be in violation of ~~Chapter 86, article 7~~ sections 133 to 177 of this act.

Sec. 178. (1) In addition to any other criminal procedure and penalty provided by law, any person who unlawfully diverts or interferes with telecommunications service may be subject to sections 28-519 and 28-1311 and sections 430, 431, and 495 of this act.

(2) In addition to any other civil procedure and remedy provided by law, any person who unlawfully diverts telecommunications service may be subject to actions authorized in sections 421 to 424 of this act.

Sec. 179. Section 86-1301, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1301.~~ Sections ~~86-1301 to 86-1307~~ 179 to 193 of this act shall be known and may be cited as the Telecommunications Relay System Act.

Sec. 180. Section 86-1302, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1302.~~ The purpose of the Telecommunications Relay System Act is to provide a statewide telecommunications relay system and a statewide voucher program for the provision of specialized telecommunications equipment for qualified deaf, hard of hearing, or speech-impaired persons in Nebraska which enables them to communicate twenty-four hours per day, seven days per week, with other persons who use conventional telephone systems.

Sec. 181. Section 86-1303, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1303.~~ For purposes of the Telecommunications Relay System Act, the definitions found in sections 182 to 189 of this act apply. +

- ~~(1) Commission shall mean the Public Service Commission;~~
- ~~(2) Deaf shall have the same meaning as in section 71-4720.01;~~
- ~~(3) Fund shall mean the Nebraska Telecommunications Relay System Fund;~~
- ~~(4) Hard of hearing shall have the same meaning as in section 71-4720.01;~~
- ~~(5) Household shall mean a family unit whose members are related by birth, marriage, or adoption and who share a common living arrangement;~~
- ~~(6) Personal telephone service shall mean telephone service located~~

in an individual's room and the telephone service account is in the individual's name;

(7) Specialized telecommunications equipment shall mean any telecommunications device enabling deaf, hard of hearing, or speech-impaired persons to communicate using conventional telephone systems. Specialized telecommunications equipment shall include, but not be limited to, telecommunications devices for the deaf, signaling devices, and amplification devices; and

(8) Telecommunications relay system shall mean a service permitting full and simultaneous communication between deaf, hard of hearing, or speech-impaired persons using specialized telecommunications equipment and other persons using conventional telephone equipment.

Sec. 182. Commission means the Public Service Commission.

Sec. 183. Deaf has the same meaning as in section 71-4720.01.

Sec. 184. Fund means the Nebraska Telecommunications Relay System Fund.

Sec. 185. Hard of hearing has the same meaning as in section 71-4720.01.

Sec. 186. Household means a family unit whose members are related by birth, marriage, or adoption and who share a common living arrangement.

Sec. 187. Personal telephone service means telephone service located in an individual's room and the telephone service account is in the individual's name.

Sec. 188. Specialized telecommunications equipment means any telecommunications device enabling deaf, hard of hearing, or speech-impaired persons to communicate using conventional telephone systems. Specialized telecommunications equipment includes, but is not limited to, telecommunications devices for the deaf, signaling devices, and amplification devices.

Sec. 189. Telecommunications relay system means a service permitting full and simultaneous communication between deaf, hard of hearing, or speech-impaired persons using specialized telecommunications equipment and other persons using conventional telephone equipment.

Sec. 190. Section 86-1304, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1304.~~ There is hereby created the (1) The Nebraska Telecommunications Relay System Fund is created. The fund shall be used to provide a statewide telecommunications relay system and to administer a statewide voucher program to provide specialized telecommunications equipment to qualified deaf, hard of hearing, and speech-impaired persons in Nebraska.

(2) Based upon the price of the equipment, vouchers shall be issued by the program administrator to pay private vendors for all or part of the cost of the equipment. After purchase, the recipient is the owner of the equipment and responsible for enforcement of any warranties and repairs.

(3) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 191. Section 86-1305, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1305.~~ (1) (a) Each telephone company in Nebraska shall collect from each of the telephone subscribers a surcharge not to exceed twenty cents per month on each telephone access line in Nebraska, including cellular telephone service. The surcharge shall only be collected on the first one hundred telephone access lines per subscriber. The companies shall add the surcharge to each subscriber's local telephone bill.

(b) The telephone companies ~~shall~~ are not be liable for any surcharge not paid by a subscriber and ~~shall~~ are not be obligated to take legal action to collect the surcharge.

(2) Before October 1 of each year, the commission shall hold a public hearing to determine the amount of surcharge necessary to carry out the Telecommunications Relay System Act. After the hearing, the commission shall set the surcharge at the level necessary to fund the statewide telecommunications relay system and the specialized telecommunications equipment program for the following year plus a reasonable reserve. The surcharge shall become effective on January 1 following the change. The amount appropriated for the specialized telecommunications equipment program from the fund shall not exceed the revenue generated by one cent of the surcharge per month.

(3) In an emergency the commission may adjust the amount of the surcharge to become effective before such date but only after a public hearing for such purpose.

(4) The proceeds from the surcharge shall be remitted to the

commission monthly no later than thirty days after the end of the month in which they were collected together with forms provided by the commission. The commission shall remit the funds to the State Treasurer for credit to the fund.

(5) The commission may require an audit of any telephone company collecting the surcharge pursuant to the act.

Sec. 192. Section 86-1306, Revised Statutes Supplement, 2000, is amended to read:

~~86-1306.~~ (1) The commission shall establish standards, procedures, and training specifications for the telecommunications relay system and shall supervise its operation. The telecommunications relay system shall assure prompt and accurate relay of all messages seven days per week, twenty-four hours per day, including holidays, and shall provide at least the following services to all deaf, hard of hearing, or speech-impaired persons living in Nebraska who possess specialized telecommunications equipment. Any person using the telecommunications relay system shall not be charged for access to such system other than charges billed for instate and out-of-state long-distance telephone service. The telecommunications relay system shall at least provide the following telephone services: (a) Statewide instate calls with charges for long-distance calls billed to the person making the call in a manner which the commission determines will recover the cost of long-distance calls to the system; (b) out-of-state calls with charges billed to the person making the call; and (c) emergency calls. ~~Any person using the system shall not be charged for access to the system other than charges billed for instate and out-of-state long distance service.~~

(2) The commission shall establish standards and criteria and shall determine the eligibility of qualified deaf, hard of hearing, and speech-impaired persons applying for specialized telecommunications equipment. The eligible standards and criteria shall ~~which~~ include the following: (a) Only one person per household may be a recipient of the telecommunications equipment; (b) an applicant shall reside in a household that has telephone service; (c) a recipient of equipment may not reapply for assistance more than once every five years; and (d) a nursing home or institution resident is eligible for specialized telecommunications equipment only if he or she has personal telephone service.

(3) ~~The commission may approve applications for specialized telecommunications equipment Applications may be approved~~ if they meet the guidelines established by the commission.

(4) The commission shall adopt and promulgate rules and regulations necessary for implementation of the Telecommunications Relay System Act and guidelines for the specialized telecommunications equipment program. The commission may enter into contracts with other agencies or private organizations, which may include the Commission for the Deaf and Hard of Hearing, to operate the telecommunications relay system and the specialized telecommunications equipment program.

~~(3)~~ (5) ~~The commission~~ Public Service Commission may administratively fine pursuant to section 75-156 any person who violates the act.

Sec. 193. Section 86-1307, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1307.~~ The commission shall administer the Telecommunications Relay System Act with the advice of a special committee appointed by the Commission for the Deaf and Hard of Hearing. The special committee shall consist of seven members as follows: One member shall be a deaf person; one member shall be a deaf or hard of hearing person; one member shall be a speech-impaired person; one member shall represent the Public Service Commission; one member shall represent the telephone industry; one member shall represent the Commission for the Deaf and Hard of Hearing; and one member shall represent the public.

Sec. 194. Section 86-1401, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1401.~~ Sections ~~86-1401 to 86-1410~~ 194 to 207 of this act shall be known and may be cited as the Nebraska Telecommunications Universal Service Fund Act.

Sec. 195. Section 86-1402, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1402.~~ The purpose of the Nebraska Telecommunications Universal Service Fund Act is to authorize the commission to establish a funding mechanism which supplements federal universal service support mechanisms and ensures that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices.

Sec. 196. Section 86-1403, Revised Statutes Supplement, 2001, is

amended to read:

~~86-1403.~~ For purposes of the Nebraska Telecommunications Universal Service Fund Act, the definitions found in sections 197 to 200 of this act apply. +

~~(1) Commission means the Public Service Commission;~~

~~(2) Fund means the Nebraska Telecommunications Universal Service Fund;~~

~~(3) Telecommunications Act of 1996 means the federal telecommunications legislation enacted as Public Law 104-104, as such law existed on September 1, 2001; and~~

~~(4) Telecommunications company means any natural person, firm, partnership, limited liability company, corporation, or association offering telecommunications services for hire in Nebraska intrastate commerce without regard to whether such company holds a certificate or permit from the commission.~~

Sec. 197. Commission means the Public Service Commission.

Sec. 198. Fund means the Nebraska Telecommunications Universal Service Fund.

Sec. 199. Telecommunications Act of 1996 means the federal telecommunications legislation enacted as Public Law 104-104, as such law existed on January 1, 2002.

Sec. 200. Telecommunications company means any natural person, firm, partnership, limited liability company, corporation, or association offering telecommunications service for hire in Nebraska intrastate commerce without regard to whether such company holds a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier from the commission.

Sec. 201. Section 86-1404, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1404.~~ The Legislature declares that it is the policy of the state to preserve and advance universal service based on the following principles:

(1) Quality telecommunications and information services should be available at just, reasonable, and affordable rates;

(2) Access to advanced telecommunications and information services should be provided in all regions of the state;

(3) Consumers in all regions of the state, including low-income consumers and those in rural and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;

(4) All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service;

(5) There should be specific, predictable, sufficient, and competitively neutral mechanisms to preserve and advance universal service. Funds for the support of high-cost service areas will be available only to the designated eligible telecommunications companies providing service to such areas. Funds for the support of low-income customers, schools, libraries, and providers of health care to rural areas will be available to any entity providing telecommunications services, maintenance, and upgrading of facilities. The distribution of universal service funds should encourage the continued development and maintenance of telecommunications infrastructure;

(6) Elementary and secondary schools, libraries, and providers of health care to rural areas should have access to advanced telecommunications services as described in the Telecommunications Act of 1996. To promote the efficient use of facilities in rural areas, universal service rules should not preclude the sharing of facilities supported by universal service funds with other local users, if such ineligible users pay appropriate retail usage rates to the telecommunications company;

(7) The implicit support mechanisms in intrastate access rates throughout the state may be replaced while ensuring that local service rates in all areas of the state remain affordable; and

(8) The costs of administration of the Nebraska Telecommunications Universal Service Fund should be kept to a minimum.

Sec. 202. Section 86-1405, Revised Statutes Supplement, 2001, is amended to read:

~~86-1405.~~ (1) The Nebraska Telecommunications Universal Service Fund is hereby created. The fund shall provide the assistance necessary to make universal access to telecommunications services available to all persons in

the state consistent with the policies set forth in the Nebraska Telecommunications Universal Service Fund Act. Only eligible telecommunications companies designated by the commission shall be eligible to receive support to serve high-cost areas from the fund. A telecommunications company that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purpose of the act.

(2) Notwithstanding the provisions of section ~~86-808~~ 25 of this act, the commission (a) shall have authority and power to issue orders carrying out its responsibilities and to review the compliance of any eligible telecommunications company receiving support for continued compliance with any such orders and may withhold all or a portion of the funds to be distributed from any telecommunications company failing to continue compliance with its orders, (b) shall, consistent with the Telecommunications Act of 1996, require every telecommunications company to contribute to any universal service mechanism established by the commission pursuant to state law, and (c) may administratively fine pursuant to section 75-156 any person who violates the Nebraska Telecommunications Universal Service Fund Act.

(3) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 203. Section 86-1406, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1406.~~ The commission shall determine the standards and procedures reasonably necessary, adopt and promulgate rules and regulations as reasonably required, and enter into such contracts with other agencies or private organizations or entities as may be reasonably necessary to efficiently develop, implement, and operate the fund.

Sec. 204. Section 86-1407, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1407.~~ The fund may be administered by a neutral third-party administrator. The commission shall oversee the preparation and selection process of the administrator through a request for proposal process established by the commission. If a third-party administrator is selected, the administrator shall serve at the will of the commission. The administrator shall: Gather the necessary data to estimate fund obligations; notify telecommunications companies of their obligations to the fund; collect and distribute money from the fund in accordance with the Nebraska Telecommunications Universal Service Fund Act and the rules and regulations established by the commission; and notify the commission of any violations of the act and rules and regulations by telecommunications companies with respect to the fund. The commission shall audit the administrator to ensure the duties are being performed in accordance with the act and its rules and regulations. Any telecommunications company not meeting its obligation to the fund shall not be eligible to receive payments from the fund, shall be subject to administrative penalties to be determined by the commission, and shall be subject to the revocation of any certificate or permit issued pursuant to section ~~75-604~~ 27 of this act or any predecessor statute.

Sec. 205. Section 86-1408, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1408.~~ The commission shall oversee and the administrator, if a third-party administrator is selected, shall administer the fund with the advice of an advisory board appointed by the commission. The number of members on such advisory board shall be not less than seven nor more than nine members. The composition of the membership of the advisory board shall be determined by the commission and shall include the following representatives: One member shall represent the commission; one member shall represent elementary and secondary schools; one member shall represent libraries; one member shall represent rural health care providers; two members, but not more than three members, shall represent telecommunications companies; and one member, but not more than two members, shall represent the public. The advisory board shall provide recommendations to the commission at the public hearing held pursuant to section 84-1408. The advisory board shall also, on an annual basis, recommend the services to be supported by the fund.

Sec. 206. Section 86-1409, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1409.~~ (1) Annually the commission shall hold a public hearing to determine the level of the fund necessary to carry out the Nebraska Telecommunications Universal Service Fund Act. The commission shall publish notice of the hearing in at least one newspaper of general circulation in the state at least once each week for two consecutive weeks before the hearing.

After the hearing, the commission shall determine the amount of the fund for the following year, including a reasonable reserve. In the initial year of the fund's operation, the commission shall determine the amount of the fund to be equivalent to the amount which, in the commission's judgment, after careful analysis, is necessary to keep approximately ninety-six percent of Nebraska households subscribed to local telecommunications service.

(2) In an emergency as determined by the commission, the commission may adjust the level of the fund, but only after a public hearing for such purpose.

Sec. 207. Section 86-1410, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1410.~~ (1) The commission shall establish the Nebraska Lifeline Service Program. The purpose of the Nebraska Lifeline Service Program shall be to promote the provision of universal service to low-income households by local exchange carriers. Support provided by the program shall be specifically targeted to maintain affordable rates for residential basic local exchange services supported by federal and state universal service mechanisms. The commission shall establish means-tested eligibility guidelines and standards for the provision of support from the Nebraska Lifeline Service Program which are consistent with the Telecommunications Act of 1996, 47 U.S.C. 254, and any rules and regulations adopted and promulgated by the Federal Communications Commission 47 C.F.R. 54.400 through 54.409, as such act and regulations existed on January 1, 2002.

(2) Any local exchange carrier receiving state universal service support shall be prohibited from disconnecting the basic local exchange service of any customer receiving low-income support from the Nebraska Lifeline Service Program for the nonpayment of any interexchange toll service charges. The Public Service Commission commission may grant limited waivers of this requirement in a manner consistent with applicable rules and regulations adopted and promulgated by the Federal Communications Commission 47 C.F.R. 54.400 through 54.409, as such regulations existed on January 1, 2002.

(3) Any person receiving low-income support from the Nebraska Lifeline Service Program shall be exempt from the payment of any surcharge established by the commission pursuant to the Nebraska Telecommunications Universal Service Fund Act.

Sec. 208. Section 86-1803, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1803.~~ Sections ~~86-1803 to 86-1811~~ 208 to 220 of this act shall be known and may be cited as the Nebraska Public Safety Wireless Communication System Act.

Sec. 209. Section 86-1804, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1804.~~ The Legislature finds that:

(1) During emergencies the resources of the state and its political subdivisions must be effectively directed to save lives, to protect property, and to meet the needs of its citizens;

(2) Public safety agencies fulfill this unique and essential role;

(3) Public safety agencies are only as effective as their ability to communicate. To adequately ensure public safety, such agencies require an efficient, reliable communication system which accounts for their unique role and the specialized needs that accompany such role;

(4) Present radio communication systems used by public safety agencies during daily operations and emergencies are deficient. Nebraska's systems are based on outdated technologies, rely on inadequate equipment, are susceptible to communication interference, have limited coverage areas, operate under the constraints of a limited number of radio frequency channels, and lack coordination and the ability to interoperate among city, county, state, and federal users. Additionally, such systems presently do not allow for secure transmissions which are necessary for the protection and integrity of public safety communications;

(5) Recent changes and advances in communication technology, including wireless communication, would increase the capability of public safety agencies to provide efficient and effective public safety services;

(6) Investment in the public safety communication infrastructure is required to ensure the effectiveness of Nebraska's 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 local and state public safety agencies cooperate in their efforts to obtain a single statewide seamless communication system;

(7) A statewide seamless communication system should balance the

need for multiple simultaneous users while maintaining autonomy for the internal use of individual agencies. The objectives of such a system should include maximizing resources and reducing duplication among public safety agencies as well as encouraging cooperation, coordination, consolidation, sharing, and partnerships between public agencies and private entities. Such a system should only be implemented after a precise needs assessment has occurred so that the system meets today's public safety needs and is capable of future additions, including mobile digital data terminals, automatic vehicle locators, and other systems for specific public safety applications; and

(8) Prior to implementation of a statewide seamless communication system, there should be in place a process for ongoing implementation, management, review, and improvement of such system.

Sec. 210. Section 86-1805, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1805.~~ For purposes of the Nebraska Public Safety Wireless Communication System Act, the definitions found in sections 211 to 214 of this act apply. +

(1) Board means the Public Safety Wireless Communication Advisory Board created in section ~~86-1811~~;

(2) Division means the division of communications of the Department of Administrative Services;

(3) Public safety agency means any federal, state, or political subdivision entity which provides emergency and public safety services, including medical services, law enforcement services, fire management services, correctional services, and emergency and disaster relief services; and

(4) System means a statewide seamless wireless communication system created in section ~~86-1806~~.

Sec. 211. Board means the Public Safety Wireless Communication Advisory Board created in section 220 of this act.

Sec. 212. Division means the division of communications of the Department of Administrative Services.

Sec. 213. Public safety agency means any federal, state, or political subdivision entity which provides emergency and public safety services, including medical services, law enforcement services, fire management services, correctional services, and emergency and disaster relief services.

Sec. 214. System means a statewide seamless wireless communication system created in section 215 of this act.

Sec. 215. Section 86-1806, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1806.~~ Based upon an implementation plan and the ongoing advice and assistance of the board, the division shall establish and implement a statewide seamless wireless communication system for the use of all state public safety agencies. The infrastructure of such system shall be operated and maintained by the state within the division. The division shall allow local, state, and federal public safety agencies to interconnect with the state's infrastructure to enable multi-agency, multijurisdictional responses to public safety situations.

Sec. 216. Section 86-1807, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1807.~~ (1) An implementation plan for the system shall be developed by the division and the board after the communication needs of public safety agencies have been assessed. The implementation plan shall build upon the recommendations contained in the report dated January 1, 1999, and issued by the Task Force for the Nebraska State Radio Communication System to the Legislature and Governor. The plan shall contain technical and logistical details of the system based upon the advice of an independent consultant hired by the division and the board pursuant to subsection (5) of this section. The plan shall:

(a) Outline the needs of the system, including infrastructure capacity to:

(i) Support statewide voice and data radio communications;

(ii) Provide wide-area and roaming access by public safety agencies on a statewide basis;

(iii) Permit public safety agencies to interoperate when needed but still maintain autonomy for daily functions;

(iv) Support coverage requirements to meet the needs of public safety agencies; and

(v) Support technology requirements to meet the current and future needs of public safety agencies;

(b) List the phases in developing the system, including a timeline for local public safety agencies to migrate to the use of the system so as to ensure that there are adequate resources to meet the needs and allow planned progressive expansion of system coverage and capacities; and

(c) Detail the estimated costs of the system, including operating costs, incentive funds, and anticipated subscriber fees.

~~The plan shall contain technical and logistical details of the system based upon the advice of an independent consultant hired by the division and the board pursuant to subsection (5) of this section.~~

(2) When assessing the needs of public safety agencies, the board shall advise the division regarding ongoing planning and strategy with state and local public safety entities. The division shall work in conjunction with the Intergovernmental Data Communications Advisory Council, the Nebraska Information Technology Commission, and the Criminal Justice Advisory Committee in fulfilling their missions related to the system. Needs assessment shall focus on maximizing available resources and minimizing duplication to facilitate the provision of seamless statewide public safety services. The implementation plan shall use and modify, as needed, existing state-owned tower sites and facilities. The implementation plan shall provide for the leasing, when feasible, of existing facilities, tower space, and equipment shelters owned by local public or private entities. The ability to use existing facilities for public safety communications shall take into consideration the unique role and specialized needs of public safety agencies, including the importance of communication integrity and security.

(3) The board shall adopt and promulgate rules and regulations as necessary concerning authorized use of the system. Such rules and regulations shall address parameters for the transmission of information over the system, including law enforcement restrictions regarding confidential information.

(4) Upon completion, the plan shall be used to formulate a request for procurement to select a system vendor.

(5) The division, with approval by the board, shall (a) hire an independent consultant to assist in developing the implementation plan and request for procurement and (b) select a system vendor pursuant to a competitive bidding process. The division and board may also contract with any private or public entities or political subdivisions to assist in developing the implementation plan. The division shall administer the operational funds to finance this subsection.

Sec. 217. Section 86-1808, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1808.~~ (1) The division and board shall assist public safety agencies joining the system and interface the agencies' existing equipment into the system when feasible. Public safety agencies shall purchase and own their subscriber equipment to interconnect with the system infrastructure. Public safety agencies shall be assessed a subscriber fee as determined by the division for use of the system. The subscriber fee shall be collected by the division and credited to the Public Safety Communications Fund.

(2) The Public Safety Communications Fund is created. The fund shall be administered by the division. The fund shall contain subscriber fees for use of the system as well as any public or private funds, including federal grant money. The board shall have oversight over any expenditures from 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.

Sec. 218. Section 86-1809, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1809.~~ The board with the division shall develop incentives to encourage regional cooperation in public safety communication throughout the state. The board shall assist local communities and public safety agencies which desire to connect with the system. Incentive alternatives may include financial incentives to encourage migration by communities to the system and to reward communities which coordinate efforts to form public safety communication centers. Such incentives shall not mandate migration by public safety agencies to the system.

Sec. 219. Section 86-1810, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1810.~~ Upon installation of the system infrastructure:

(1) The division shall have a continuing duty to:

(a) Operate, maintain, and manage the system;

(b) Supervise the migration of public safety agencies to the system and develop a set of factors to determine prioritization of agencies migrating to the system;

(c) Assess the need for, and estimate usage of, any system

resources, upgrades, and expansions; and

- (d) Administer the Public Safety Communications Fund; and
- (2) The board shall have a continuing duty to:
 - (a) Develop proposals for the administration of system resources, upgrades, and expansions;
 - (b) Determine the availability of financial resources for system resources, upgrades, and expansions;
 - (c) Assess the communication needs of public safety agencies;
 - (d) Remain abreast of developments in communication technology as it impacts public safety agencies;
 - (e) Coordinate communication strategy with other public and private entities, including political subdivisions, when feasible; and
 - (f) Oversee any expenditures from the Public Safety Communications Fund.

Sec. 220. Section 86-1811, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1811.~~ (1) The Public Safety Wireless Communication Advisory Board is created. The board shall provide advice to the division to implement the Nebraska Public Safety Wireless Communication System Act. For administrative and budgetary purposes, the board shall be within the division. The division shall provide office space, equipment, technical assistance, and staff support for the board.

(2) The board shall consist of the following members, all of whom shall be individuals with knowledge of the communication needs of their represented agencies or constituencies:

- (a) A representative of the division who is an ex officio member;
- (b) A representative of the Department of Correctional Services;
- (c) A representative of the Department of Roads;
- (d) A representative of the Game and Parks Commission;
- (e) A representative of the Nebraska State Patrol;
- (f) A representative of the Department of Health and Human Services Regulation and Licensure;
- (g) A representative of the Nebraska Emergency Management Agency;
- (h) A representative of the Nebraska County Sheriffs Association;
- (i) A representative of the Police Officers Association of Nebraska;
- (j) A representative of the Nebraska Association of County Officials;
- (k) A representative of the League of Nebraska Municipalities;
- (l) A representative of the Criminal Justice Advisory Committee;
- (m) A representative of professional firefighters;
- (n) A representative of volunteer firefighters; and
- (o) A representative of emergency medical services.

(3) A chairperson of the board shall be elected annually by a vote of the majority of the board. The board may establish subcommittees and working groups as deemed necessary.

~~(3)~~ (4) Members of the board representing agencies listed in subdivisions (2)(a) through (2)(l) of this section shall be appointed by their respective agencies, and members representing constituencies listed in subdivisions (2)(m) through (2)(o) of this section shall be appointed by the Governor. ~~Initial appointments to the board shall be made within thirty days after May 26, 1999.~~ In the case of a vacancy, a successor shall be appointed in the same manner as the initial appointment.

~~(4)~~ (5) The board shall hold at least four meetings annually. ~~The first organizational meeting shall be held within sixty days after May 26, 1999.~~ A quorum of voting members is required to conduct business. Members shall be reimbursed from the Public Safety Communications Fund for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

~~(5)~~ (6) Prior to December 1 of each year, the board shall provide a written report to the Legislature on the progress of the system.

Sec. 221. Sections 221 to 242 of this act shall be known and may be cited as the Emergency Telephone Communications Systems Act.

Sec. 222. Section 86-1001, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1001.~~ The Legislature finds that 911 emergency telephone communications systems further the public interest and protect the health, safety, and welfare of the people of Nebraska. The purpose of ~~sections 86-1001 to 86-1009~~ the Emergency Telephone Communications Systems Act is to fund the development, installation, and operation of 911 emergency telephone communications systems throughout the state.

Sec. 223. Section 86-1002, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1002.~~ For purposes of the Emergency Telephone Communications Systems Act, the definitions found in sections 224 to 235 of this act apply. ~~sections 86-1001 to 86-1009.~~

(1) ~~Automatic location identification shall mean a feature by which the name and address associated with the calling party's telephone number is forwarded to the public safety answering point for display. Additional telephones with the same telephone number as the calling party's shall be identified with the address of the telephone number at the main location of the calling party. This feature shall be available only for E-911 service.~~

(2) ~~Automatic number identification shall mean a feature by which the calling party's automatic number identification telephone number is forwarded to the E-911 control office and to the public safety answering point's display and transfer units. This feature shall be available only for E-911 service.~~

(3) ~~E-911 service or enhanced-911 service shall mean a telephone exchange communications service by which one or more public safety answering points designated by the governing body may receive telephone calls dialed to the telephone number 911. E-911 service generally may provide, but is not limited to, selective routing, automatic number identification, and automatic location identification features.~~

(4) ~~Governing body shall mean the board of county commissioners or supervisors of a county, the city council of a city, the board of trustees of a village, or the board of directors of any rural or suburban fire protection district.~~

(5) ~~Local exchange access line shall mean any telephone line that has the ability to access local dial tone and reach a public safety answering point by dialing 911.~~

(6) ~~911 service shall mean a telephone service which provides a service user with the ability to reach a public safety answering point by dialing the digits 911 for the purpose of reporting emergencies. The level of technology to be used for the provision of 911 service in a particular 911 service area shall be determined by the governing bodies having jurisdiction over such area.~~

(7) ~~911 service area shall mean (a) the portion of a governing body's jurisdiction in which 911 service is provided and (b) an area being provided 911 service by contract with a service supplier on or before January 1, 1990, notwithstanding the crossing of jurisdictional lines, until such time as the noncontracting governing body notifies the contracting governing body in writing of its intention to opt out of the 911 service area.~~

(8) ~~Public safety agency shall mean an agency which actually provides firefighting, law enforcement, ambulance, emergency medical, or other emergency services.~~

(9) ~~Public safety answering point shall mean a twenty-four-hour, local-jurisdiction communications facility which receives 911 service calls and either directly dispatches emergency services or relays calls to the appropriate public safety agency.~~

(10) ~~Service supplier shall mean any person providing 911 service in this state.~~

(11) ~~Service surcharge shall mean a charge set by a governing body and assessed on each local exchange access line which physically terminates within the governing body's designated 911 service area, and~~

(12) ~~Service user shall mean any person who is provided local exchange access line service in this state.~~

Sec. 224. Automatic location identification means a feature by which the name and address associated with the calling party's telephone number is forwarded to the public safety answering point for display. Additional telephones with the same telephone number as the calling party's shall be identified with the address of the telephone number at the main location of the calling party. This feature is available only for E-911 service.

Sec. 225. Automatic number identification means a feature by which the calling party's automatic number identification telephone number is forwarded to the E-911 control office and to the public safety answering point's display and transfer units. This feature is available only for E-911 service.

Sec. 226. E-911 service or enhanced-911 service means a telephone exchange communications service by which one or more public safety answering points designated by the governing body may receive telephone calls dialed to the telephone number 911. E-911 service generally may provide, but is not limited to, selective routing, automatic number identification, and automatic location identification features.

Sec. 227. Governing body means the county board, the city council

of a city, the board of trustees of a village, or the board of directors of any rural or suburban fire protection district.

Sec. 228. Local exchange access line means any telephone line that has the ability to access local dial tone and reach a public safety answering point by dialing 911.

Sec. 229. 911 service means a telephone service which provides a service user with the ability to reach a public safety answering point by dialing the digits 911 for the purpose of reporting emergencies. The level of technology to be used for the provision of 911 service in a particular 911 service area shall be determined by the governing bodies having jurisdiction over such 911 service area.

Sec. 230. 911 service area means (1) the portion of a governing body's jurisdiction in which 911 service is provided and (2) an area being provided 911 service by contract with a service supplier on or before January 1, 1990, notwithstanding the crossing of jurisdictional lines, until such time as the noncontracting governing body notifies the contracting governing body in writing of its intention to opt out of the 911 service area.

Sec. 231. Public safety agency means an agency which actually provides firefighting, law enforcement, ambulance, emergency medical, or other emergency services.

Sec. 232. Public safety answering point means a twenty-four-hour, local-jurisdiction communications facility which receives 911 service calls and either directly dispatches emergency services or relays calls to the appropriate public safety agency.

Sec. 233. Service supplier means any person providing 911 service in this state.

Sec. 234. Service surcharge means a charge set by a governing body and assessed on each local exchange access line which physically terminates within the governing body's designated 911 service area.

Sec. 235. Service user means any person who is provided local exchange access line service in this state.

Sec. 236. Section 86-1003, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1003.~~ (1) A governing body may incur any nonrecurring or recurring charges for the installation, maintenance, and operation of 911 service and shall pay such costs out of general funds which may be supplemented by funds from the imposition of a service surcharge. A governing body incurring costs for 911 service may impose a uniform service surcharge of up to fifty cents per month on each local exchange access line physically terminating in the governing body's 911 service area. The initial service surcharge may be imposed at any time subsequent to the execution of an agreement for 911 service with a service supplier.

(2) Except in a county containing a city of the metropolitan class, such uniform service surcharge in subsection (1) of this section may be increased by an additional amount not to exceed fifty cents per month. Such additional increase shall be made only after:

(a) Publication of notices for a public hearing. Such notices shall:

(i) Be published at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in the areas affected;

(ii) Set forth the time, place, and date of such public hearing; and

(iii) Set forth the purpose of the public hearing and the purpose of the increase; and

(b) A public hearing is held pursuant to such notices.

(3) If 911 service is to be provided for a territory which is included in whole or in part in the jurisdiction of two or more governing bodies, the agreement for such service shall be entered into by each such governing body unless any such governing body expressly excludes itself from the agreement. Such an agreement shall provide that each governing body which is a customer of 911 service will pay for its portion of the service. Nothing in this subsection shall be construed to prevent two or more governing bodies from entering into a contract which establishes a separate legal entity for the purpose of entering into such an agreement as the customer of the service supplier or any supplier of equipment for 911 service.

(4) If a governing body's 911 service area includes a local exchange area which intersects governmental boundary lines, the affected governmental units may cooperate to provide 911 service through an ~~interlocal~~ agreement as provided in the Interlocal Cooperation Act or the Joint Public Agency Act. The agreement shall provide for the assessment of a uniform service surcharge within a governing body's 911 service area. The service surcharge on each local exchange access line physically terminating in the governing body's 911 service area shall be the same as the amount allowed in subsections (1) and

(2) of this section.

(5) Funds generated by the service surcharge shall be expended only for the purchase, installation, maintenance, and operation of telecommunications equipment and telecommunications-related services required for the provision of 911 service.

Sec. 237. Section 86-1004, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1004.~~ (1) A service user shall pay service surcharges in each 911 service area where the service user has local exchange access line service and receives 911 service, except that an individual service user shall not be required to pay on a single periodic billing service surcharges on more than one hundred local exchange access lines, or their equivalent, in any single 911 service area. Every service user shall be liable for any service surcharge billed to such user until the surcharge has been paid to the service supplier.

(2) The duty of a service supplier to bill a service surcharge to a service user shall commence at such time as may be specified by the governing body. A service surcharge shall be collected as far as practicable at the same time as and along with the charges for local exchange access lines in accordance with the regular billing practice of the service supplier.

(3) A service supplier shall have no obligation to take any legal action to enforce the collection of any service surcharge imposed pursuant to section ~~86-1003~~ 236 of this act. Such action may be brought by or on behalf of the governing body imposing the charge or the separate legal entity formed pursuant to such section. A service supplier shall annually provide the governing body a list of the amounts uncollected along with the names and addresses of those service users who carry a balance that can be determined by the service supplier to be for nonpayment of any service surcharge. The service supplier shall not be liable for such uncollected amounts.

Sec. 238. Section 86-1005, Revised Statutes Supplement, 2000, is amended to read:

~~86-1005.~~ (1) The amount of service surcharges collected in one calendar quarter by a service supplier shall be remitted to the governing body no later than sixty days after the close of that calendar quarter. At the time of the remittance, the service supplier shall file a return for the remittance with the governing body in such form as the governing body and the service supplier agree upon. The service supplier shall maintain a record of the amount of service surcharges collected. The record shall be maintained for a period of one year after the date the amount was billed. A governing body may at its own expense require an annual audit of a service supplier's books and records concerning the collection and remittance of a service surcharge.

(2) ~~Each~~ On or before April 30 of each year, each service supplier shall report for the preceding calendar year to the Public Service Commission for each of its exchanges (a) whether 911 service or E-911 service is provided in that exchange, (b) the level of the service surcharge, (c) the location of the public safety answering point, (d) whether the governing body belongs to an interlocal agreement or other agreement with another governing body and, if so, the name of the other governing body, and (e) the amount of revenue collected by the service surcharge.

~~The initial report shall be due April 30, 1994, for calendar year 1993 and subsequent reports shall be due no later than April 30 of each year. The report period shall be the preceding calendar year.~~

(3) The commission shall compile and place the information from such reports required in subsection (2) of this section into its annual telecommunications report to the Legislature, including the availability and location of 911 service and E-911 service in the State of Nebraska.

(4) The commission shall adopt and promulgate rules and regulations necessary to carry out subsections (2) and (3) of this section.

(5) The commission may administratively fine pursuant to section 75-156 any person who violates ~~sections 86-1001 to 86-1009~~ the Emergency Telephone Communications Systems Act.

Sec. 239. Section 86-1006, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1006.~~ Each calendar year, the governing body shall establish the rate of the service surcharge, not to exceed the amount authorized by section ~~86-1003~~ 236 of this act, that together with any surplus revenue carried forward will produce sufficient revenue to fund the expenditures described in section ~~86-1001~~ 222 of this act. Amounts collected in excess of such necessary expenditures within a given year shall be carried forward to the next year. A governing body shall make its determination of the rate no later than September 1 of each year and, if it is a new rate, shall fix the new rate

to take effect commencing with the first billing period of each service user on or following the next January 1. The governing body shall notify by certified or registered mail every service supplier of any change in the rate at least ninety days before the new rate becomes effective.

Sec. 240. Section 86-1007, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1007.~~ Funds collected by a governing body from the imposition of a service surcharge shall be credited to a separate fund apart from the general revenue of the governing body and shall be used solely to pay for costs for 911 service. Any money remaining in the fund at the end of any fiscal year shall remain in the fund for payments during any succeeding year, except that if 911 service is discontinued, money remaining in the fund after payment of all costs related to 911 service have been made shall be transferred to the general fund of the public safety agency or proportionately to the general fund of each participating public safety agency.

Sec. 241. Section 86-1008, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1008.~~ Any governing body authorized to impose a service surcharge may enter into an agreement directly with a service supplier of 911 service or may contract and cooperate with any public safety agency, with other states or their political subdivisions, or with any association or corporation for the administration of 911 service as provided by law.

Sec. 242. Section 86-1009, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1009.~~ The 911 service described in sections 86-1001 to 86-1009 the Emergency Telephone Communications Systems Act is within the governmental powers and authorities of a governing body or public safety agency. In contracting for such 911 service and in providing such 911 service, except for failure to use reasonable care or for intentional acts, each governing body, public safety agency, and service supplier and their employees and agents shall be immune from liability or the payment for any damages in the performance of installing, maintaining, or providing 911 service.

Sec. 243. Sections 243 to 270 of this act shall be known and may be cited as the Enhanced Wireless 911 Services Act.

Sec. 244. Section 86-2201, Revised Statutes Supplement, 2001, is amended to read:

~~86-2201.~~ For purposes of the Enhanced Wireless 911 Services Act, the definitions found in sections 245 to 257 of this act apply. ~~sections 86-2201 to 86-2214.~~

(1) ~~Advisory board means the Enhanced Wireless 911 Advisory Board,~~
 (2) ~~Automatic number identification means a feature by which a person calling a public safety answering point has his or her ten-digit telephone number simultaneously forwarded to the public safety answering point and to the public safety answering point's display and transfer units,~~

(3) ~~Commission means the Public Service Commission,~~

(4) ~~E-911 service has the same meaning as in subdivision (3) of section 86-1002,~~

(5) ~~Enhanced wireless 911 service means a telephone exchange communications service by which wireless carriers can provide automatic number identification, pseudo-automatic number identification, and wireless automatic location identification information to a public safety answering point which has capability of providing selective routing, selective transfer, fixed transfer, automatic number identification, and wireless automatic location identification,~~

(6) ~~Governing body has the same meaning as in subdivision (4) of section 86-1002,~~

(7) ~~911 service has the same meaning as in subdivision (6) of section 86-1002,~~

(8) ~~Pseudo-automatic number identification means a feature by which automatic number identification is provided to a public safety answering point of the ten-digit telephone number of the specific cell site or cell site sector from which a wireless call originated,~~

(9) ~~Public safety agency has the same meaning as in subdivision (8) of section 86-1002,~~

(10) ~~Public safety answering point has the same meaning as in subdivision (9) of section 86-1002,~~

(11) ~~Ten-digit telephone number means a telephone number assigned to a particular telephone account prefaced by the area code,~~

(12) ~~Wireless automatic location identification means a feature by which information is provided to a public safety answering point identifying the location, the latitude and longitude within the parameters established by the Federal Communication Commission, of a wireless unit originating a call to~~

a public safety answering point, and

(13) Wireless carrier means (a) any carrier of commercial mobile radio service as defined in 47 U.S.C. 153(27) and 332(d), as such sections existed on April 18, 2001, and 47 C.F.R. 20.18, as such section existed on April 18, 2001, or (b) any cellular licensee, personal communications licensee, and specialized mobile radio carrier defined in 47 C.F.R. 20.18, as such section existed on April 18, 2001.

Sec. 245. Advisory board means the Enhanced Wireless 911 Advisory Board.

Sec. 246. Automatic number identification means a feature by which a person calling a public safety answering point has his or her ten-digit telephone number simultaneously forwarded to the public safety answering point and to the public safety answering point's display and transfer units.

Sec. 247. Commission means the Public Service Commission.

Sec. 248. E-911 service has the same meaning as in section 226 of this act.

Sec. 249. Enhanced wireless 911 service means a telephone exchange communications service by which wireless carriers can provide automatic number identification, pseudo-automatic number identification, and wireless automatic location identification information to a public safety answering point which has the capability of providing selective routing, selective transfer, fixed transfer, automatic number identification, and wireless automatic location identification.

Sec. 250. Governing body has the same meaning as in section 227 of this act.

Sec. 251. 911 service has the same meaning as in section 229 of this act.

Sec. 252. Pseudo-automatic number identification means a feature by which automatic number identification is provided to a public safety answering point of the ten-digit telephone number of the specific cell site or cell site sector from which a wireless call originated.

Sec. 253. Public safety agency has the same meaning as in section 231 of this act.

Sec. 254. Public safety answering point has the same meaning as section 232 of this act.

Sec. 255. Ten-digit telephone number means a telephone number assigned to a particular telephone account prefaced by the area code.

Sec. 256. Wireless automatic location identification means a feature by which information is provided to a public safety answering point identifying the location, including the latitude and longitude within the parameters established by the Federal Communications Commission, of a wireless unit originating a call to a public safety answering point.

Sec. 257. Wireless carrier means (1) any carrier of commercial mobile radio service as referenced in 47 U.S.C. 153(27) and 332(d), as such sections existed on January 1, 2002, and 47 C.F.R. 20.18, as such regulation existed on January 1, 2002, or (2) any cellular licensee, personal communications licensee, and specialized mobile radio carrier defined in 47 C.F.R. 20.18, as such regulation existed on January 1, 2002.

Sec. 258. Section 86-2202, Revised Statutes Supplement, 2001, is amended to read:

~~86-2202.~~ Commencing July 1, 2001, each Each wireless carrier who has a subscriber with a billing address in Nebraska shall collect a surcharge of not more than fifty cents per month per access line. The wireless carrier shall add the surcharge to each subscriber's billing statement. The wireless carrier ~~shall~~ is not be liable for any surcharge not paid by a subscriber and ~~shall~~ is not be obligated to take legal action to collect the surcharge. The surcharge shall appear as a separate line-item charge on the subscriber's billing statement and shall be labeled as "Enhanced Wireless 911 Surcharge". The commission may take any legal action as it deems necessary to collect unpaid surcharges in its own name, as a real party in interest, or by assigning such debt for collection to a third party.

Sec. 259. Section 86-2203, Revised Statutes Supplement, 2001, is amended to read:

~~86-2203.~~ The commission shall hold a public hearing annually to determine the amount of revenue necessary to carry out the ~~provisions of sections 86-2201 to 86-2214~~ Enhanced Wireless 911 Services Act. After the hearing, the commission shall determine the amount of money to be deposited in the Enhanced Wireless 911 Fund for the following year and shall set the surcharge subject to the limitation in section ~~86-2202~~ 258 of this act.

Sec. 260. Section 86-2204, Revised Statutes Supplement, 2001, is amended to read:

~~86-2204.~~ Each wireless carrier shall remit monthly to the

commission the amount of surcharge collected together with any forms required by the commission no later than sixty days after the last day of the month. The wireless carrier shall report the number of wireless lines served and the number of wireless lines from which it has collected surcharge revenue. The wireless carrier shall maintain surcharge and remittance records for a period of two years after the date of the subscriber's billing statement. The commission shall remit the funds to the State Treasurer for credit to the Enhanced Wireless 911 Fund. The commission may at its own expense require an audit of any wireless carrier's books and records concerning the collection and remittance of the surcharge pursuant to ~~sections 86-2201 to 86-2214~~ the Enhanced Wireless 911 Services Act.

Sec. 261. Section 86-2205, Revised Statutes Supplement, 2001, is amended to read:

~~86-2205.~~ (1) Each public safety answering point shall report to the commission annually ~~(1)~~ (a) the name and location of the public safety answering point and ~~(2)~~ (b) whether wireless 911 service or enhanced wireless 911 service is provided at that public safety answering point.

(2) The commission shall compile and place the information required in this section into its annual telecommunications report to the Legislature.

Sec. 262. Section 86-2206, Revised Statutes Supplement, 2001, is amended to read:

~~86-2206.~~ (1) The Enhanced Wireless 911 Advisory Board is created to advise the commission concerning the implementation, development, administration, coordination, evaluation, and maintenance of enhanced wireless 911 service. The advisory board shall be composed of ten individuals appointed by the Governor, including:

- ~~(1)~~ (a) One sheriff;
- ~~(2)~~ (b) Two county officials or employees;
- ~~(3)~~ (c) Two municipal officials or employees;
- ~~(4)~~ (d) Two representatives from the state's wireless telecommunications industry;
- ~~(5)~~ (e) One manager of a public safety answering point not employed by a sheriff;
- ~~(6)~~ (f) One representative of the state's local exchange telecommunications service industry;
- ~~(7)~~ (g) One commissioner from the Public Service Commission or his or her designee who shall serve as an ex officio member; and
- ~~(8)~~ (h) The Director of Administrative Services or his or her designee who shall serve as an ex officio member.

~~For members~~ (2) Members of the ~~initial~~ board as described in subdivisions (1) (a) through ~~(6)~~ (1) (f) of this section, ~~three members shall be appointed for a term of one year, three members shall be appointed for a term of two years, and three members shall be appointed for a term of three years.~~ Each succeeding member of the board shall be appointed for a term of three years. The board shall meet as often as necessary to carry out its duties. Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 263. Section 86-2207, Revised Statutes Supplement, 2001, is amended to read:

~~86-2207.~~ (1) The advisory board shall make recommendations to the commission regarding the implementation of ~~sections 86-2201 to 86-2214~~ the Enhanced Wireless 911 Services Act, including:

- ~~(1)~~ (a) The allocation of funds from the Enhanced Wireless 911 Fund as specified in section ~~86-2210~~ 266 of this act;
- ~~(2)~~ (b) Rules and regulations necessary to carry out the ~~provisions of sections 86-2201 to 86-2214~~ act;
- ~~(3)~~ (c) Any adjustments in the surcharge amount to recommend to the Legislature; and
- ~~(4)~~ (d) The resolution of any disputes between public safety answering points and wireless carriers.

(2) The commission may approve and implement any recommendations of the advisory board.

Sec. 264. Section 86-2208, Revised Statutes Supplement, 2001, is amended to read:

~~86-2208.~~ The Enhanced Wireless 911 Fund is created. The fund shall consist of the surcharges credited to the fund, any money appropriated by the Legislature, any federal funds received for wireless emergency communication, and any other funds designated for credit to the fund. Money in the fund shall be used for the costs of administering the fund and the purposes specified in section ~~86-2210~~ 266 of this act unless otherwise directed by federal law with respect to any federal funds. The costs of administering the fund shall be kept to a minimum. Until July 1, 2004, the money in the fund

shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any fiscal year or biennium. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 265. Section 86-2209, Revised Statutes Supplement, 2001, is amended to read:

~~86-2209.~~ A public safety answering point may enter into a service agreement with one or more wireless carriers. The commission shall determine the most efficient method for providing enhanced wireless 911 service.

Sec. 266. Section 86-2210, Revised Statutes Supplement, 2001, is amended to read:

~~86-2210.~~ (1) The commission shall, in consultation with the advisory board:

(a) Determine the costs to implement wireless automatic location identification;

(b) Determine the level of funding needed to trigger disbursements pursuant to ~~sections 86-2201 to 86-2214~~ the Enhanced Wireless 911 Services Act;

(c) Determine the percentage of the fund to be allocated to each funding purpose, including the percentage that shall be designated for funding 911 service under subdivision (2)(c) of this section; and

(d) Determine how the funds distributed under subdivisions (2)(a) and (2)(c) of this section are to be allocated among the wireless carriers and the public safety answering points.

(2) The commission shall, in consultation with the advisory board, establish eligibility standards and criteria for fund disbursement applications and standards and criteria concerning the level of fund disbursement for each application. In establishing such criteria and standards, the following purposes shall be eligible for funding:

(a) Costs incurred or to be incurred by wireless carriers to implement enhanced wireless 911 service pursuant to a service agreement with a public safety answering point or pursuant to a request for service from a public safety answering point. Such costs shall include, but not be limited to, the portion of the costs for new equipment used for providing enhanced wireless 911 service, costs to lease another vendor's equipment or services to provide enhanced wireless 911 service, costs to create or maintain any data base or data base elements used solely for enhanced wireless 911 service, and other costs of establishing enhanced wireless 911 service. The portion of the costs of equipment or services used in the wireless carrier's main infrastructure resulting in revenue to the wireless carrier is not eligible for funding;

(b) Costs incurred or to be incurred by public safety answering points to implement enhanced wireless 911 service, including, but not limited to, purchases of new equipment, costs of upgrades, modification and personnel training used solely to process the data elements of enhanced wireless 911 service, and maintenance costs and license fees for new equipment;

(c) Costs incurred or to be incurred by public safety answering points for the purchase, installation, maintenance, and operation of telecommunications equipment and telecommunications services required for the provision of enhanced wireless 911 service; and

(d) Expenses incurred by members of the advisory board while performing duties required by ~~sections 86-2201 to 86-2214~~ the act.

(3) The commission shall have any powers necessary to carry out the intent and purposes of ~~sections 86-2201 to 86-2214~~ the act.

Sec. 267. Section 86-2211, Revised Statutes Supplement, 2001, is amended to read:

~~86-2211.~~ (1) A public safety answering point and wireless carrier shall be compensated for costs determined by the commission to be eligible for funding. A public safety answering point or wireless carrier may apply for disbursement from the Enhanced Wireless 911 Fund by submitting a written application to the commission. The commission shall receive and review applications, including supporting documentation. The commission shall notify each applicant as to the commission's approval or disapproval of the application.

(2) Each entity that receives disbursements from the fund shall make a full accounting of the money in a manner and form prescribed by the commission.

Sec. 268. Section 86-2212, Revised Statutes Supplement, 2001, is amended to read:

~~86-2212.~~ Information provided by wireless carriers to the advisory board or the commission pursuant to ~~sections 86-2201 to 86-2214~~ the Enhanced

Wireless 911 Services Act may be treated as records which may be withheld from the public upon request of the party submitting such records if the information qualifies under subdivision (3) of section 84-712.05.

Sec. 269. Section 86-2213, Revised Statutes Supplement, 2001, is amended to read:

~~86-2213.~~ The commission, governing bodies, and public safety agencies may provide enhanced wireless 911 service. In contracting for and providing such service, except for failure to use reasonable care or for intentional acts, the commission, each governing body, each public safety agency, each wireless carrier, and their employees and agents shall be immune from liability or the payment of damages in the performance of installing, maintaining, or providing enhanced wireless 911 service.

Sec. 270. Section 86-2214, Revised Statutes Supplement, 2001, is amended to read:

~~86-2214.~~ The commission, in consultation with the advisory board, shall adopt and promulgate rules and regulations necessary to carry out the provisions of sections ~~86-2201 to 86-2214~~ Enhanced Wireless 911 Services Act.

Sec. 271. Section 81-1190, Revised Statutes Supplement, 2000, is amended to read:

~~81-1190.~~ Sections ~~81-1190 to 81-11,102~~ 271 to 300 of this act shall be known and may be cited as the Information Technology Infrastructure Act.

Sec. 272. Section 81-1191, Revised Statutes Supplement, 2000, is amended to read:

~~81-1191.~~ For purposes of the Information Technology Infrastructure Act, the definitions found in sections 273 to 281 of this act apply. +

(1) ~~Commission means the Nebraska Information Technology Commission,~~

(2) ~~Department means the Department of Administrative Services,~~

(3) ~~Enterprise means the entirety of all departments, offices, boards, bureaus, commissions, or institutions in the state for which money is to be appropriated for communications or data processing services, equipment, or facilities, including all executive, legislative, and judicial departments, the Nebraska state colleges, the University of Nebraska, and all other state institutions and entities,~~

(4) ~~Enterprise project means an endeavor undertaken over a fixed period of time using information technology, which would have a significant effect on a core business function and affects multiple government programs, agencies, or institutions. Enterprise project includes all aspects of planning, design, implementation, project management, and training relating to the endeavor,~~

(5) ~~Fund means the Information Technology Infrastructure Fund,~~

(6) ~~Information technology means computing and telecommunications systems and their supporting infrastructure and interconnectivity used to acquire, transport, process, analyze, store, and disseminate information electronically,~~

(7) ~~Information technology infrastructure means the basic facilities, services, and installations needed for the functioning of information technology, and~~

(8) ~~Statewide technology plan means the plan developed by the Nebraska Information Technology Commission pursuant to section 86-1506.~~

Sec. 273. Section 86-1504, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1504.~~ For purposes of sections ~~86-1501 to 86-1514:~~

(1) ~~Commission means the Nebraska Information Technology Commission.~~

+

(2) ~~Information technology means computing and telecommunications systems, their supporting infrastructure, and interconnectivity used to acquire, transport, process, analyze, store, and disseminate information electronically, and~~

(3) ~~Technology information clearinghouse means a service to provide convenient access for the commission and general public to information about best technology practices, referrals for technical assistance, and other information related to the provisions of sections 86-1501 to 86-1514.~~

Sec. 274. Department means the Department of Administrative Services.

Sec. 275. Enterprise means the entirety of all departments, offices, boards, bureaus, commissions, or institutions in the state for which money is to be appropriated for communications or data processing services, equipment, or facilities, including all executive, legislative, and judicial departments, the Nebraska state colleges, the University of Nebraska, and all other state institutions and entities.

Sec. 276. Enterprise project means an endeavor undertaken over a fixed period of time using information technology, which would have a

significant effect on a core business function and affects multiple government programs, agencies, or institutions. Enterprise project includes all aspects of planning, design, implementation, project management, and training relating to the endeavor.

Sec. 277. Information technology means computing and telecommunications systems and their supporting infrastructure and interconnectivity used to acquire, transport, process, analyze, store, and disseminate information electronically.

Sec. 278. Information technology clearinghouse means a service to provide convenient access for the commission and general public to information about best technology practices, referrals for technical assistance, and other information related to the Information Technology Infrastructure Act.

Sec. 279. Information technology infrastructure means the basic facilities, services, and installations needed for the functioning of information technology.

Sec. 280. Statewide technology plan means the plan developed by the commission pursuant to section 286 of this act.

Sec. 281. Technical panel means the panel created in section 291 of this act.

Sec. 282. Section 86-1501, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1501.~~ Nebraskans, and others throughout the world, have become part of the information age, in which information is a primary element of economic, social, and cultural growth. ~~Our~~ The ability to move information quickly and accurately through electronic means is critical to the success of education, business, agriculture, health care, government, libraries, communities, and other areas of interest in a global society. A statewide vision and strategy is needed to ensure coordinated development of the telecommunications infrastructure necessary for Nebraska to keep pace worldwide and collaboration among entities within the state and with other states.

Sec. 283. Section 86-1502, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1502.~~ (1) The Legislature finds that appropriations for information technology continue to increase. Advances in information technology have the potential to improve government efficiency, broaden educational opportunities, and enhance services to Nebraska communities and citizens. To assure the most cost-effective use of state appropriations:

(a) Responsibility should be assigned for developing a statewide vision and strategic plan to guide investments in information technology;

(b) Organizational and technical support for technology budget decisions should be improved and integrated;

(c) A clearinghouse should be formed for technical support and best practices information; and

(d) Responsibility should be assigned to an office within state government for improving the planning, budgeting, and management of state government's information resources.

(2) It is the intent of the State of Nebraska to support the development of a unified statewide telecommunications infrastructure. The statewide telecommunications infrastructure will be scalable, reliable, and efficient. It is further the intent of the Legislature that the provisions of sections ~~86-1501 to 86-1514~~ 282 to 294 of this act serve to coordinate the state's investments in information technology in an efficient and expeditious manner. The provisions are not intended to impede the rapid deployment of appropriate technology or establish cumbersome regulations or bureaucracy.

Sec. 284. Section 86-1503, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1503.~~ (1) The Legislature finds that the University of Nebraska, as the state's only public university, has unique needs and requirements in the area of information technology relating to the university's academic research mission. Accordingly, the Legislature intends that sections ~~86-1501 to 86-1514~~ 282 to 294 of this act shall not limit the authority of the Board of Regents of the University of Nebraska to make decisions about policies, purchases, and uses of information technology related to its academic research mission. For purposes of this section, academic research mission means those specific activities or programs of the university which are undertaken as a part of sponsored or grant-supported activities, organized research projects, or other similar activities intended to produce one or more research outcomes and conducted by employees of the university or other entities, including, but not limited to, research divisions, bureaus, institutes, and experimental stations. Academic research mission does not include the administrative activities of the university, instruction of students, or services provided by

the university to communities when not conducted in the context of research outcomes.

(2) The Legislature finds that, as a separate branch of government, the Legislature must perform its functions independently of other branches. Accordingly, the Legislature shall not be limited by the provisions and requirements of sections ~~86-1501 to 86-1514~~ 282 to 294 of this act. However the Legislature reserves the right to use the resources established by such sections.

Sec. 285. Section 86-1505, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1505.~~ (1) The Nebraska Information Technology Commission is created. The commission shall consist of nine members, including (a) one member representing elementary and secondary education, (b) one member representing postsecondary education, (c) the Governor or his or her designee, (d) one member representing communities, and (e) five members representing the general public who have experience in developing strategic plans and making high-level business decisions.

(2) The Governor or a designee of the Governor shall serve as chairperson of the commission.

(3) The members of the commission shall be appointed by the Governor with the approval of a majority of the Legislature. Members of the commission shall serve for terms of four years, except that two members initially appointed to represent the general public shall be appointed for a term of two years. Members shall be limited to two consecutive terms. The Governor or his or her designee shall serve on the commission for his or her term. Each member shall serve until the appointment and qualification of his or her successor. In case of a vacancy occurring prior to the expiration of the term of a member, the appointment shall be made only for the remainder of the term.

(4) Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(5) The commission may employ or designate an executive director to provide administrative and operational support for the commission. The Department of Administrative Services and Nebraska Educational Telecommunications Commission shall assist with administrative and operational support for the Nebraska Information Technology Commission as necessary to carry out its duties.

Sec. 286. Section 86-1506, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1506.~~ The commission shall:

(1) ~~By July 1, 1999, and each Annually by July 1, thereafter,~~ adopt policies and procedures used to develop, review, and annually update a statewide technology plan;

(2) Create a ~~technology~~ an information technology clearinghouse to identify and share best practices and new developments, as well as identify existing problems and deficiencies;

(3) Review and adopt policies to provide incentives for investments in information technology infrastructure services;

(4) Determine a broad strategy and objectives for developing and sustaining information technology development in Nebraska, including long-range funding strategies, research and development investment, support and maintenance requirements, and system usage and assessment guidelines;

(5) ~~By September 15, 1998, adopt~~ Adopt guidelines regarding project planning and management, information sharing, and administrative and technical review procedures involving state-owned or state-supported technology and infrastructure. Governmental entities, state agencies, and political subdivisions shall submit projects which directly utilize state-appropriated funds for information technology purposes to the process established by sections ~~86-1501 to 86-1514~~ 282 to 294 of this act. Governmental entities and political subdivisions may submit other projects involving information technology to the commission for comment, review, and recommendations;

(6) ~~By September 15, 1998, adopt~~ Adopt minimum technical standards, guidelines, and architectures upon recommendation by the technical panel; ~~created in section 86-1511,~~

(7) Establish ad hoc technical advisory groups to study and make recommendations on specific topics, including work groups to establish, coordinate, and prioritize needs for education, local communities, and state agencies;

(8) By November 15 of each even-numbered year, make recommendations on technology investments to the Governor and the Legislature, including a prioritized list of projects, reviewed by the technical panel, for which new or additional funding is requested;

(9) Approve grants from the Community Technology Fund and Government

Technology Collaboration Fund;

(10) ~~By September 15, 1998, adopt~~ Adopt schedules and procedures for reporting needs, priorities, and recommended projects; and

(11) Provide assistance upon request to the Public Safety Wireless Communication Advisory Board.

Sec. 287. Section 86-1507, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1507.~~ The commission shall implement ~~the provisions of sections 86-1501 to 86-1514~~ 282 to 294 of this act in accordance with the policy objectives described in ~~sections 86-1501, 86-1502, and 86-1506~~ 282, 283, and 286 of this act and with the following goals:

(1) Expanding access to lifelong educational and training opportunities so that Nebraska's citizens and work force can function in the emerging information society;

(2) Stimulating and supporting information-based economic development that improves economic opportunity; and

(3) Expanding citizen access to government information.

Sec. 288. Section 86-1508, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1508.~~ By November 15 of each even-numbered year, the Nebraska Information Technology Commission shall submit a progress report to the Governor and Legislature.

Sec. 289. Section 86-1509, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1509.~~ The office of Chief Information Officer is created. The Chief Information Officer shall be appointed by and serve at the pleasure of the Governor with the approval of a majority of the Legislature. For administrative purposes, the office of Chief Information Officer shall be located in the Department of Administrative Services.

Sec. 290. Section 86-1510, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1510.~~ The Chief Information Officer shall:

(1) Maintain, in cooperation with the Department of Administrative Services, an inventory of noneducation state government technology assets, including hardware, applications, and data bases;

(2) Recommend policies and guidelines for acceptable and cost-effective use of information technology in noneducation state government;

(3) Advise the Governor and Legislature on policy issues affecting noneducation state government related to information technology;

(4) Coordinate efforts among other noneducation state government technology agencies and coordinating bodies;

(5) Implement a strategic, tactical, and project planning process for noneducation state government information technology that is linked to the budget process;

(6) Assist the budget division of the Department of Administrative Services and Legislative Fiscal Analyst in evaluating technology-related budget requests;

(7) Work with each governmental department and noneducation state agency to evaluate and act upon opportunities to more efficiently and effectively deliver government services through the use of ~~informational~~ information technology;

(8) Recommend to the Governor and Legislature methods for improving the organization and management of data by noneducation agencies to achieve the goals of making information sharable and reusable, eliminating redundancy of data and programs, improving the quality and usefulness of data, and improving access to data, and implement such recommendations as the Governor or Legislature may direct;

(9) Monitor the status of major noneducation state government technology projects;

(10) Administer such funds as may be appropriated to the Chief Information Officer by the Legislature; and

(11) Complete other tasks as assigned by the Governor.

Sec. 291. Section 86-1511, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1511.~~ (1) A technical panel is created. The technical panel shall be comprised of one representative from the Nebraska Educational Telecommunications Commission, one representative from the Department of Administrative Services, one representative from the University of Nebraska Computing Services Network, one representative from the project sector, and such other members as specified by the Nebraska Information Technology Commission.

(2) The technical panel shall review any technology project or

request for additional funding recommended to the Nebraska Information Technology Commission including any recommendations by working groups established under sections ~~86-1501 to 86-1514~~ 282 to 294 of this act. Upon the conclusion of the review of a technology project or request for additional funding, the technical panel shall provide its analysis to the ~~Nebraska Information Technology Commission~~ commission. The technical panel may recommend technical standards and guidelines to be considered for adoption by the commission.

Sec. 292. Section 86-1512, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1512.~~ The Community Technology Fund is created. The fund shall be granted to public entities or for the public entity's share of public-private partnerships by the commission. The fund shall be used to provide incentives for collaborative community and regional approaches toward more effective and efficient use of technology to meet the needs of citizens, political subdivisions, and other entities as determined by the commission. Expenditures from the fund shall be approved by the commission only after review by the technical panel. ~~created in section 86-1511.~~ The fund shall be administered by the Department of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 293. Section 86-1513, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1513.~~ The Government Technology Collaboration Fund is created. The fund shall be granted by the commission. The fund shall be used to provide incentives for collaborative technology projects and programs by state agencies, boards, and commissions and to assist in meeting the technology needs of small agencies as determined by the commission. Expenditures from the fund shall be approved by the commission only after review by the technical panel. ~~created in section 86-1511.~~ The fund shall be administered by the Department of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 294. Section 86-1514, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1514.~~ (1) The Appropriations Committee and the Transportation Committee of the Legislature shall jointly review ~~the provisions of sections 86-1501 to 86-1513~~ 282 to 294 of this act before January 1, 2001, and every two years thereafter. The Executive Board of the Legislative Council shall designate staff with appropriate technical experience to provide the staff support for the review. The committees shall establish criteria to be used for the review in accordance with the following policy objectives. ~~within sixty days after April 3, 1998.~~ It shall be the policy of the state to:

(a) Use information technology in education, communities, including health care and economic development, and every level of government service to improve economic opportunities and quality of life for all Nebraskans regardless of location or income;

(b) Stimulate the demand to encourage and enable long-term infrastructure innovation and improvement; and

(c) Organize technology planning in new ways to aggregate demand, reduce costs, and create support networks; encourage collaboration between communities of interest; and encourage competition among technology and service providers.

(2) In the review, the committees shall determine the extent to which:

(a) The vision has been realized and short-term and long-term strategies have been articulated and employed;

(b) The statewide technology plan and other activities of the commission have improved coordination and assisted policymakers;

(c) ~~An information technology clearinghouse of information~~ has been established, maintained, and utilized of Nebraska's information technology infrastructure and of activities taking place in the state involving information technology, and ~~that~~ the information flow between and among individuals and organizations has been facilitated as a result of the information technology clearinghouse;

(d) Policies, standards, guidelines, and architectures have been developed and observed;

(e) Recommendations made by the commission to the Governor and Legislature have assisted policy and funding decisions;

(f) Input and involvement of all interested parties has been

encouraged and facilitated; and

(g) Long-term infrastructure innovation, improvement, and coordination has been planned for, facilitated, and achieved with minimal barriers and impediments.

Sec. 295. Section 81-1192, Revised Statutes Supplement, 2000, is amended to read:

~~81-1192.~~ The In addition to the findings in section 283 of this act, the Legislature also finds that:

(1) The effective, efficient, and cost-effective operation of state government requires that information be considered and managed as a strategic resource;

(2) Information technologies present numerous opportunities to more effectively manage the information necessary for state government operations;

(3) Information technologies are changing and advancing at a very rapid rate, increasing the computing power available to individual users;

(4) The commission should have the responsibility to establish goals, guidelines, and priorities for information technology infrastructure; and

(5) Periodic investments in the information technology infrastructure are required to develop and maintain the foundation for the effective use of information technologies throughout state government.

Sec. 296. Section 81-1194, Revised Statutes Supplement, 2000, is amended to read:

~~81-1194.~~ It To authorize enterprise projects and provide funding, it is the intent of the Legislature that:

(1) A program be created with the goals of:

(a) Improving the efficiency of and reducing the cost of state government and its various agencies;

(b) Improving the technical capabilities and productivity of state employees and students, faculty, and administrators in state educational institutions;

(c) Addressing enterprise-wide information technology issues; and

(d) Clearly identifying and providing accountability for the costs and benefits of information technology in state government; and

(2) A fund be created to provide resources for periodic investments in the information technology infrastructure.

Sec. 297. Section 81-1195, Revised Statutes Supplement, 2000, is amended to read:

~~81-1195.~~ The Information Technology Infrastructure Fund is hereby created. The fund shall contain revenue from the special privilege tax as provided in section 77-2602, gifts, grants, and such other money as is appropriated or transferred by the Legislature. The fund shall be used to attain the goals listed in section ~~81-1194~~ 296 of this act and the goals and priorities identified in the statewide technology plan. The fund shall be administered by the department. Expenditures shall be made from the fund to finance the operations of the Information Technology Infrastructure Act in accordance with the appropriations made by the Legislature. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 298. Section 81-1196.01, Revised Statutes Supplement, 2000, is amended to read:

~~81-1196.01.~~ (1) The Legislature may allocate money from the ~~fund~~ Information Technology Infrastructure Fund for enterprise projects. The Legislature may recognize multiple-year commitments for large projects, subject to available appropriations, including remaining obligations for the century date change project managed by the department.

(2) No contract or expenditure for the implementation of an enterprise project may be initiated unless the commission has approved a project plan. The project plan shall include, but not be limited to, the objectives, scope, and justification of the project; detailed specifications and analyses that guide the project from beginning to conclusion; technical requirements; and project management. The commission may request clarification, require changes, or provide conditional approval of a project plan. In its review, the commission shall determine whether the objectives, scope, timeframe, and budget of the project are consistent with the proposal authorized by the Legislature in its allocation from the fund.

(3) The commission may also evaluate whether the project plan is consistent with the statewide technology plan and the commission's technical standards and guidelines.

(4) Pursuant to section ~~86-1510~~ 290 of this act, the Chief Information Officer shall report the status of enterprise projects to the

commission, Governor, and Legislature. In addition, the Chief Information Officer shall provide the Legislature a semiannual progress report for enterprise projects funded through the fund.

Sec. 299. Section 81-1199, Revised Statutes Supplement, 2000, is amended to read:

~~81-1199.~~ The To implement enterprise projects pursuant to sections 295 to 300 of this act, the commission shall:

(1) Develop procedures and issue guidelines regarding the review, approval, and monitoring of enterprise projects that benefit from the ~~fund~~ Information Technology Infrastructure Fund; and

(2) Monitor the status of projects implemented under the Information Technology Infrastructure Act, including a complete accounting of all project costs by fund source.

Sec. 300. Section 81-11,102, Revised Statutes Supplement, 2000, is amended to read:

~~81-11,102.~~ The commission shall report annually to the Governor and the Appropriations Committee of the Legislature concerning its activities pursuant to the Information Technology Infrastructure Act.

Sec. 301. Section 81-2301, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2301.~~ Sections ~~81-2301 to 81-2313~~ 301 to 319 of this act shall be known and may be cited as the Intergovernmental Data Communications Act.

Sec. 302. Section 81-2302, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2302.~~ The Legislature finds and declares that:

(1) The collection, storage, and transfer of information between the state and its agencies and political subdivisions is essential to the efficient operation of state and local government;

(2) The collection, storage, and transfer of information may be best achieved using advanced data processing and communications capabilities;

(3) The potential for data transfer within the state is underdeveloped due to a lack of overall planning, system design, and input into program development, especially as that development affects the transfer of information between state agencies and between the state and its political subdivisions;

(4) Proper program design begins not with the implementation of data processing activities but with the overall design of data processing and communications systems, including a measurement of the impact of program implementation upon all state and local governmental offices; and

(5) The design of a statewide system for the collection, storage, and transfer of data requires input from all affected or potentially affected governmental agencies and political subdivisions of the state.

Sec. 303. Section 81-2303, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2303.~~ As used in For purposes of the Intergovernmental Data Communications Act, unless the context otherwise requires, the definitions found in sections 304 to 308 of this act apply. +

~~(1) Council shall mean the Intergovernmental Data Communications Advisory Council;~~

~~(2) Local project shall mean an intergovernmental data communications project by which information can be exchanged electronically between governmental subdivisions;~~

~~(3) Multijurisdictional data processing project shall mean a project identified by a state agency or governmental subdivision for development on data processing systems which gather data that can be used by other state agencies or governmental subdivisions to aid in carrying out their statutory or administrative duties; and~~

~~(4) State project shall mean an intergovernmental data communications project by which information can be exchanged electronically between governmental subdivisions and state agencies and between state agencies.~~

Sec. 304. Council means the Intergovernmental Data Communications Advisory Council.

Sec. 305. Intergovernmental data services program means the program created in the Intergovernmental Data Services Program Act.

Sec. 306. Local project means an intergovernmental data communications project by which information can be exchanged electronically between governmental subdivisions.

Sec. 307. Multijurisdictional data processing project means a project identified by a state agency or governmental subdivision for development on data processing systems which gather data that can be used by other state agencies or governmental subdivisions to aid in carrying out their

statutory or administrative duties.

Sec. 308. State project means an intergovernmental data communications project by which information can be exchanged electronically between governmental subdivisions and state agencies and between state agencies.

Sec. 309. Section 81-2304, Revised Statutes Supplement, 2000, is amended to read:

~~81-2304.~~ There is hereby created the The Intergovernmental Data Communications Advisory Council is created. The council shall consist of thirteen members as follows:

(1) ~~One person shall be the~~ The administrator of the intergovernmental data services program, who shall serve as the chairperson of the council;

(2) ~~One person shall be a~~ A representative of the information management services division of the Department of Administrative Services;

(3) ~~One person shall be a~~ A representative of the division of communications of the Department of Administrative Services;

(4) ~~One person shall be~~ appointed by the Governor as a representative of state government;

(5) ~~One person shall be~~ appointed by the Executive Board of the Legislative Council as a representative of the Legislature;

(6) ~~One person shall be~~ appointed by the Chief Justice of the Supreme Court as a representative of the court system;

(7) ~~Two elected county officials shall be~~ appointed by the Governor as representatives of county government;

(8) ~~Two elected city or village officials shall be~~ appointed by the Governor as representatives of municipal government;

(9) ~~One person shall be~~ appointed by the Governor as a representative of the local data processing division of a political subdivision;

(10) ~~One person shall be a~~ A representative of the Department of Natural Resources data bank; and

(11) ~~One person shall be a~~ A representative of the records management division of the Secretary of State's office.

Sec. 310. Section 81-2305, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2305.~~ The term of office of the members of the council ~~shall be~~ is two years. Vacancies on the council shall be filled in the same manner as the initial appointments. The seat of a council member who accumulates three consecutive absences from the meetings of the council shall be considered vacant. The appointments to the council shall be made ~~within thirty days following August 30, 1987, and successive appointments shall be made~~ no later than thirty days prior to the expiration date of the term of office.

Sec. 311. Section 81-2306, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2306.~~ The council shall elect a vice-chairperson who shall serve for one year. The council shall meet at least four times annually at the call of the chairperson or a majority of the members of the council. All meetings shall be open to the public.

Sec. 312. Section 81-2307, Revised Statutes Supplement, 2000, is amended to read:

~~81-2307.~~ The purposes of the council ~~shall be~~ are to:

(1) ~~assure~~ Assure the efficient collection, use, and exchange of information between state agencies and between state agencies and governmental subdivisions; ~~;~~

(2) ~~study~~ Study and make recommendations concerning the data processing and communications needs of the state and its political subdivisions; ~~;~~

(3) ~~make~~ Make recommendations of program design which would enhance data transfer between state agencies and between the state and its political subdivisions; ~~;~~

(4) ~~coordinate~~ Coordinate the implementation of data processing applications involving multijurisdictional data processing projects; ~~;~~ and

(5) ~~serve~~ Serve in an advisory capacity to the intergovernmental data services program ~~of the information management services division of the Department of Administrative Services.~~

Sec. 313. Section 81-2308, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2308.~~ (1) The council shall:

(a) ~~(1)~~ Develop and publish one-year and five-year plans, specifications, and recommendations for the data processing needs of the state and for a network to provide for intergovernmental transfer of data;

(b) Seek ~~(2) seek~~ to eliminate duplication of effort through coordination of related projects;

(c) Promote ~~(3) promote~~ flexibility in the collection, use, and exchange of information in anticipation of future needs of the state and its political subdivisions;

(d) Identify ~~(4) identify~~ and recommend data processing applications in anticipation of the future needs of state and local governments;

(e) Promote ~~(5) promote~~ intergovernmental exchanges of data and technical expertise;

(f) Report ~~(6) report~~ to, assist, and advise the Chief Information Officer in setting information technology policy;

(g) Provide ~~(7) provide~~ assistance as requested by the Nebraska Information Technology Commission to support the technical panel created in section ~~86-1511~~ 291 of this act; and

(h) Provide ~~(8) provide~~ assistance upon request to the Public Safety Wireless Communication Advisory Board.

(2) The council may ~~(a) study~~ study and make recommendations, including a cost-benefit analysis, concerning:

(a) State ~~state~~ projects which involve intergovernmental transfer of information in an electronic medium or multijurisdictional data processing projects; and

(b) ~~study and make recommendations, including a cost-benefit analysis, concerning a~~ A local project only if the request for assistance comes from the governmental subdivisions involved in the project.

Sec. 314. Section 81-2308.01, Revised Statutes Supplement, 2000, is amended to read:

~~81-2308.01.~~ The council shall coordinate and integrate its responsibilities and role with the responsibilities of the intergovernmental data services program. ~~of the information management services division of the Department of Administrative Services.~~

Sec. 315. Section 81-2309, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2309.~~ The council shall have the power to appoint representatives of state agencies and governmental subdivisions which are affected by a proposed project to serve as developmental subcommittees of the council on the development of the proposed project. Such subcommittees shall be temporary in nature and shall serve to advise, design, and implement specific projects. A subcommittee member shall serve only on proposed projects affecting his or her agency or governmental subdivision and only for the period of time from the inception of the project until it is operational or deemed terminated by the council.

Sec. 316. Section 81-2310, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2310.~~ Members of the council or subcommittees of the council shall receive no compensation but may be reimbursed for actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177. ~~for state employees.~~

Sec. 317. Section 81-2311, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2311.~~ The council may study any state project which appears to have a potential impact upon intergovernmental data transfer. The council may make recommendations concerning the use of data collected and stored in an electronic medium if such data is deemed to have the potential for intergovernmental data transfer and which it deems to have a positive cost-to-benefit relationship. The council may study any local project only if the request for the study originates from the governmental subdivisions involved in the project.

Sec. 318. Section 81-2312, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2312.~~ (1) Any state agency, political subdivision, or officer or employee thereof, including a member of the council, who has identified or is considering the development of a project which may result in a more efficient use of collected, stored, or communicated data in an electronic medium through intergovernmental data transfer may submit an application to the council for the purpose of requesting a study on the feasibility of the project. Such application shall state the nature of information sought to be exchanged and the state agencies or political subdivisions which might make effective use of the data or which would be affected if the project were undertaken.

(2) The council shall review each application and approve or deny the proposed project for study. If the project is approved for study, the council shall oversee the progress of the study as it deems necessary.

(3) The completed study shall be presented to the council, and the ~~and the~~

The council may then recommend (a) approval of the project for implementation, ~~recommend~~ (b) additional study, ~~recommend~~ (c) modification prior to implementation, ~~recommend~~ (d) additional funding to expand any existing program if such expansion would bring such program into compliance with the long-term objectives set forth by the council, or ~~recommend~~ (e) termination of the project.

Sec. 319. Section 81-2313, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2313.~~ The council shall, at least annually, set forth its recommendations to the Governor, the Legislature, and the Supreme Court. The council shall distribute its recommendations, at least annually, to state agencies and political subdivisions.

Sec. 320. Sections 320 to 338 of this act shall be known and may be cited as the Intergovernmental Data Services Program Act.

Sec. 321. Section 81-1120.35, Revised Statutes Supplement, 2000, is amended to read:

~~81-1120.35.~~ There is hereby created the The intergovernmental data services program which is created and shall be located within the information management services division of the Department of Administrative Services.

Sec. 322. Section 81-1120.36, Revised Statutes Supplement, 2000, is amended to read:

~~81-1120.36.~~ For purposes of the Intergovernmental Data Services Program Act, the definitions found in sections 323 to 331 of this act apply. sections 81-1120.35 to 81-1120.40.

~~(1) Administrator shall mean the administrator of the intergovernmental data services program;~~

~~(2) Application shall mean a computer program that provides a specific service to the user. The term shall include the applications specified in Laws 1989, LB 814, section 54, and all applications of statewide or intergovernmental benefit subject to the review set forth in subdivision (2) of section 81-1120.38;~~

~~(3) Department shall mean the Department of Administrative Services;~~

~~(4) Director shall mean the Director of Administrative Services;~~

~~(5) Division shall mean the information management services division of the Department of Administrative Services;~~

~~(6) Intergovernmental data services system shall mean the installation and use of applications on a computer network that allows for the intergovernmental transfer of data, automation of multijurisdictional functions, and integration of governmental entities that involve multiple locations separated by long distances. The term shall include computers that serve as platforms for statewide applications, cabling, other equipment essential to operating the computers, and operating programs that allow the computers to function. The term shall not include any applications;~~

~~(7) Local application shall mean a computer program intended for use at the local government or state agency level, not of intergovernmental use, serving only limited local needs, and proposed to be resident on only a limited part of the system;~~

~~(8) Peripheral device shall mean equipment that connects to the system to allow local use and access to applications on the system. Peripheral devices shall include, but not be limited to, microprocessors, word processors, desktop computers, terminals, and printers; and~~

~~(9) System shall mean the intergovernmental data services system.~~

Sec. 323. Administrator means the administrator of the intergovernmental data services program.

Sec. 324. Application means a computer program that provides a specific service to the user. Application includes the applications specified in Laws 1989, LB 814, section 54, and all applications of statewide or intergovernmental benefit subject to the review set forth in subdivision (2)(a) of section 333 of this act.

Sec. 325. Department means the Department of Administrative Services.

Sec. 326. Director means the Director of Administrative Services.

Sec. 327. Division means the information management services division of the department.

Sec. 328. Intergovernmental data services system means the installation and use of applications on a computer network that allows for the intergovernmental transfer of data, automation of multijurisdictional functions, and integration of governmental entities that involve multiple locations separated by long distances. Intergovernmental data services system includes computers that serve as platforms for statewide applications, cabling, other equipment essential to operating the computers, and operating programs that allow the computers to function. Intergovernmental data

services system does not include any applications.

Sec. 329. Local application means a computer program intended for use at the local government or state agency level, not of intergovernmental use, serving only limited local needs and proposed to be resident on only a limited part of the system.

Sec. 330. Peripheral device means equipment that connects to the system to allow local use and access to applications on the system. Peripheral device includes, but is not limited to, microprocessors, word processors, desktop computers, terminals, and printers.

Sec. 331. System means the intergovernmental data services system.

Sec. 332. Section 81-1120.37, Revised Statutes Supplement, 2000, is amended to read:

~~81-1120.37.~~ The purpose of the system is to allow for the efficient operation of state government and its political subdivisions. In managing and allocating resources on the system, the administrator shall assign first priority to providing capacity for statewide applications that are essential to carrying out the duties of state agencies in an efficient and effective manner. The system may also serve local data processing needs of political subdivisions, provide citizens with a point of access to governmental services and information, and serve other state and local needs, subject to available resources.

Sec. 333. Section 81-1120.38, Revised Statutes Supplement, 2000, is amended to read:

~~81-1120.38.~~ In establishing and maintaining the system: ~~the division shall exercise the following duties and powers:~~

(1) The division:

(a) ~~Shall~~ ~~shall~~ provide the computer network and services for the system with assistance from the division of communications of the ~~Department of Administrative Services~~ department;

(b) ~~Shall~~, within available resources, assist the Intergovernmental Data Communications Advisory Council, the Geographic Information System Steering Committee, and other local, state, and federal collaborative efforts to encourage coordination of information systems and data sharing;

(c) ~~Shall~~ coordinate its activities and responsibilities with the functions of the division of communications of the department to minimize overlap and duplication of technical services between the divisions in supporting the system, its applications, and application development; and

(d) ~~May~~ undertake and coordinate planning studies to determine the feasibility, benefits, costs, requirements, and options for the intergovernmental transfer of data;

(2) The administrator:

(a) ~~Shall~~ ~~shall~~ approve and coordinate the design, development, installation, training, and maintenance of applications by state agencies for use on the system. Any agency proposing to add an application to the system shall submit an evaluation to the administrator that ~~(a)~~ examines the cost-effectiveness, technical feasibility, and potential use of the proposed application; that ~~(b)~~ identifies the total costs of the application, including design, development, testing, installation, operation, and any changes to the computer network that are necessary for its operation; ~~(c)~~ and ~~(e)~~ that provides a schedule that shows the estimated completion dates for design, development, testing, installation, training, and full operational status. The administrator shall not approve an application by a state agency for use on the system unless his or her review shows that the application is cost effective and technically feasible, that funding is available, and that the proposed schedule is reasonable and feasible;

~~(3) The administrator shall~~ (b) ~~Shall~~ approve changes in the design of applications by state agencies for use on the system. The administrator may require such information from the agency as necessary to determine that the proposed change in design is cost effective and technically feasible, that funding is available, and that the proposed schedule for implementation is reasonable and feasible;

~~(4) The administrator~~ (c) ~~May~~, with the approval of the director, ~~may~~ contract with other governmental entities or private vendors in carrying out the duties relating to the intergovernmental data services program;

~~(5) The administrator~~ (d) ~~Shall~~, in cooperation with the division of communications of the ~~Department of Administrative Services~~ department, ~~shall~~ establish a rate schedule that reflects the rates adopted by the division of communications and the information management services division, plus any additional costs of the system. Such fees may reflect a base cost for access to the system, costs for actual usage of the system, costs for special equipment or services, or a combination of these factors. The administrator may charge for the costs of changes to the system that are requested by or are

necessary to accommodate a request by a user. All fees shall be set to recover all costs of operation;

(6) The administrator shall submit as part of the biennial budget request of the department a listing of all applications submitted for consideration, cost estimates for development, testing, and full operation of each application, a recommended priority listing of the applications for which an evaluation is completed, and funding recommendations by application contained within the budget request for the division. All application estimates and requests shall be scheduled over ensuing fiscal years such that annual projected costs and completion of application phases to the point of fully operational status can be clearly determined. Local applications shall not be subject to the provisions of this subdivision;

(7) Ownership of the system, applications, and peripheral devices purchased or developed by the expenditure of state funds shall be vested with the state, and the responsibility for its proper operation shall be vested with the director and administrator;

(8) The administrator (e) May, with the approval of the director, may enter into agreements with other state and local governments, the federal government, or private-sector entities for the purpose of sale, lease, or licensing for third-party resale of applications and system design. Proceeds from such agreements shall be deposited to the Data Systems Cash Fund; 7 which fund is hereby 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. The fund may be expended for application-related purposes for which the Legislature makes a specific appropriation. The fund may be used to subsidize the cost of operating existing applications, for lowering rates charged to participating state agencies and counties, or for the purpose of new application development;

(9) The budget division of the Department of Administrative Services shall administratively create such cash and revolving funds as may be required to properly account for the receipt of charges for use of applications and the payment of expenses for operation of the system. It is the intent of the Legislature that operations of the system shall be fully financed by user charges with the exception of development costs for new applications and initial costs of operation as applications progress to full operating status and are unable to generate sufficient fee revenue to finance operating costs;

(10) (f) Shall determine whether a local application shall be a component of the system. No local application shall be resident or operational in any component of the system without explicit authorization of the administrator;

(11) All development costs for approved new applications shall be budgeted and appropriated to the division or to participating state agencies at the discretion of the Legislature. Agencies may independently request appropriations for such application development, however such requests shall be subject to the review and prioritization set forth in subdivision (2) of this section, and at such time as the application becomes an authorized application and funded by the Legislature, the cost of such development shall be appropriated to the division or to participating state agencies. To the extent possible, if agency cash or revolving funds or federal funds may be used for application development, such funds may be transferred to the division and expended for application development in order to properly account for all costs associated with application development;

(12) The administrator shall (g) Shall approve or disapprove the attachment of any peripheral device to the system and may prescribe standards and specifications that such devices must meet; and

(13) The administrator shall adopt and promulgate such rules, regulations, guidelines, and procedures to carry out this section;

(14) All communications and telecommunications services for the program and the system shall be secured from the division of communications of the Department of Administrative Services;

(15) The information management services division, within available resources, shall assist the Intergovernmental Data Communications Advisory Council, the Geographic Information System Steering Committee, and other local, state, and federal collaborative efforts to encourage coordination of information systems and data sharing;

(16) The division may undertake and coordinate planning studies to determine the feasibility, benefits, costs, requirements, and options for the intergovernmental transfer of data;

(17) The administrator shall (h) Shall provide assistance as requested by the Nebraska Information Technology Commission to support the technical panel created in section ~~86-1511~~ 291 of this act; and

~~(18) Activities and responsibilities of the division shall be coordinated with the functions of the division of communications. Overlap and duplication of technical services between the divisions in supporting the system, its applications, and application development shall be minimized.~~

(3) The director and administrator shall be responsible for the proper operation of the system, applications, and peripheral devices purchased or developed by the expenditure of state funds. The ownership of such system, applications, and peripheral devices shall be vested with the state; and

(4) All communications and telecommunications services for the intergovernmental data services program and the system shall be secured from the division of communications of the department.

Sec. 334. (1) The administrator shall submit as part of the biennial budget request of the department a listing of all applications submitted for consideration, cost estimates for development, testing, and full operation of each application, a recommended priority listing of the applications for which an evaluation is completed, and funding recommendations by application contained within the budget request for the division. All application estimates and requests shall be scheduled over ensuing fiscal years such that annual projected costs and completion of application phases to the point of fully operational status can be clearly determined. Local applications shall not be subject to the provisions of this subsection.

(2) All development costs for approved new applications shall be budgeted and appropriated to the division or to participating state agencies at the discretion of the Legislature. Agencies may independently request appropriations for such application development, however such requests shall be subject to the review and prioritization set forth in subdivision (2)(a) of section 333 of this act, and at such time as the application becomes an authorized application and funded by the Legislature, the cost of such development shall be appropriated to the division or to participating state agencies. To the extent possible, if agency cash or revolving funds or federal funds may be used for application development, such funds may be transferred to the division and expended for application development in order to properly account for all costs associated with application development.

Sec. 335. The administrator may adopt and promulgate rules, regulations, guidelines, and procedures to carry out sections 333 and 334 of this act.

Sec. 336. The Data Systems Cash Fund is created. The fund shall include money remitted from section 333 of this act. The fund may be expended for application-related purposes for which the Legislature makes a specific appropriation. The fund may be used to subsidize the cost of operating existing applications, for lowering rates charged to participating state agencies and counties, or for the purpose of new application development. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 337. Section 81-1120.40, Revised Statutes Supplement, 2000, is amended to read:

~~81-1120.40.~~ There is hereby created the The Intergovernmental Data Services Program Revolving Fund is created. The fund shall be administered by the division. The fund shall consist of fees paid for services provided to state agencies, political subdivisions, or other governmental or private entities by the division and shall be used to pay for expenses incurred by the division. 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.

Sec. 338. The budget division of the department shall administratively create such cash and revolving funds as may be required to properly account for the receipt of charges for use of applications and the payment of expenses for operation of the system. It is the intent of the Legislature that operations of the system shall be fully financed by user charges with the exception of development costs for new applications and initial costs of operation as applications progress to full operating status and are unable to generate sufficient fee revenue to finance operating costs.

Sec. 339. Section 81-2601, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2601.~~ (1) The Legislature finds that the Geographic Information System is a computer-based technology that captures, stores, analyzes, and displays information about the earth's surface from a geographically referenced system, that an interest in the system is rapidly increasing at all levels of government, and that an institutional mechanism is needed to encourage initiatives, coordinate efforts, avoid duplication, seek efficiencies, develop guidelines, policies, and standards for operations and

management, promote education and training, and make recommendations so that such technology will benefit the entire state and endure as an analysis tool for decisionmakers.

(2) The Intergovernmental Data Communications Advisory Council has found that there are many levels of experience, expertise, and hardware and software sophistication among the various levels of government and that guidelines, policies, coordination, and standards are required to realize the maximum benefits of this technology, avoid data quality problems, and resolve conflicts at a reasonable cost for the state.

(3) It is the intent of the Legislature that a Geographic Information System Steering Committee be created with statewide responsibilities to take an active role in implementing the Geographic Information System. Such committee would help facilitate acquisition of such technology at all levels of government and make recommendations to the Legislature for program initiatives and funding and the fostering of communication, training, and education.

Sec. 340. Section 81-2602, Revised Statutes Supplement, 2000, is amended to read:

~~81-2602.~~ (1) The Geographic Information System Steering Committee is hereby created and shall consist of nineteen members as follows:

~~(1)~~ (a) The director or designee of the Department of Administrative Services, the Department of Environmental Quality, the Department of Health and Human Services Regulation and Licensure, the Conservation and Survey Division of the University of Nebraska, the Department of Natural Resources, and the Governor's Policy Research Office;

~~(2)~~ (b) The Director-State Engineer or designee;

~~(3)~~ (c) The State Surveyor or designee;

~~(4)~~ (d) The Clerk of the Legislature or designee;

~~(5)~~ (e) The secretary of the Game and Parks Commission or designee;

~~(6)~~ (f) The Property Tax Administrator or designee;

~~(7)~~ (g) One representative of federal agencies appointed by the Governor;

~~(8)~~ (h) One representative of the natural resources districts nominated by the Nebraska Association of Resources Districts and appointed by the Governor;

~~(9)~~ (i) One representative of the public power districts appointed by the Governor;

~~(10)~~ (j) Two representatives of the counties nominated by the Nebraska Association of County Officials and appointed by the Governor;

~~(11)~~ (k) One representative of the municipalities nominated by the League of Nebraska Municipalities and appointed by the Governor; and

~~(12)~~ (l) Two members at large appointed by the Governor.

(2) The appointed members shall serve for terms of four years, except that of the initial members appointed by the Governor, one of the representatives of the counties shall be appointed for one year and the other shall be appointed for three years, one of the members at large shall be appointed for one year and the other for three years, and the representative of the public power districts shall be appointed for two years. Their successors shall be appointed for four-year terms. Any vacancy on the committee shall be filled in the same manner as the original appointment, and the person selected to fill such vacancy shall have the same qualifications as the member whose vacancy is being filled.

(3) The members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 341. Section 81-2603, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2603.~~ (1) The Geographic Information System Steering Committee shall elect a chairperson from its members and such other officers as the committee deems necessary.

(2) As the need arises, advisory committees may be established by the committee from various levels of government, industry, or the general public to assist the committee. The members of advisory committees shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The committee shall meet quarterly or upon the call of the chairperson.

Sec. 342. Section 81-2604, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2604.~~ The Geographic Information System Steering Committee shall:

(1) Make recommendations to the Legislature for program initiatives and funding;

(2) Establish guidelines and policies for statewide Geographic Information System operations and management to include:

(a) The acquisition, development, maintenance, quality assurance such as quality control standards, access, ownership, cost recovery, and priorities of data bases;

(b) The compatibility, acquisition, and communications of hardware and software;

(c) The assessment of needs, identification of scope, setting of standards, and determination of an appropriate enforcement mechanism;

(d) The fostering of training programs and promoting education and information about the Geographic Information System; and

(e) The promoting of the Geographic Information System development in the State of Nebraska and providing or coordinating additional support to address Geographic Information System issues as such issues arise;

(3) Report to, assist, and advise the Chief Information Officer in setting information technology policy;

(4) Provide assistance as requested by the Nebraska Information Technology Commission to support the technical panel created in section ~~86-1511~~ 291 of this act; and

(5) Provide assistance upon request to the Public Safety Wireless Communication Advisory Board.

Sec. 343. Section 81-2605, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2605.~~ Annually, the chairperson of the Geographic Information System Steering Committee shall submit a written report, approved by the committee, to the Governor and the Clerk of the Legislature and shall send a copy of such report to the Intergovernmental Data Communications Advisory Council.

Sec. 344. Section 86-2301, Revised Statutes Supplement, 2001, is amended to read:

~~86-2301.~~ For purposes of sections ~~86-2301 to 86-2307~~ 344 to 348 of this act, dark fiber means any unused fiber optic cable through which no light is transmitted or any installed fiber optic cable not carrying a signal.

Sec. 345. Section 86-2302, Revised Statutes Supplement, 2001, is amended to read:

~~86-2302.~~ (1) Any agency or political subdivision of the state may:

(a) Own dark fiber;

(b) Sell dark fiber pursuant to section ~~86-2303~~ 346 of this act; and

(c) Lease dark fiber pursuant to section ~~86-2304~~ 347 of this act.

(2) No agency or political subdivision of the state shall provide telecommunications services for a fee, except as authorized in sections 79-1319, 81-1120.01 to 81-1120.28, 85-401 to 85-418, and 85-1501 to 85-1542, or be issued a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier. Any agency or political subdivision which sells or leases its dark fiber pursuant to sections ~~86-2301 to 86-2307~~ 344 to 348 of this act shall not be deemed to be providing telecommunications services for a fee.

Sec. 346. Section 86-2303, Revised Statutes Supplement, 2001, is amended to read:

~~86-2303.~~ Any agency or political subdivision of the state may sell its dark fiber by any method, including auction, sealed bid, or public sale, which it deems to be most advantageous to the public. The sales agreement may require that the agency or political subdivision be solely responsible for the maintenance of the dark fiber and that the buyer is responsible, on a pro rata basis, for any such maintenance costs.

Sec. 347. Section 86-2304, Revised Statutes Supplement, 2001, is amended to read:

~~86-2304.~~ Any agency or political subdivision of the state may lease its dark fiber if:

(1) The lessee is a certificated telecommunications common carrier or a permitted telecommunications contract carrier pursuant to section ~~75-604~~ 27 of this act or an Internet service provider;

(2) The lease price and profit distribution is approved by the Public Service Commission as follows:

(a) The commission shall not approve any lease price which is less than the market rate for leasing such fiber as determined by the commission. The market rate is the price associated with similar unbundled network elements that may be available from the incumbent local exchange carrier or the price of any other private entity leasing dark fiber optic facilities serving the same or similar territory where the leased equipment is located. Before entering into a lease, each agency or political subdivision shall file a request with the commission for a competitive price comparison to determine

the market rate. When conducting a competitive price comparison, the commission in its discretion shall use rate schedules, interconnection agreements, or other documents within its regulatory oversight and shall gather other market rate information as deemed necessary;

(b) The commission shall not approve any lease price which is agreed upon by the agency or political subdivision and the lessee unless the lease requires that the agency or political subdivision be solely responsible for the maintenance of its dark fiber and that the lessee be responsible, on a pro rata basis, for any such maintenance costs; and

(c) The commission shall not approve any lease unless fifty percent of the profit earned by the agency or political subdivision under the lease is remitted to the Nebraska Internet Enhancement Fund. Profit earned by the agency or political subdivision is the lease price less the cost of infrastructure overbuilding. Before entering into a lease, each agency or political subdivision shall file a request with the commission to determine the cost of overbuilding its fiber optic infrastructure. For purposes of this subdivision, cost of infrastructure overbuilding means the cost of each leased optic fiber, including the cost, on a pro rata basis, associated with the agency's or political subdivision's installation of such fiber;

(3) Any interconnection agreement subject to ~~subsection (2) of section 75-109~~ section 23 of this act is approved by the commission; and

(4) The lessee makes every reasonable effort to activate the maximum amount of the leased fiber as is possible, within one year after entering into the lease, unless good cause is shown.

Sec. 348. Section 86-2305, Revised Statutes Supplement, 2001, is amended to read:

~~86-2305.~~ An original action or appeal concerning a violation of any provision of sections ~~86-2301 to 86-2307~~ 344 to 348 of this act by an agency or political subdivision of the state shall follow the procedures set forth in section 75-132.01.

Sec. 349. Section 86-2306, Revised Statutes Supplement, 2001, is amended to read:

~~86-2306.~~ The Nebraska Internet Enhancement Fund is created. The fund shall be used to provide financial assistance to install and deliver broadband or other advanced telecommunications infrastructure and service throughout the state. It is the intent of the Legislature that two hundred fifty thousand dollars shall be appropriated to the fund to be used for startup costs and seed money for FY2001-02. The Public Service Commission may receive gifts, contributions, property, and equipment from public and private sources for purposes of the fund. The fund shall consist of money appropriated by the Legislature and gifts, grants, or bequests from any source, including money remitted to the fund pursuant to section 347 of this act and any other federal, state, public, and private sources. Money in the fund shall be distributed by the commission pursuant to section ~~86-2307~~ 350 of this 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.

Sec. 350. Section 86-2307, Revised Statutes Supplement, 2001, is amended to read:

~~86-2307.~~ (1) The Public Service Commission shall establish an application process through which any county or municipality in the state may apply for financial assistance from the Nebraska Internet Enhancement Fund. The process shall allow the county or municipality to obtain a service provider for broadband or other advanced telecommunications services in an exchange or other area defined by the county or municipality where such telecommunications services are to be delivered at rates of service agreed upon between the service provider and county or municipality. The application shall state the projected cost, identify the service provider, describe the process for selection of the service provider, list terms and considerations of any agreement between the applicant and the service provider, and include other information as required by the commission.

(2) The commission shall not provide assistance unless (a) the service provider is an eligible service provider of telecommunications, video, Internet, or other related services as determined by rule and regulation of the commission and (b) the applicant can provide matching funds of at least twenty-five percent of the total projected cost.

(3) The commission shall establish a system to prioritize applications. Highest priority shall be given to applicants based on high-cost factors, including population scarcity and location remoteness. Other factors, including financial need, may be considered by the commission as deemed necessary.

(4) Funds for financial assistance to counties and municipalities

may be distributed by the commission on and after January 1, 2002. Funds committed for future use are deemed to be used in the year committed.

Sec. 351. Section 86-401, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-401.~~ The counties of this state may establish public telephone systems within the respective counties according to ~~the provisions of sections 86-401 to 86-412~~ 351 to 362 of this act.

Sec. 352. Section 86-402, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-402.~~ For the purpose of establishing a county telephone system pursuant to sections ~~86-401 to 86-412~~ 351 to 362 of this act, the county board ~~is empowered and authorized to cause~~ may levy a tax of not more than one and four-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such county to be levied and collected ~~for the purpose of establishing or assisting in establishing a public telephone system for any county within this state~~ subject to section 77-3443. The county board shall submit the question of such levy to the electors at a general or special election when a petition is filed with the clerk of the board signed by at least ten percent of the electors of the county. If such proposal submitted at such election is carried by a majority of all the votes cast at the election, the board shall make the levy set forth in this section.

Sec. 353. Section 86-403, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-403.~~ ~~When~~ (1) If the amount of revenue ~~which~~ produced in any one year from a tax under section ~~86-402~~ would produce in any one year 352 of this act is insufficient to establish a public telephone system, the county board of any county shall, upon petition of ten percent of the electors of the county, ~~praying therefor,~~ issue the bonds of the county to an amount not to exceed one-half of one percent of the taxable valuation of the county, bearing not to exceed six percent interest and payable in not to exceed twenty years. Bonds issued under this section shall have but with an option on the part of the county that ~~same~~ the bonds may be paid at any time within five years from the date of issuance.

(2) Before the bonds are issued, the question of ~~issuing the same~~ issuance shall be submitted to a vote of the electors of the county at a general or special election and ~~shall be authorized by a majority vote. of the electors voting at such election.~~ Such bond issue and all matters concerned therewith shall be governed, in all respects, except when in conflict with this section, by the provisions of law for the issuance of bonds by counties for the purpose of internal improvement and when so issued shall be deemed regular and valid. in all respects. When such bonds are ~~so~~ issued, the ~~boards~~ county board shall provide for the levy and collection of a tax annually, sufficient to pay ~~the any interest thereon,~~ and for a tax and to provide a sinking fund for the payment of the bonds as they mature.

Sec. 354. Section 86-404, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-404.~~ The county board shall provide by resolution for the establishment of ~~such a county~~ telephone system. All contracts for the construction of ~~the same,~~ such telephone system or any part thereof, of such system shall be by competitive bid, and upon twenty days' notice by publication in ~~some~~ a newspaper of general circulation published in ~~said~~ the county. The county board PROVIDED, said boards may reject any and all bids bid and cause the work of construction to be performed under ~~their~~ its supervision.

Sec. 355. Section 86-405, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-405.~~ The county board shall ~~further~~ provide for the proper organization, regulation, maintenance, and extension of ~~such~~ the county telephone system. As needed and subject to section 77-3443, the county board may and shall be authorized, if necessary, to levy a tax of not to exceed seven-tenths of one cent on each one hundred dollars upon the taxable property of the county for the purpose of maintaining and extending the ~~same~~ subject to section 77-3443 county telephone system.

Sec. 356. Section 86-406, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-406.~~ (1) Under the direction of the county board, the control and operation of the county telephone system is the responsibility of the telephone chief. The county board shall ~~further~~ provide for the employment of employ a telephone chief. The employment contract of the telephone chief shall not who shall be hired by contract with the county board for a term of not to exceed a term of five years. He The telephone chief shall give bond to the county in the penal sum of at least five thousand dollars, and not more

than twice the value of the said telephone system, as may be determined by the said county board. The which bond shall be approved by said the county board, shall be and filed before such the employment contract is consummated, and shall be conditioned ~~for~~ upon the faithful performance of all duties, and the proper accounting and payment of all money. ~~To the telephone chief shall be committed, under the direction of the county board, the full control and operation of the telephone system.~~

(2) The county board may, upon recommendation of the telephone chief, employ such assistants as may be required. The county board shall determine the number and compensation of any assistants.

(3) ~~thereof to be determined by the county board.~~ The telephone chief and such assistants shall be paid, by the county by warrant ~~out of~~ from the county telephone fund. The telephone chief and assistants hereinafter referred to, such compensation as shall be fixed by the board, PROVIDED, they shall never not be paid any sum ~~out of~~ from any other fund for their services, or otherwise, except that the compensation of the telephone chief may be wholly or partly paid ~~out of~~ from the county general fund during the construction of said the telephone system or for the period of one year thereafter, providing if sufficient funds are not available in the county telephone fund for that purpose.

Sec. 357. Section 86-407, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-407.~~ (1) The county board shall provide by resolution, which shall be published with its regular proceedings, for the rates and tolls to be charged each subscriber system for the use of the telephone system within said the county. The county board PROVIDED, in its discretion it may provide rates and tolls for the use of the entire county system, and, if may also, in case more than one local exchange is established, may provide charges and tolls for the use of the telephones connected to the various exchanges. ~~In providing such charges and tolls, the same~~ The charges and tolls shall, so far as may be practicable, be based upon the actual cost of service, including operation expenses, salaries, maintenance of property, and the like, and after the other expenses. The charges and tolls shall take into account any deduction from the gross income of a reasonable percentage for depreciation of property, and for necessary extension work. It is the intention that such system shall be operated, as nearly as may be far as practicable, for the actual cost of service, but shall be self-sustaining and self-perpetuating.

(2) The charges and tolls shall be collected by the telephone chief. On a monthly basis the telephone chief shall remit such charges and tolls to and by him paid over monthly into the county treasurer's office for credit into a separate fund to be known as the county telephone fund. The county telephone fund in which shall also be included include the funds, if any, derived from the maintenance and extension tax provided for in section ~~86-405~~ 355 of this act.

Sec. 358. Section 86-408, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-408.~~ The power to establish public telephone systems as provided for by sections ~~86-401 to 86-412~~ 351 to 362 of this act shall include the right to purchase or to acquire, through arbitration or by condemnation proceedings, ~~the any telephone systems system already existing in the county. Whenever~~ If there is already exists a telephone system or systems in such county, ~~the furnishing service to the inhabitants thereof, it shall be the duty of said county to shall~~ acquire the same, either telephone system by purchase, or by arbitration, or by condemnation proceedings, as determined by the county. ~~shall determine.~~

Sec. 359. Section 86-409, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-409.~~ In the event (1) If the price to be paid for said for the telephone system is to be fixed set by condemnation proceedings, such proceedings shall be had as provided for held in accordance with section ~~86-411~~ 361 of this act.

(2) If the price to be paid for said the telephone system is to be fixed set by arbitration, then one arbitrator shall be appointed by the county, one arbitrator shall be appointed by the owner of the telephone system to be acquired, and the two appointed arbitrators ~~thus appointed~~ shall select a third arbitrator. The and the price agreed upon by two or more of said the arbitrators, excluding anything for going value, shall constitute the award of the arbitrators. PROVIDED, HOWEVER, upon the filing of

(3) Once the price is set pursuant to subsection (1) or (2) of this section, the owner of the telephone system shall file with the county board a written acceptance of the award of the arbitrators, or the award made by the appraisers in condemnation proceedings. Before by the owners of the

telephone system before the price to be paid for such telephone system shall become becomes binding upon the county, the same price must be submitted to and be approved by a vote of a majority of the electors of said the county, voting at a general or special election of the county called for that purpose. The election notice shall, and the notice therefor must state the purchase price to be paid for said the telephone system.

Sec. 360. Section 86-410, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-410.~~ In the event If the electors of the county shall reject the price fixed by the arbitrators, or by the appraisers in condemnation proceedings, set pursuant to subsection (1) or (2) of section 359 of this act or the owner of such the telephone system refuses to abide by the price as fixed by said arbitration, or by the report of the appraisers appointed by the county court in such condemnation proceedings, then set pursuant to subsection (1) or (2) of section 359 of this act, such county shall have the right to may construct a public telephone system without acquiring the existing telephone system. of such owner.

Sec. 361. Section 86-411, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-411.~~ For the purpose of carrying out the provisions of sections ~~86-401 to 86-412~~ 351 to 362 of this act, the right of eminent domain is granted to the various counties to condemn any and all private property necessary, but only on upon just compensation to the property owner. thereof. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Sec. 362. Section 86-412, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-412.~~ Any county maintaining and operating a county telephone system, as provided in sections 86-401 to 86-412, shall also have power may, through its county board, to enter into yearly contracts with other counties and municipalities, owning and operating telephone systems, and also with persons, firms, and corporations operating telephone systems, (1) for physical connection with such other telephone systems for the interchange of telephone service and the transmission of telephone messages to (a) originating from points within the county and terminating at points beyond the county line of such outside the county, and (b) originating from points without to outside the county and terminating at points within such the county, and for the transmission of messages (c) originating from points without such outside the county, transmitted over its telephone wires to other within the county, and terminating at points beyond the boundaries of such outside the county, and (2) with full power to fix and agree upon toll rates for such intercounty service.

Sec. 363. Section 86-101, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-101.~~ All associations organized or incorporated under the laws of this state, or by and under authority of any other state, or by authority of the United States, whose object and purpose is the transmission, collection, and distribution of dispatches by telegraph, shall be are subject to the regulations and restrictions prescribed in sections 86-102 to 86-113 364 to 372 of this act.

Sec. 364. Section 86-102, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-102.~~ Every telegraph company and every press association or corporation engaged in the transmission, collection, distribution, or delivery of telegraphic telegraph dispatches, either for private use or for publication in newspapers, shall file in the office of the Secretary of State a statement, a copy of its articles of incorporation or other articles of organization, and a copy of its regulations and bylaws. The statement shall be certified to under oath by its the president and secretary or by two of its the officers, embodying the following information and shall contain: (1) The name of the association; (2) the amount of capital invested; and (3) the character of its business. and together with a true copy of its articles of incorporation or other articles of organization, with its regulations and bylaws then in force.

Sec. 365. Section 86-103, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-103.~~ It shall be the duty of the The Secretary of State to shall issue a certificate to every company, association, or corporation that has filed the statement required by section ~~86-102,~~ upon payment 364 of this act and has paid a filing fee of five dollars. The and which certificate shall convey conveys authority to such company, association, or corporation to conduct its business within this state under the restrictions and penalties imposed by sections 86-108 and 86-110 to 86-112 369 to 372 of this act.

Sec. 366. Section 86-104, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-104.~~ Every telegraph company, and press association or corporation engaged in the transmission, collection, and delivery of telegraphic telegraph dispatches, that shall refuse or fail refuses or fails to comply with the provisions of section ~~86-102~~ 364 of this act shall forfeit its right to carry on the collection, transmission, and delivery of dispatches for publication or for private use, and shall furthermore forfeit to the county where such business is carried on, conducted one thousand dollars for each and every day it so continues in violation of sections ~~86-101 to 86-103~~, the penal sum of one thousand dollars, to be recovered in any court of competent jurisdiction. It shall be the duty of county attorneys to 363 to 365 of this act. Each day a violation continues constitutes a separate violation. The county attorney shall prosecute such violations, at the expense of the respective counties wherein said county where the violations occur occurred.

Sec. 367. Section 86-105, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-105.~~ All telegraph companies and press associations or corporations operating telegraph lines in this state shall (1) transmit and forward all dispatches directed to newspapers, private individuals, or public officers, with impartiality, in the order in which they are received, and (2) use due diligence in their delivery, without discrimination as to any person or party to whom they may be directed.

Sec. 368. Section 86-106, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-106.~~ Every (1) It is unlawful for any officer or employee of any telegraph company, or press association or corporation engaged in the transmission of dispatches, to ~~who shall~~ willfully delay the transmission or delivery of any dispatch, or to willfully divulge the contents of any dispatch entrusted to his or her care, to any person except the party entitled to receive the same, shall be guilty of such dispatch.

(2) A violation of this section is a Class III misdemeanor.

Sec. 369. Section 86-107, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-107.~~ It shall be (1) Except as otherwise provided in this section, it is unlawful for any telegraph company, its agents, or its operators, to demand, charge, or receive from any individual, association, or corporation a greater sum for the transmission and delivery of any telegram or message over a given distance than it demands, charges, or receives for the transmission and delivery of any telegram or message containing an equal number of words over a greater distance. A dispatch ~~+~~ PROVIDED, dispatches transmitted during the night and ~~dispatches~~ a dispatch for publication in newspapers a newspaper may be forwarded and delivered at reduced rates. Such if such rates must, however, be are uniform to all patrons for the same service.

(2) It is unlawful for any telegraph company, or press association or organization engaged in the business of forwarding dispatches by telegraph, to demand, collect, or receive from any publisher or proprietor of a newspaper any greater sum for a given service than it demands, charges, or collects from the publisher or proprietor of any other newspaper for a like service.

(3) A violation of this section is a Class II misdemeanor. In addition, such telegraph company or press association or organization shall be liable for all damages sustained by the person or party as a result of such discrimination.

Sec. 370. Section 86-109, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-109.~~ Every (1) Any telegraph company, and every press association or organization engaged in the transmission, collection, distribution, or publication of dispatches, shall afford the same and equal facilities to all publishers of newspapers, and shall furnish the dispatches collected by them for publication in any given locality to all newspapers there published in such locality on the same conditions as to payment and delivery.

(2) A violation of this section is a Class II misdemeanor. In addition, such telegraph company or press association or organization and its members shall be jointly and severally liable for all damages sustained by the owner of any newspaper as a result of such discrimination.

Sec. 371. Section 86-111, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-111.~~ If (1) It is unlawful for any telegraph company, any press association or organization engaged in the transmission of telegraph

dispatches from any place in this state, or the person having the control or management thereof, ~~refuses~~ of the company, association, or organization, to refuse to receive dispatches a dispatch from any person, corporation, or any other telegraph company, or to refuse to transmit the same dispatch with fidelity and without unreasonable delay.

(2) Upon application to send a dispatch, any telegraph company or its operator, agent, clerk, or servant shall inform the applicant, and write upon the dispatch if required by him or her, that the line is not in working order or that the dispatches already on hand for transmission will occupy the line so that the dispatch offered cannot be transmitted within the time required, if applicable. It is unlawful for any telegraph company or its operator, agent, clerk, or servant to omit or to intentionally give false information to the applicant in relation to the time within which the dispatch offered may be sent.

(3) A violation of this section is, it shall be guilty of a Class V misdemeanor. In and upon conviction shall be fined, for each and every offense, in the sum of not less than fifty dollars nor more than one hundred dollars, and in addition, such company, association, corporation, or person shall be liable for damages to the person or corporation sustaining a loss by reason of such refusal or failure. to so transmit.

Sec. 372. Section 86-112, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-112.~~ Any telegraph company engaged in the transmission of telegraphic dispatches is declared to be liable for the nondelivery of dispatches entrusted to its care, and for all mistakes in transmitting messages made by any person in its employ its employee or agent, and for damages resulting from a failure to perform any other duty required by law. ~~Any such~~ Such telegraph company shall not be exempted from any such liability by reason of any clause, condition, or agreement contained in its printed blanks.

Sec. 373. Section 86-1701, Revised Statutes Supplement, 2000, is amended to read:

~~86-1701.~~ (1) It is the intent of the Legislature to promote economic growth and the efficient operation of business and government in Nebraska through the electronic exchange of information and legally binding electronic transactions. In order to facilitate the electronic exchange of information, Nebraska must establish means to ensure that electronic transactions are legally binding and enforceable, while ensuring that security measures are in place to prevent opportunities for fraud and misuse.

(2) In any written communication in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this section. The use of a digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:

- (a) It is unique to the person using it;
- (b) It is capable of verification;
- (c) It is under the sole control of the person using it;
- (d) It is linked to data in such a manner that if the data is

changed, the digital signature is invalidated; and

(e) It conforms to rules and regulations adopted and promulgated by the Secretary of State.

(3) In any communication in which a signature is required or used, a state agency or political subdivision may accept a digital signature or an electronic signature and may accept the communication in electronic format. Any use of a digital signature, an electronic signature, or an electronic communication by a court is subject to the rules of the Supreme Court.

(4) The Secretary of State shall adopt and promulgate rules and regulations to carry out this section which:

(a) Identify and define the type of signature which may be used in the electronic communications governed by the rules and regulations;

(b) Identify and define the type of electronic communications for which a digital signature or an electronic signature may be used; and

(c) Provide a degree of security reasonably related to the risks and consequences of fraud or misuse for the type of electronic communication which, at a minimum, shall require the maintenance of an audit trail of the assignment or approval and the use of the unique access code or unique electronic identifier.

(5) This section shall not be construed to invalidate digital signatures, electronic signatures, or electronic communications which are valid under any other applicable law.

(6) Unless otherwise provided by law, the use or acceptance of a digital signature or an electronic signature shall be at the option of the

parties to the communication. This section shall not be construed to require a person to use or permit the use of a digital signature or electronic signature.

(7) In developing the rules and regulations, the Secretary of State shall seek the advice of public and private entities, including the Department of Administrative Services.

(8) For purposes of this section:

(a) Electronic signature means a unique access code or other unique electronic identifier assigned or approved by the state agency for use in communications with the state agency;

(b) Digital signature means an electronic identifier, created by computer, intended by the person using it to have the same force and effect as a manual signature; and

(c) State agency means any agency, board, court, or constitutional officer of the executive, judicial, and legislative branches of state government, except individual members of the Legislature.

Sec. 374. Section 86-2101, Revised Statutes Supplement, 2000, is amended to read:

~~86-2101.~~ Sections ~~86-2101 to 86-2116~~ 374 to 405 of this act shall be known and may be cited as the Uniform Electronic Transactions Act.

Sec. 375. Section 86-2102, Revised Statutes Supplement, 2000, is amended to read:

~~86-2102.~~ For purposes of the Uniform Electronic Transactions Act, the definitions found in sections 376 to 391 of this act apply. +

(1) Agreement means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) Automated transaction means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) Computer program means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) Contract means the total legal obligation resulting from the parties' agreement as affected by the act and other applicable law.

(5) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(6) Electronic agent means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(7) Electronic record means a record created, generated, sent, communicated, received, or stored by electronic means.

(8) Electronic signature means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(9) Governmental agency means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(10) Information means data, text, images, sounds, codes, computer programs, software, data bases, or the like.

(11) Information processing system means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(12) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(13) 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.

(14) Security procedure means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

~~(15) 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. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.~~

~~(16) Transaction means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.~~

Sec. 376. Agreement means the bargain of the parties in fact as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

Sec. 377. Automated transaction means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

Sec. 378. Computer program means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

Sec. 379. Contract means the total legal obligation resulting from the parties' agreement as affected by the Uniform Electronic Transactions Act and other applicable law.

Sec. 380. Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Sec. 381. Electronic agent means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual.

Sec. 382. Electronic record means a record created, generated, sent, communicated, received, or stored by electronic means.

Sec. 383. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Sec. 384. Governmental agency means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or a county, municipality, or other political subdivision of a state.

Sec. 385. Information means data, text, images, sounds, codes, computer programs, software, data bases, or the like.

Sec. 386. Information processing system means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

Sec. 387. Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

Sec. 388. 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.

Sec. 389. Security procedure means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. Security procedure includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgement procedures.

Sec. 390. 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. State includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

Sec. 391. Transaction means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

Sec. 392. Section 86-2103, Revised Statutes Supplement, 2000, is amended to read:

~~86-2103.~~ ~~(a)~~ (1) Except as otherwise provided in subsection ~~(b)~~ (2) of this section, the Uniform Electronic Transactions Act applies to electronic records and electronic signatures relating to a transaction.

~~(b)~~ (2) The act does not apply to a transaction to the extent it is governed by:

~~(1)~~ a (a) A law governing the creation and execution of wills, codicils, or testamentary trusts; or

~~(2)~~ ~~the~~ (b) The Uniform Commercial Code other than sections 1-107 and 1-206, article 2, and article 2A.

~~(c)~~ (3) The act applies to an electronic record or electronic signature otherwise excluded from the application of the act under subsection ~~(b)~~ (2) of this section to the extent it is governed by a law other than those specified in subsection ~~(b)~~ (2) of this section.

~~(d)~~ (4) A transaction subject to the act is also subject to other applicable substantive law.

Sec. 393. Section 86-2104, Revised Statutes Supplement, 2000, is amended to read:

~~86-2104.~~ The Uniform Electronic Transactions Act applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after July 13, 2000.

Sec. 394. Section 86-2105, Revised Statutes Supplement, 2000, is amended to read:

~~86-2105.~~ ~~(a)~~ (1) The Uniform Electronic Transactions Act does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

~~(b)~~ (2) The act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

~~(c)~~ (3) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

~~(d)~~ (4) Except as otherwise provided in the act, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of the act of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

~~(e)~~ (5) Whether an electronic record or electronic signature has legal consequences is determined by the act and other applicable law.

Sec. 395. Section 86-2106, Revised Statutes Supplement, 2000, is amended to read:

~~86-2106.~~ The Uniform Electronic Transactions Act must be construed and applied:

(1) ~~to~~ To facilitate electronic transactions consistent with other applicable law;

(2) ~~to~~ To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) ~~to~~ To effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Sec. 396. Section 86-2107, Revised Statutes Supplement, 2000, is amended to read:

~~86-2107.~~ ~~(a)~~ (1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

~~(b)~~ (2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

~~(c)~~ (3) If a law requires a record to be in writing, an electronic record satisfies the law.

~~(d)~~ (4) If a law requires a signature, an electronic signature satisfies the law.

Sec. 397. Section 86-2108, Revised Statutes Supplement, 2000, is amended to read:

~~86-2108.~~ ~~(a)~~ (1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

~~(b)~~ (2) If a law other than the Uniform Electronic Transactions Act requires a record ~~(i)~~ to be posted or displayed in a certain manner; ~~or~~ ~~(ii)~~ to be sent, communicated, or transmitted by a specified method; ~~or~~ ~~(iii)~~ to contain information that is formatted in a certain manner, the following rules apply:

~~(1)~~ (a) The record must be posted or displayed in the manner

specified in the other law; ~~+~~

~~(2)~~ (b) Except as otherwise provided in subdivision ~~(d)~~~~(2)~~ (4) (b) of this section, the record must be sent, communicated, or transmitted by the method specified in the other law; and ~~+~~

~~(3)~~ (c) The record must contain the information formatted in the manner specified in the other law.

~~(e)~~ (3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

~~(d)~~ (4) The requirements of this section may not be varied by agreement, but:

~~(1)~~ ~~to~~ (a) To the extent a law other than the act requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection ~~(a)~~ (1) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

~~(2)~~ ~~a~~ (b) A requirement under a law other than the act to send, communicate, or transmit a record by first-class mail, postage prepaid or regular United States mail, may be varied by agreement to the extent permitted by the other law.

Sec. 398. Section 86-2109, Revised Statutes Supplement, 2000, is amended to read:

~~86-2109.~~ ~~(a)~~ (1) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

~~(b)~~ (2) The effect of an electronic record or electronic signature attributed to a person under subsection ~~(a)~~ (1) of this section is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

Sec. 399. Section 86-2110, Revised Statutes Supplement, 2000, is amended to read:

~~86-2110.~~ If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record; ~~+~~

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

~~(A)~~ ~~promptly~~ (a) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

~~(B)~~ ~~takes~~ (b) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

~~(C)~~ ~~has~~ (c) Has not used or received any benefit or value from the consideration, if any, received from the other person; ~~+~~

(3) If neither subdivision (1) or subdivision (2) of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any; and ~~+~~

(4) Subdivisions (2) and (3) of this section may not be varied by agreement.

Sec. 400. Section 86-2111, Revised Statutes Supplement, 2000, is amended to read:

~~86-2111.~~ If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

Sec. 401. Section 86-2112, Revised Statutes Supplement, 2000, is amended to read:

~~86-2112.~~ ~~(a)~~ (1) If a law requires that a record be retained, the

requirement is satisfied by retaining an electronic record of the information in the record which:

~~(1)~~ accurately (a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

~~(2)~~ remains (b) Remains accessible for later reference.

~~(b)~~ (2) A requirement to retain a record in accordance with subsection ~~(a)~~ (1) of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

~~(c)~~ (3) A person may satisfy subsection ~~(a)~~ (1) of this section by using the services of another person if the requirements of that subsection are satisfied.

~~(d)~~ (4) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection ~~(a)~~ (1) of this section.

~~(e)~~ (5) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection ~~(a)~~ (1) of this section.

~~(f)~~ (6) A record retained as an electronic record in accordance with subsection ~~(a)~~ (1) of this section satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after July 13, 2000, specifically prohibits the use of an electronic record for the specified purpose.

~~(g)~~ (7) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

Sec. 402. Section 86-2113, Revised Statutes Supplement, 2000, is amended to read:

~~86-2113.~~ In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

Sec. 403. Section 86-2114, Revised Statutes Supplement, 2000, is amended to read:

~~86-2114.~~ In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements; ~~-~~

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance; and ~~-~~

(3) The terms of the contract are determined by the substantive law applicable to it.

Sec. 404. Section 86-2115, Revised Statutes Supplement, 2000, is amended to read:

~~86-2115.~~ ~~(a)~~ (1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

~~(1)~~ is (a) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

~~(2)~~ is (b) Is in a form capable of being processed by that system;

and

~~(3)~~ enters (c) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

~~(b)~~ (2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

~~(1)~~ it (a) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

~~(2)~~ it (b) It is in a form capable of being processed by that system.

~~(c)~~ (3) Subsection ~~(b)~~ (2) of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection ~~(d)~~ (4) of this

section.

~~(d)~~ (4) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

~~(1)~~ (a) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction; and

~~(2)~~ (b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

~~(e)~~ (5) An electronic record is received under subsection ~~(b)~~ (2) of this section even if no individual is aware of its receipt.

~~(f)~~ (6) Receipt of an electronic acknowledgment from an information processing system described in subsection ~~(b)~~ (2) of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

~~(g)~~ (7) If a person is aware that an electronic record purportedly sent under subsection ~~(a)~~ (1) of this section, or purportedly received under subsection ~~(b)~~ (2) of this section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

Sec. 405. Section 86-2116, Revised Statutes Supplement, 2000, is amended to read:

~~86-2116.~~ ~~(a)~~ (1) In this section, transferable record means an electronic record that:

~~(1)~~ ~~would~~ (a) Would be a note under article 3 of the Uniform Commercial Code or a document under article 7 of the Uniform Commercial Code if the electronic record were in writing; and

~~(2)~~ ~~the~~ (b) The issuer of the electronic record expressly has agreed is a transferable record.

~~(b)~~ (2) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

~~(e)~~ (3) A system satisfies subsection ~~(b)~~ (2) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

~~(1)~~ ~~a~~ (a) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in subdivisions ~~(4)~~, ~~(5)~~, and ~~(6)~~ ~~(d)~~, ~~(e)~~, and ~~(f)~~ of this subsection, unalterable;

~~(2)~~ ~~the~~ (b) The authoritative copy identifies the person asserting control as:

~~(A)~~ ~~the~~ (i) The person to which the transferable record was issued;

or

~~(B)~~ ~~if~~ (ii) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

~~(3)~~ ~~the~~ (c) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

~~(4)~~ ~~copies~~ (d) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

~~(5)~~ ~~each~~ (e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

~~(6)~~ ~~any~~ (f) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

~~(d)~~ ~~(i)~~ (4) (a) Prior to July 1, 2001, except as otherwise agreed, a person having control of a transferable record is the holder, as defined in subdivision (20) of section 1-201, Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under subsection (a) of section 3-302, ~~7-501~~, Uniform Commercial Code, or section 7-501 or 9-308, Uniform Commercial Code, are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subdivision.

~~(ii)~~ (b) On or after July 1, 2001, except as otherwise agreed, a

person having control of a transferable record is the holder, as defined in subdivision (20) of section 1-201, Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under subsection (a) of section 3-302, ~~7-501, Uniform Commercial Code, or section 7-501~~ or 9-330, Uniform Commercial Code, are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subdivision.

~~(e)~~ (5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

~~(f)~~ (6) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

Sec. 406. For purposes of sections 406 to 415 of this act, the definitions found in sections 407 and 408 of this act apply.

Sec. 407. Highway has the same meaning as in section 60-624.

Sec. 408. Telecommunications company has the same meaning as in section 20 of this act.

Sec. 409. Section 86-301, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-301.~~ (1) Any telecommunications company, incorporated or qualified to do business in this state, is granted the right to construct, operate, and maintain telecommunications lines and related facilities along, upon, across, and under the public highways of this state, and upon and under lands in this state, whether state or privately owned, except that (a) such lines and related facilities shall be so constructed and maintained as not to interfere with the ordinary use of such lands or of such highways by the public and (b) all aerial wires and cables shall be placed at a height of not less than eighteen feet above all highway crossings. ~~Nothing in sections 86-301 to 86-304 shall transfer the rights now vested in municipalities in relation to the regulation of the poles, wires, cables, and other appliances.~~

(2) Sections 86-301 to 86-304 406 to 412 of this act shall not transfer the rights now vested in municipalities in relation to the regulation of the poles, wires, cables, and other appliances or authorize a telecommunications company to erect any poles or construct any conduit, cable, or other facilities along, upon, across, or under a public highway within a municipality without first obtaining the consent of the governing body of the municipality. The municipality shall not exercise any authority over any rights the telecommunications company may have to deliver telecommunications services as authorized by the Public Service Commission or the Federal Communications Commission.

(3) Consent from a governing body for the use of a public highway within a municipality shall be based upon a lawful exercise of its statutory and constitutional authority. Such consent and shall not be unreasonably withheld, nor shall any and a preference or disadvantage shall not be created through the granting or withholding of such consent. A municipality shall not adopt an ordinance that prohibits or has the effect of prohibiting the ability of a telecommunications company to provide telecommunications service.

(4) (a) A municipality shall not levy a tax, fee, or charge for any right or privilege of engaging in a telecommunications business or for the use by a telecommunications company of a public highway other than:

~~(a)~~ (i) An occupation tax authorized under section 14-109, 15-202, 15-203, 16-205, or 17-525; and

~~(b)~~ (ii) A public highway construction permit fee or charge to the extent that the fee or charge applies to all persons seeking use of the public highway in a substantially similar manner. All public highway construction permit fees or charges shall be directly related to the costs incurred by the municipality in providing services relating to the granting or administration of permits. Any highway construction permit fee or charge shall also be reasonably related in time to the occurrence of such costs.

(b) Any tax, fee, or charge imposed by a municipality shall be competitively neutral.

(5) The changes made by Laws 1999, LB 496, shall not be construed to affect the terms or conditions of any franchise, license, or permit issued by a municipality prior to August 28, 1999, or to release any party from any

obligations thereunder. Such franchises, licenses, or permits shall remain fully enforceable in accordance with their terms. A municipality may lawfully enter into agreements with franchise holders, licensees, or permittees to modify or terminate an existing franchise, license, or agreement.

(6) Taxes or fees shall not be collected by a municipality through the provision of in-kind services by a telecommunications company, and a municipality shall not require the provision of in-kind services as a condition of consent to the use of a public highway.

(7) The terms of any agreement between a municipality and a telecommunications company regarding use of public highways shall be matters of public record and shall be made available to any member of the public upon request, except that information submitted to a municipality by a telecommunications company which such telecommunications company determines to be proprietary shall be deemed to be a trade secret pursuant to subdivision (3) of section 84-712.05 and shall be accorded full protection from disclosure to third parties in a manner consistent with state law.

~~(8) For purposes of sections 86-301 to 86-304.~~

~~(a) Highway shall have the same meaning as in section 60-624, and~~

~~(b) Telecommunications company shall have the same meaning as in section 86-802.~~

Sec. 410. Section 86-302, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-302. Every~~ Any telecommunications company ~~is authorized to~~ may enter upon private lands to survey the lands for the purpose of obtaining a right-of-way. Every owner of an interest in private lands to be occupied by any telecommunications lines shall be compensated for any right-of-way ~~thus~~ appropriated pursuant to sections 406 to 412 of this act. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Sec. 411. Section 86-303, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-303. Any right-of-way obtained under sections 86-301 to 86-304~~ 406 to 412 of this act by condemnation proceedings for poles, aerial wires, and aerial cables shall be located only on section boundary lines as established by law or property boundary lines adjoining public highways as established by law. All expense of surveying, court costs, and reasonable attorney's fees shall be paid by the telecommunications company obtaining the right-of-way. If any telecommunications line constructed under sections ~~86-301 to 86-303~~ 406 to 412 of this act is abandoned for three years, the right-of-way or easement shall revert to the property affected.

Sec. 412. Section 86-303.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-303.01. If the public highway, along, upon, across, or under~~ which the right to construct, operate, and maintain the telecommunications lines and related facilities is granted, ~~is~~ along, upon, across, or under a state or federal highway, ~~then~~ the location and installation of such lines and related facilities, insofar as they pertain to the present and future use of the right-of-way for highway purposes, ~~shall be~~ is subject to ~~such reasonable rules and regulations and restrictions as are or may be prescribed by~~ of the Department of Roads. If the future use of the state or federal highway requires the moving or relocating of the facilities, ~~then~~ such facilities shall be removed or relocated by the owner at the owner's cost and expense and as directed by the Department of Roads except as provided by section 39-1304.02.

Sec. 413. Section 86-334, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-334. Whenever any county or township road construction, widening, repair, or grading project requires, or can reasonably be expected to require, the performance of any work within six feet of any telephone, electric transmission, or electric distribution line, or its poles, or anchors, notice to the owner of such line, poles, or anchors shall be given by the respective county or township officers in charge of such projects. Such notice shall be given at least thirty days prior to the start of any work when, because of road construction, widening, repair, or grading, or for any other reason, it is necessary to relocate such line, or any of its poles, or anchors.~~

Sec. 414. Section 86-335, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-335. The notice required by section 86-334~~ 413 of this act shall state the nature and location of the work to be done and the date on which such work is scheduled to commence. In the event of any change in the scheduled time of starting such work, notice of such change shall be given as

soon as practicable.

Sec. 415. Section 86-336, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-336.~~ Any owner of any telephone, ~~electric transmission, or electric distribution~~ line failing to move its lines, poles, or anchors located ~~on~~ near a public highway in accordance with the notice provided by section ~~86-334~~ 413 of this act shall be liable to the county or township for the cost of relocating such lines, ~~or any of its poles, or and~~ anchors. When an owner of such facilities located on private right-of-way is required to move ~~the same~~ such lines, poles, or anchors, it shall be at the expense of the county or township. The county or township shall be liable to the owner of any telephone, ~~electric transmission, or electric distribution~~ line for loss of use of such line for failure to give the notice required by the provisions of sections ~~86-334 and 86-335~~ 413 and 414 of this act.

Sec. 416. Section 2-1570, Revised Statutes Supplement, 2000, is amended to read:

2-1570. To assist in the coordination and dissemination of the resources of the data bank, there is hereby established a technical advisory committee to the data bank. Such committee shall be appointed by the Governor and shall consist of nine representatives of state and federal agencies concerned with the collection, interpretation, and use of basic data. The committee shall report to, assist, and advise the Chief Information Officer in setting information technology policy and shall provide assistance as requested by the department to support the technical panel created in section ~~86-1511~~ 291 of this act.

Sec. 417. Section 2-3917.02, Reissue Revised Statutes of Nebraska, is amended to read:

2-3917.02. When a producer desires to switch to a new plant, the new plant shall not accept any milk until the new plant requests, either by ~~phone~~ telephone or in writing, and obtains assurance from the department that the producer's milk may be accepted.

A producer who desires to switch to a new plant while on a probationary or reject status shall first request the department to verify the producer's quality prior to offering milk to the new plant. The new plant shall not accept any milk until acceptable quality tests are obtained by the department.

Sec. 418. Section 9-812, Revised Statutes Supplement, 2001, as amended by section 1, Legislative Bill 3, Ninety-seventh Legislature, First Special Session, 2001, is amended to read:

9-812. (1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be credited to the State Lottery Operation Trust Fund, which fund is hereby created. All payments of expenses of the operation of the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which have been sold. At least twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund. Of the money available to be transferred to the Education Innovation Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund, the first five hundred thousand dollars shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in sections 83-162.01 to 83-162.04. Thereafter, forty-nine and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Education Innovation Fund. Forty-nine and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act. One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in sections 83-162.01 to 83-162.04.

(2) The Education Innovation Fund is hereby created. At least

seventy-five percent of the lottery proceeds allocated to the Education Innovation Fund shall be available for disbursement. For each fiscal year except fiscal years 2001-02 and 2002-03, the Education Innovation Fund shall be allocated in the following manner: Up to ten percent to fund the mentor teacher program pursuant to the Quality Education Accountability Act; up to sixty percent as quality education incentives pursuant to the act; up to twenty percent to the Attracting Excellence to Teaching Program Cash Fund to fund the Attracting Excellence to Teaching Program Act; and up to ten percent of the fund shall be allocated by the Governor. For fiscal years 2001-02 and 2002-03, the Education Innovation Fund shall be allocated in the following manner by the Excellence in Education Council: Up to one million five hundred thousand dollars per fiscal year, as a distance education network completion grant pursuant to section 79-1328; and, after operating expenses for the Excellence in Education Council are deducted, the remainder to the General Fund.

Allocations by the Governor shall be through incentive grants to encourage the development of strategic school improvement plans by school districts for accomplishing high performance learning and to encourage schools to establish innovations in programs or practices that result in restructuring of school organization, school management, and instructional programs which bring about improvement in the quality of education. Such incentive grants allocated by the Governor are intended to provide selected school districts, teachers or groups of teachers, nonprofit educational organizations, educational service units, or cooperatives funding for the allowable costs of implementing pilot projects and model programs.

From the funds allocated by the Governor, minigrants shall be available to school districts to support the development of strategic school improvement plans which shall include statements of purposes and goals for the districts. The plans shall also include the specific statements of improvement or strategic initiatives designed to improve quality learning for every student.

In addition to the minigrants granted for the development of strategic school improvement plans, school districts with annual budget expenditures of three hundred fifty thousand dollars or less are eligible for minigrants from the funds allocated by the Governor for the purposes allowed in subdivisions (2)(a) through (q) of this section. The amount of this type of minigrant shall not exceed five thousand dollars. The school district shall present a curriculum support plan with its application for the grant. The curriculum support plan must show how the district is working to achieve one or more of the allowed purposes and how the grant will be used to directly advance the plan to achieve one or more of these purposes. The plan must be signed by the school administrator and a school board representative. The application for the grant shall be brief. The Excellence in Education Council shall select the recipients of this type of minigrant and shall administer such minigrants.

From the funds allocated by the Governor, major competitive grants shall be available to support innovative programs which are directly related to the strategic school improvement plans. The development of a strategic school improvement plan by a school district shall be required before a grant is awarded. Annual reports shall be made by program recipients documenting the effectiveness of the program in improving the quality of education as designed in the strategic school improvement plans. Special consideration shall be given to plans which contain public or private matching funds and cooperative agreements, including agreements for in-kind services. Purposes for which such major competitive grants would be offered shall include:

(a) Professional staff development programs to provide funds for teacher and administrator training and continuing education to upgrade teaching and administrative skills;

(b) The development of strategic school improvement plans by school districts;

(c) Educational technology assistance to public schools for the purchase and operation of computers, telecommunications equipment and services, and other forms of technological innovation which may enhance classroom teaching, instructional management, and districtwide administration. Telecommunications equipment, services, and forms of technical innovation shall be approved only after review by the technical panel created in section ~~86-1511~~ 291 of this act;

(d) An educational accountability program to develop an educational indicators system to measure the performance and outcomes of public schools and to ensure efficiency in operations;

(e) Alternative programs for students, including underrepresented groups, at-risk students, and dropouts;

- (f) Programs that demonstrate improvement of student performance against valid national and international achievement standards;
- (g) Early childhood and parent education which emphasizes child development;
- (h) Programs using decisionmaking models that increase involvement of parents, teachers, and students in school management;
- (i) Increased involvement of the community in order to achieve increased confidence in and satisfaction with its schools;
- (j) Development of magnet or model programs designed to facilitate desegregation;
- (k) Programs that address family and social issues impairing the learning productivity of students;
- (l) Programs enhancing critical and higher-order thinking capabilities;
- (m) Programs which produce the quality of education necessary to guarantee a competitive work force;
- (n) Programs designed to increase productivity of staff and students through innovative use of time;
- (o) Training programs designed to benefit teachers at all levels of education by increasing their ability to work with educational technology in the classroom;
- (p) Approved accelerated or differentiated curriculum programs under sections 79-1106 to 79-1108.03; and
- (q) Programs for children from birth to age twenty-one years with disabilities receiving special education under the Special Education Act and children from birth to age twenty-one years needing support services as defined in section 79-1125.01, which programs demonstrate improved outcomes for children from birth to age twenty-one years through emphasis on prevention and collaborative planning.

The Governor shall establish the Excellence in Education Council. The Governor shall appoint eleven members to the council including representatives of educational organizations, postsecondary educational institutions, the business community, and the general public, members of school boards and parent education associations, school administrators, and at least four teachers who are engaged in classroom teaching. The State Department of Education shall provide staff support for the council to administer the Education Innovation Fund, including the Quality Education Accountability Act. The council shall have the following powers and duties:

- (i) In consultation with the department, develop and publish criteria for the awarding of incentive grants allocated by the Governor for programs pursuant to this subsection, including minigrants;
- (ii) Provide recommendations to the Governor regarding the selection of projects to be funded and the distribution and duration of project funding;
- (iii) Establish standards, formats, procedures, and timelines for the successful implementation of approved programs funded by incentive grants allocated by the Governor from the Education Innovation Fund;
- (iv) Assist school districts in determining the effectiveness of the innovations in programs and practices and measure the subsequent degree of improvement in the quality of education;
- (v) Consider the reasonable distribution of funds across the state and all classes of school districts;
- (vi) Carry out its duties pursuant to the Quality Education Accountability Act; and
- (vii) Provide annual reports to the Governor concerning programs funded by the fund. Each report shall include the number of applicants and approved applicants, an overview of the various programs, objectives, and anticipated outcomes, and detailed reports of the cost of each program.

To assist the council in carrying out its duties, the State Board of Education shall, in consultation with the council, adopt and promulgate rules and regulations establishing criteria, standards, and procedures regarding the selection and administration of programs funded from the Education Innovation Fund, including the Quality Education Accountability Act.

- (3) Recipients of incentive grants allocated by the Governor from the Education Innovation Fund shall be required to provide, upon request, such data relating to the funded programs and initiatives as the Governor deems necessary.
- (4) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the Education Innovation 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) Unclaimed prize money on a winning lottery ticket shall be

retained for a period of time prescribed by rules and regulations. If no claim is made within such period, the prize money shall be used at the discretion of the Tax Commissioner for any of the purposes prescribed in this section.

Sec. 419. Section 18-419, Revised Statutes Supplement, 2001, is amended to read:

18-419. In addition to the powers authorized by sections 18-401 to 18-418 and any ordinances or resolutions relating to the provision of electric service, any city or village owning or operating electric generation or transmission facilities may sell or lease its dark fiber pursuant to sections ~~86-2301 to 86-2307~~ 344 to 348 of this act.

Sec. 420. Section 86-601, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-601.~~ (1) The owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations, and the agents or employees of any such owner, licensee, or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a visual or sound radio broadcast, by ~~one~~ any person other than such owner, licensee, or operator, or an agent or employee thereof, unless it ~~shall be~~ is alleged and proved by the complaining party, that such owner, licensee, or operator, or such agent or employee, has failed to exercise due care to prevent the publication or utterance of such statement in such broadcast.

(2) In no event shall any owner, licensee, or operator, or an agent or employee thereof, be held liable for any damages for any defamatory statement uttered over the facilities of the visual or sound radio broadcasting station or network by any person other than such owner, licensee, or operator, or an agent or employee thereof, by, on behalf of, or against any candidate for public office.

(3) In any action for damages for any defamatory statement published or uttered in or as a part of a visual or sound radio broadcast, the complaining party shall be allowed only such actual damages as such party has alleged and proved.

Sec. 421. Section 86-331.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-331.01.~~ As used in sections 86-331.01 to 86-331.04 For purposes of sections 421 to 424 of this act, unless the context otherwise requires:

(1) Bypassing shall mean means the act of attaching, connecting, or in any manner affixing any wire, cord, socket, motor, pipe, or other instrument, device, or contrivance to the utility supply system or any part of the system in such a manner as to transmit, supply, or use any utility service without passing through an authorized meter or other device provided for measuring, registering, determining, or limiting the amount of electricity, gas, or water consumed. Bypassing shall also mean also means the act of employing any means to obtain the use or benefit of electricity, gas, or water without paying for the use at the rate established by the supplier of such utilities;

(2) Customer shall mean means the person responsible for payment for utility services for the premises and ~~shall include~~ includes employees and agents of the customer;

(3) Person shall mean means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, and other legal entity;

(4) Tampering shall mean means the act of damaging, altering, adjusting, or in any manner interfering with or obstructing the action or operation of any meter or other device provided for measuring, registering, determining, or limiting the amount of electricity, gas, or water consumed;

(5) Unauthorized metering shall mean means the act of removing, moving, installing, connecting, reconnecting, or disconnecting any meter or metering device for utility service by a person other than an authorized employee or agent of such utility;

(6) Utility shall mean means any person or entity lawfully operating in whole or in part for the purpose of supplying electricity, gas, water, including steam, or any combination thereof, to the public or to any person;

(7) Utility service shall mean means the provision of electricity, gas, steam, water, or any other service or commodity furnished by the utility for compensation; and

(8) Utility supply system shall mean and include means and includes all wires, conduits, pipes, cords, sockets, motors, meters, instruments, load control equipment, and other devices used by the utility for the purpose of providing utility services.

Sec. 422. Section 86-331.02, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-331.02.~~ (1) A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts (a) bypassing, (b) tampering, or (c) unauthorized metering when such act results in damages to the utility. A utility may bring a civil action for damages pursuant to this section against any person receiving the benefit of utility service through means of bypassing, tampering, or unauthorized metering.

(2) In any civil action brought pursuant to this section, the utility shall be entitled, upon proof of willful or intentional bypassing, tampering, or unauthorized metering, to recover as damages:

(a) The amount of actual damage or loss if the amount of the damage or loss is susceptible of reasonable calculation; or

(b) Liquidated damages of ~~(i) until July 1, 1985, five hundred dollars and (ii) on July 1, 1985, and thereafter, seven hundred fifty dollars~~ if the amount of actual damage or loss is not susceptible of reasonable calculation.

In addition to damage or loss under subdivision (a) or (b) of this subsection, the utility may recover all reasonable expenses and costs incurred on account of the bypassing, tampering, or unauthorized metering, including, but not limited to, disconnection, reconnection, service calls, equipment, costs of the suit, and reasonable attorneys' fees in cases within the scope of section 25-1801.

Sec. 423. Section 86-331.03, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-331.03.~~ (1) There shall be a rebuttable presumption that a tenant or occupant at any premises where bypassing, tampering, or unauthorized metering is proven to exist caused or had knowledge of such bypassing, tampering, or unauthorized metering if the tenant or occupant (a) had access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering is proven to exist and (b) was responsible or partially responsible for payment, either directly or indirectly, to the utility or to any other person for utility services to the premises.

(2) There shall be a rebuttable presumption that a customer at any premises where bypassing, tampering, or unauthorized metering is proven to exist caused or had knowledge of such bypassing, tampering, or unauthorized metering if the customer controlled access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering was proven to exist.

Sec. 424. Section 86-331.04, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-331.04.~~ The remedies provided by sections ~~86-331.01 to 86-331.04~~ 421 to 424 of this act shall be deemed to be supplemental and additional to powers conferred by existing laws. ~~The and the~~ remedies provided in sections ~~86-331.01 to 86-331.04~~ 421 to 424 of this act are in addition to and not in limitation of any other civil or criminal statutory or common-law remedies.

Sec. 425. Section 25-2503, Reissue Revised Statutes of Nebraska, is amended to read:

25-2503. Any agency which proposes to acquire private property for a public purpose shall give notice of such proposed acquisition at least forty-five days before beginning negotiations for such acquisition. The notice shall be directed to each owner of property over or across which any right or interest is to be acquired, and shall be deemed properly given if delivered personally or mailed by registered or certified mail addressed to the property owner and to the address shown on the tax records in the office of the county treasurer, ~~except + PROVIDED,~~ that such notice shall be sufficient if given to the administrator or executor of the estate of a deceased person, the trustee of a trust estate, the guardian of the estate of a minor or incompetent person, or a conservator. The notice shall (1) describe the property proposed to be acquired and the compensation to be given for such property, (2) include a statement of the authority for the acquisition, (3) include the nature of and necessity and purpose for which the land shall be used, (4) include the title, right, or interest in the property to be acquired, (5) specify the amount of property needed for the public purpose, (6) include the reasons for selecting the proposed location or route, and (7) state that if approval of any other agency is required, the condemner shall set forth which other agency's approval shall be necessary and, when the acquisition involves a highway, power line, ~~phone~~ telephone line, or similar project, shall include a map showing the proposed route to be followed by the project.

Sec. 426. Section 25-2602.01, Revised Statutes Supplement, 2000, is amended to read:

25-2602.01. (a) A written agreement to submit any existing

controversy to arbitration is valid, enforceable, and irrevocable except upon such grounds as exist at law or in equity for the revocation of any contract.

(b) A provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract, if the provision is entered into voluntarily and willingly.

(c) The Uniform Arbitration Act applies to arbitration agreements between employers and employees or between their respective representatives.

(d) Contract provisions agreed to by the parties to a contract control over contrary provisions of the act other than subsections (e) and (f) of this section.

(e) Subsections (a) and (b) of this section do not apply to a claim for workers' compensation.

(f) Subsection (b) of this section does not apply to:

(1) A claim arising out of personal injury based on tort;

(2) A claim under the Nebraska Fair Employment Practice Act;

(3) Any agreement between parties covered by sections 60-1401.01 to 60-1440; and

(4) Except as provided in section 44-811, any agreement concerning or relating to an insurance policy other than a contract between insurance companies including a reinsurance contract.

(g) When a conflict exists, the Uniform Arbitration Act shall not apply to the Uniform Act on Interstate Arbitration and Compromise of Death Taxes, sections 44-811, 44-4824, 54-404 to 54-406, 60-2701 to 60-2709, and 70-1301 to 70-1329, and ~~86-408 to 86-410~~ and the Uniform Act on Interstate Arbitration and Compromise of Death Taxes sections 358 to 360 of this act.

Sec. 427. Section 28-109, Reissue Revised Statutes of Nebraska, is amended to read:

28-109. For purposes of the Nebraska Criminal Code, unless the context otherwise requires:

(1) Act shall mean a bodily movement, and includes words and possession of property;

(2) Aid or assist shall mean knowingly to give or lend money or credit to be used for, or to make possible or available, or to further activity thus aided or assisted;

(3) Benefit shall mean any gain or advantage to the beneficiary including any gain or advantage to another person pursuant to the desire or consent of the beneficiary;

(4) Bodily injury shall mean physical pain, illness, or any impairment of physical condition;

(5) Conduct shall mean an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions;

(6) Deadly physical force shall mean force, the intended, natural, and probable consequence of which is to produce death, or which does, in fact, produce death;

(7) Deadly weapon shall mean any firearm, knife, bludgeon, or other device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or intended to be used is capable of producing death or serious bodily injury;

(8) Deface shall mean to alter the appearance of something by removing, distorting, adding to, or covering all or a part of the thing;

(9) Dwelling shall mean a building or other thing which is used, intended to be used, or usually used by a person for habitation;

(10) Government shall mean the United States, any state, county, municipality, or other political unit, any branch, department, agency, or subdivision of any of the foregoing, and any corporation or other entity established by law to carry out any governmental function;

(11) Governmental function shall mean any activity which a public servant is legally authorized to undertake on behalf of government;

(12) Motor vehicle shall mean every self-propelled land vehicle, not operated upon rails, except self-propelled chairs used by persons who are disabled and electric personal assistive mobility devices as defined in section 449 of this act;

(13) Omission shall mean a failure to perform an act as to which a duty of performance is imposed by law;

(14) Peace officer shall mean any officer or employee of the state or a political subdivision authorized by law to make arrests, and shall include members of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder;

(15) Pecuniary benefit shall mean benefit in the form of money, property, commercial interest, or anything else, the primary significance of

which is economic gain;

(16) Person shall mean any natural person and where relevant a corporation or an unincorporated association;

(17) Public place shall mean a place to which the public or a substantial number of the public has access, and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings and facilities;

(18) Public servant shall mean any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses;

(19) Recklessly shall mean acting with respect to a material element of an offense when any person disregards a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation;

(20) Serious bodily injury shall mean bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body;

(21) Tamper shall mean to interfere with something improperly or to make unwarranted alterations in its condition;

(22) Thing of value shall mean real property, tangible and intangible personal property, contract rights, choses in action, services, and any rights of use or enjoyment connected therewith; and

(23) Voluntary act shall mean an act performed as a result of effort or determination, and includes the possession of property if the actor was aware of his or her physical possession or control thereof for a sufficient period to have been able to terminate it.

Sec. 428. Section 28-401, Revised Statutes Supplement, 2001, is amended to read:

28-401. As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

(1) Administer shall mean to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;

(2) Agent shall mean an authorized person who acts on behalf of or at the direction of another person but shall not include a common or contract carrier, public warehouse keeper, or employee of a carrier or warehouse keeper;

(3) Administration shall mean the Drug Enforcement Administration, United States Department of Justice;

(4) Controlled substance shall mean a drug, biological, substance, or immediate precursor in Schedules I to V of section 28-405. Controlled substance shall not include distilled spirits, wine, malt beverages, tobacco, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on May 1, 2001, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance shall mean a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department shall mean the Department of Health and Human Services Regulation and Licensure;

(7) Division of Drug Control shall mean the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense shall mean to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;

(9) Distribute shall mean to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe shall mean to issue a medical order;

(11) Drug shall mean (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but shall not include devices or their components, parts, or accessories;

(12) Deliver or delivery shall mean the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Marijuana shall mean all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but shall not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, or the sterilized seed of such plant which is incapable of germination. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it shall mean its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time;

(14) Manufacture shall mean the production, preparation, propagation, compounding, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and shall include any packaging or repackaging of the substance or labeling or relabeling of its container, except that manufacture shall not include the preparation or compounding of a controlled substance by an individual for his or her own use or the preparation, compounding, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(15) Narcotic drug shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(16) Opiate shall mean any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate shall not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate shall include its racemic and levorotatory forms;

(17) Opium poppy shall mean the plant of the species *Papaver somniferum* L., except the seeds thereof;

(18) Poppy straw shall mean all parts, except the seeds, of the opium poppy after mowing;

(19) Person shall mean any corporation, association, partnership, limited liability company, or one or more individuals;

(20) Practitioner shall mean a physician, physician assistant, dentist, veterinarian, pharmacist, podiatrist, optometrist, certified nurse midwife, advanced practice registered nurse, certified registered nurse anesthetist, scientific investigator, pharmacy, hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 71-5175;

(21) Production shall include the manufacture, planting, cultivation, or harvesting of a controlled substance;

(22) Immediate precursor shall mean a substance which is the

principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(23) State shall mean the State of Nebraska;

(24) Ultimate user shall mean a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(25) Hospital shall have the same meaning as in section 71-419;

(26) Cooperating individual shall mean any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;

(27) Hashish or concentrated cannabis shall mean: (a) The separated resin, whether crude or purified, obtained from a plant of the genus cannabis; or (b) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols;

(28) Exceptionally hazardous drug shall mean (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, or (f) pentobarbital;

(29) Imitation controlled substance shall mean a substance which is not a controlled substance but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;

(30) (a) Controlled substance analogue shall mean a substance (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled Substances Act; and

(b) Controlled substance analogue shall not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on May 1, 2001, (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on May 1, 2001, to the extent conduct with respect to such substance is pursuant to such exemption;

(31) Anabolic steroid shall mean any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid shall not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;

(32) Chart order shall mean an order for a controlled substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order shall not include a prescription;

(33) Medical order shall mean a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(34) Prescription shall mean an order for a controlled substance issued by a practitioner. Prescription shall not include a chart order;

(35) Registrant shall mean any person who has a controlled

substances registration issued by the state or the administration;

(36) Reverse distributor shall mean a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances; and

(37) Signature shall mean the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section ~~86-1701~~ 373 of this act.

Sec. 429. Section 28-515, Reissue Revised Statutes of Nebraska, is amended to read:

28-515. (1) A person commits theft if he or she obtains services, which he or she knows are available only for compensation, by deception or threat or by false token or other means to avoid payment for the service. Services include labor, professional service, telephone service, electric service, cable television service, or other public service, accommodation in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other movable property. When compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

(2) A person commits theft if, having control over the disposition of services of others to which he or she is not entitled, he or she diverts such services to his or her own benefit or to the benefit of another not entitled thereto.

~~(3) For purposes of this subsection, telecommunications service shall include, but not be limited to, telephone service and cable television service, and device shall include, but not be limited to, instrument, apparatus, equipment, and plans or instructions for making or assembling the same.~~

It shall be a Class II misdemeanor for any person to:

~~(a) Knowingly make or possess any device designed to or commonly used to obtain telecommunications service fraudulently from a licensed cable television franchisee with the intent to use such device in the commission of an offense described in subsection (1) of this section;~~

~~(b) Knowingly tamper with, interfere with, or connect to any cables, wires, converters, or other devices used for the distribution of telecommunications services by any mechanical, electrical, acoustical, or other means without authority from the operator of the service with the intent of obtaining telecommunications service fraudulently; or~~

~~(c) Sell, give, transfer, or offer or advertise for sale a device which such person knows or should know is intended to be used for the purpose of obtaining telecommunications service fraudulently.~~

Sec. 430. (1) It is unlawful for any person to:

(a) Knowingly make or possess any device designed to or commonly used to obtain telecommunications service fraudulently from a licensed cable television franchisee with the intent to use such device in the commission of an offense described in subsection (1) of section 28-515;

(b) Knowingly tamper with, interfere with, or connect to any cables, wires, converters, or other devices used for the distribution of telecommunications service by any mechanical, electrical, acoustical, or other means without authority from the operator of the service with the intent of obtaining telecommunications service fraudulently; or

(c) Sell, give, transfer, or offer or advertise for sale a device which such person knows or should know is intended to be used for the purpose of obtaining telecommunications service fraudulently.

(2) For purposes of this section:

(a) Telecommunications service includes, but is not limited to, telephone service and cable television service; and

(b) Device includes, but is not limited to, instrument, apparatus, equipment, and plans or instructions for making or assembling the instrument, apparatus, or equipment.

(3) A violation of this section is a Class II misdemeanor.

Sec. 431. Section 86-329, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-329.~~ (1) ~~Any person who connects~~ It is unlawful for any person:

(a) To connect any instrument, device, or contrivance with any wire supplying or intended to supply electricity or electric current or connects to connect any pipe or conduit supplying gas or water, without the knowledge and consent of the supplier of such products, in such manner that any portion thereof may be supplied to any instrument by or at which electricity, electric

current, gas, or water may be consumed without passing through the meter made or provided for measuring or registering the amount or quantity thereof passing through it;

(b) To ~~τ~~ and any person who knowingly uses use or knowingly permits permit the use of electricity, electric current, gas, or water obtained unlawfully pursuant to this section;

(c) To reconnect in the above-mentioned unauthorized ways, shall be deemed guilty of a Class III misdemeanor.

(2) When electrical, gas, or water service has been disconnected pursuant to sections 70-1601 to 70-1615, any person who reconnects such service without the knowledge and consent of the supplier of such service if the service has been disconnected pursuant to sections 70-1601 to 70-1615; or

(d) To willfully injure, alter, or by any instrument, device, or contrivance in any manner interfere with or obstruct the action or operation of any meter made or provided for measuring or registering the amount or quantity of electricity, electric current, gas, or water passing through it, without the knowledge and consent of the supplier of the electricity, electric current, gas, or water passing or intended to pass through such meter.

(2) Proof of the existence of any wire, pipe, or conduit connection or reconnection or of any injury, alteration, interference, or obstruction of a meter is prima facie evidence of the guilt of the person in possession of the premises where such connection, reconnection, injury, alteration, interference, or obstruction is proved to exist.

(3) A violation of this section is a Class III misdemeanor. shall be deemed guilty of a Class III misdemeanor.

Sec. 432. Section 28-711, Reissue Revised Statutes of Nebraska, is amended to read:

28-711. (1) When any physician, medical institution, nurse, school employee, social worker, or other person has reasonable cause to believe that a child has been subjected to abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in abuse or neglect, he or she shall report such incident or cause a report to be made to the proper law enforcement agency or to the department on the toll-free number established by subsection (2) of this section. Such report may be made orally by telephone with the caller giving his or her name and address, shall be followed by a written report, and to the extent available shall contain the address and age of the abused or neglected child, the address of the person or persons having custody of the abused or neglected child, the nature and extent of the abuse or neglect or the conditions and circumstances which would reasonably result in such abuse or neglect, any evidence of previous abuse or neglect including the nature and extent, and any other information which in the opinion of the person may be helpful in establishing the cause of such abuse or neglect and the identity of the perpetrator or perpetrators. Law enforcement agencies receiving any reports of abuse or neglect under this subsection shall notify the state central registry on the next working day by ~~phone~~ telephone or mail.

(2) The department shall establish a statewide toll-free number to be used by any person any hour of the day or night, any day of the week, to make reports of abuse or neglect. Reports of abuse or neglect not previously made to or by a law enforcement agency shall be made immediately to such agency by the department.

Sec. 433. Section 28-1310, Reissue Revised Statutes of Nebraska, is amended to read:

28-1310. (1) A person commits the offense of intimidation by ~~phone~~ telephone call if, with intent to terrify, intimidate, threaten, harass, annoy, or offend, ~~he~~ the person:

(a) Telephones another anonymously, whether or not conversation ensues, and disturbs the peace, quiet, and right of privacy of any person at the place where the calls are received; or

(b) Telephones another and uses indecent, lewd, lascivious, or obscene language or suggests any indecent, lewd, or lascivious act; or

(c) Telephones another and threatens to inflict injury to any person or to the property of any person; or

(d) Intentionally fails to disengage the connection; or

(e) Telephones another and attempts to extort money or other thing of value from any person.

(2) The use of indecent, lewd, or obscene language or the making of a threat or lewd suggestion shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy, or offend.

(3) The offense shall be deemed to have been committed either at the place where the call was made or where it was received.

(4) Intimidation by ~~phone~~ telephone call is a Class III misdemeanor.

Sec. 434. Section 86-337, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-337.~~ Administrators and executors of the estates of deceased persons, trustees of trust estates, the guardians of estates of minors and incompetent persons, and conservators ~~are hereby authorized to may~~ execute easements, licenses, and other contracts with public power districts, electric membership associations, cooperative corporations, individuals, partnerships, limited liability companies, or corporations for the construction, operation, and maintenance of electric generation, transmission, or distribution facilities or facilities for the transmission or distribution of communications upon such terms and conditions as the administrators, executors, trustees, guardians, or conservators may deem reasonable and equitable, and for the best interests of the estates of deceased persons, minors, incompetents, and the beneficiaries of a trust.

Sec. 435. Section 86-338, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-338.~~ ~~Such easements~~ Easements and contracts authorized in section 434 of this act shall be entered into by administrators, executors, trustees, guardians, and conservators only upon compliance with and upon securing the approval of the county court of the county where the real estate is located in the manner provided in section 57-402, pertaining to oil and gas pipeline easements.

Sec. 436. Section 39-101, Reissue Revised Statutes of Nebraska, is amended to read:

39-101. For purposes of Chapter 39, unless the context otherwise requires:

(1) Alley ~~shall mean~~ means 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;

(2) Divided highway ~~shall mean~~ means a highway with separated roadways for traffic in opposite directions;

(3) Highway ~~shall mean~~ 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;

(4) Intersection ~~shall mean~~ means 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;

(5) Mail ~~shall mean~~ means to deposit in the United States mail properly addressed and with postage prepaid;

(6) Maintenance ~~shall mean~~ means 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;

(7) Motor vehicle ~~shall mean~~ means every self-propelled land vehicle, not operated upon rails, except mopeds as defined in section 60-637, ~~and~~ self-propelled chairs used by persons who are disabled, and electric personal assistive mobility devices as defined in section 449 of this act;

(8) Park or parking ~~shall mean~~ means 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;

(9) Pedestrian ~~shall mean~~ means any person afoot;

(10) Right-of-way ~~shall mean~~ means 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;

(11) Roadway ~~shall mean~~ means 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~~ refers to any such roadway separately but not to all such roadways collectively;

(12) Shoulder ~~shall mean~~ means 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;

(13) Sidewalk ~~shall mean~~ means 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;

(14) Traffic ~~shall mean~~ means pedestrians, ridden or herded animals, and vehicles and other conveyances either singly or together while using any highway for purposes of travel; and

(15) Vehicle ~~shall mean~~ means 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, devices ~~or~~ used exclusively upon stationary rails or tracks, and electric personal assistive mobility devices as defined in section 449 of this act.

Sec. 437. Section 43-158, Reissue Revised Statutes of Nebraska, is amended to read:

43-158. When the department determines that an adoption involving exchange of information would serve a child's best interests, it may enter into agreements with the child's proposed adoptive parent or parents for the exchange of information. The nature of the information promised to be provided shall be specified in an exchange-of-information contract and may include, but shall not be limited to, letters by the adoptive parent or parents at specified intervals providing information regarding the child's development or photographs of the child at specified intervals. Any agreement shall provide that the biological parent or parents keep the department informed of any change in address or ~~phone~~ telephone number and may include provision for communication by the biological parent or parents indirectly through the department or directly to the adoptive parent or parents. Nothing in sections 43-155 to 43-160 shall be interpreted to preclude or allow visitation between the biological parent or parents and the child.

Sec. 438. Section 49-14,141, Revised Statutes Supplement, 2000, is amended to read:

49-14,141. 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 ~~86-1701~~ 373 of this act. 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.

Sec. 439. Section 52-1307, Revised Statutes Supplement, 2000, is amended to read:

52-1307. Effective financing statement means a statement that:

- (1) Is an original or reproduced copy thereof;
- (2) Is signed and filed by the secured party in the office of the Secretary of State;
- (3) Is signed 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 of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number 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 used or produced or to be used or produced, (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 52-1321;
- (5) Shall be amended in writing, within three months, similarly signed and filed, to reflect material changes;
- (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 refiling 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 it 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.

Any effective financing statement that is filed electronically shall include an electronic signature of the secured party which may consist of a signature recognized under section ~~86-1701~~ 373 of this act or an access code or any other identifying word or number assigned by the Secretary of State that is unique to a particular filer.

Sec. 440. Section 52-1314, Revised Statutes Supplement, 2000, is amended to read:

52-1314. (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 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 ~~86-1701~~ 373 of this act or an access code or any other identifying word or number assigned by the Secretary of State that is unique to a particular filer.

Sec. 441. Section 86-502, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-502.~~ (1) Each and every express company engaged in the business of receiving and transporting freight in this state shall, when any 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 ~~make provision~~ provide for the proper housing of any ~~and all~~ 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.

Sec. 442. Section 60-102, Reissue Revised Statutes of Nebraska, is amended to read:

60-102. Sections 60-102 to 60-117 shall apply to motor vehicles, commercial trailers, and semitrailers required to be registered under sections 60-301 to 60-306 and all cabin trailers defined in section 60-614 whether or not any such cabin trailer is required to be registered under sections 60-301 to 60-306.

Sections 60-102 to 60-117 shall not apply to:

(1) Foreign trucks and buses required to pay registration fees under sections 60-301 to 60-306 except a vehicle registered or eligible to be registered as part of a fleet of apportionable vehicles under section 60-305.09;

(2) Trailers of farmers or ranchers used wholly and exclusively to carry supplies to the owner's farm or ranch, used by the farmer or rancher to carry his or her own products to storage or market, or used by farmers or ranchers for such hauling of such supplies or products in exchange of services;

(3) 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, well-boring apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, crawler tractors, backhoes, bulldozers, and front-end loaders; and

(4) Minibikes as defined in section 60-636, ~~or~~ mopeds as defined in

section 60-637, and electric personal assistive mobility devices as defined in section 449 of this act.

Sec. 443. Section 60-301, Revised Statutes Supplement, 2001, is amended to read:

60-301. For purposes of Chapter 60, article 3, unless the context otherwise requires:

(1) 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;

(2) Apportionable vehicle means any vehicle used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property. Apportionable vehicle does not include any recreational vehicle, vehicle displaying restricted plates, city pickup and delivery vehicle, bus used in the transportation of chartered parties, or government-owned vehicle. Such vehicle shall either (a) be a power unit having two axles and a gross vehicle weight or registered gross vehicle weight in excess of twenty-six thousand pounds, (b) be a power unit having three or more axles, regardless of weight, or (c) be used in combination when the weight of such combination exceeds twenty-six thousand pounds gross vehicle weight. Vehicles or combinations of vehicles having a gross vehicle weight of twenty-six thousand pounds 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;

(3) 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 (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 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 (c) 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;

(4) Cabin trailer means any vehicle without motive power designed for living quarters and for being drawn 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;

(5) Commercial trailer means any trailer or semitrailer 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 and does not include farm trailers, fertilizer trailers, utility trailers, or cabin trailers;

(6) Commercial 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;

(7) Evidence of insurance means evidence of a current and effective automobile liability policy;

(8) Farm trailer means any trailer or semitrailer (a) 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, (b) used by the farmer or rancher to carry his or her own agricultural products, livestock, and produce to or from storage and market and attached to a passenger car, commercial-licensed vehicle registered for sixteen tons or less, or farm-licensed vehicle, or (c) used by a farmer or rancher to carry his or her own agricultural products, livestock, and produce to and from market. Such trailers shall carry on their license plate, in addition to the registration number, the letter X. Farm trailer does not include a trailer so used when attached to a farm tractor;

(9) Farm trucks means trucks, including combinations of trucks or truck-tractors and trailers or semitrailers, of farmers or ranchers (a) 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, (b) used by the farmer or rancher to carry his or her own agricultural products, livestock, and produce to or from storage or market, (c) used by farmers or ranchers in exchange of service in such hauling of such supplies or agricultural products,

livestock, and produce, or (d) used occasionally to carry camper units, to pull boats or cabin trailers, or to carry or pull museum pieces or vehicles of historical significance, without compensation, to events for public display or educational purposes. Such trucks may carry on their license plates, in addition to the registration number, the designation farm and the words NOT FOR HIRE;

(10) 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. Such trailers shall carry on their license plate, in addition to the registration number, the letter X;

(11) 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;

(12) Fleet means one or more apportionable vehicles;

(13) Highways means public streets, roads, turnpikes, parks, parkways, drives, alleys, and other public ways used for the passage of road vehicles;

(14) Instate miles means total miles operated (a) in the State of Nebraska during the preceding year by the motor vehicle or vehicles registered and licensed for fleet operation and (b) in noncontracting reciprocity states by vehicles that are base-plated in Nebraska;

(15) Local truck means a truck and combinations of trucks, truck-tractors, or trailers or semitrailers 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. Such trucks shall carry on their license plates, in addition to the registration number, the designation of local truck;

(16) Motor vehicle means any vehicle propelled by any power other than muscular power except (a) mopeds as defined in section 60-637, (b) farm tractors, (c) 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 as defined in section 60-6,294.01, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (d) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (e) vehicles which run only on rails or tracks, (f) off-road designed vehicles, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles as defined in section 60-6,355, snowmobiles as defined in section 60-663, and minibikes as defined in section 60-636, (g) 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, ~~and~~ (h) self-propelled chairs used by persons who are disabled, and (i) electric personal assistive mobility devices as defined in section 449 of this act;

(17) Motorcycle means any motor vehicle, except a tractor, ~~or~~ an all-terrain vehicle as defined in section 60-6,355, or an electric personal assistive mobility device as defined in section 449 of this act, 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;

(18) Noncontracting reciprocity state means any state 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 vehicles and, as a condition to operate on the highways of that state, (a) does not require any type of vehicle registration or allocation of vehicles for registration purposes or (b) does not impose any charges based on miles operated, other than those that might be assessed against fuel consumed in that state, on any vehicles which are part of a Nebraska-based fleet;

(19) Owner means a person, firm, or corporation which holds a legal title of a vehicle. If (a) a vehicle 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, (b) a vehicle is subject to a lease of thirty days or more with an immediate right of possession vested in the lessee, or (c) a mortgagor of a vehicle is entitled to possession, then such conditional vendee, lessee, or mortgagor shall be deemed the owner for purposes of Chapter 60, article 3. For such purpose, there are hereby adopted and incorporated by reference the provisions of Article XI, International

Registration Plan, adopted by the American Association of Motor Vehicle Administrators, as revised November 1976;

(20) Park means to stop a vehicle for any length of time, whether occupied or unoccupied;

(21) Passenger car means a motor vehicle designed and used to carry ten passengers or less and not used for hire;

(22) Proof of financial responsibility has the same meaning as in section 60-501;

(23) Self-propelled mobile home means a vehicle with motive power designed for living quarters;

(24) Semitrailer means any vehicle without motive power designed for carrying persons or property and for being 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 the towing vehicle;

(25) Suspension of operator's license has the same meaning as in section 60-476.02;

(26) Total fleet miles means the total number of miles operated in all jurisdictions during the preceding year by the vehicles in such fleet during such year;

(27) Trailer means any vehicle without motive power designed for carrying persons or property and being pulled by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle;

(28) Transporter means any person lawfully engaged in the business of transporting vehicles not his or her own solely for delivery thereof (a) by driving singly, (b) by driving in combinations by the towbar, fullmount, or saddlemount methods or any combinations thereof, or (c) when a truck or tractor draws a semitrailer or tows a trailer;

(29) Truck means a motor vehicle that is designed, used, or maintained primarily for the transportation of property;

(30) Truck-tractor means any motor vehicle designed and used primarily 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 being drawn;

(31) Utility trailer means a trailer having a gross weight, including load thereon, of nine thousand pounds or less attached to a motor vehicle and used exclusively to carry miscellaneous items of personal property. Such trailers shall carry on their license plate, in addition to the registration number, the letter X; and

(32) Vehicle means any device in, upon, or by which any person or property is or may be transported or drawn upon a public highway except devices moved solely by human power or used exclusively upon stationary rails or tracks.

Sec. 444. Section 60-311.14, Revised Statutes Supplement, 2000, is amended to read:

60-311.14. (1) The Department of Motor Vehicles shall, without the payment of any fee except the taxes and fees required by sections 60-311, 60-3002, and 60-3007, issue license plates for one motor vehicle not used for hire and a license plate for one motorcycle not used for hire to 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. 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 pursuant to this section.

(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 of Motor Vehicles prescribes. Such license plate or plates shall be used by such person in lieu of the usual license plate or plates.

Sec. 445. Section 60-471, Reissue Revised Statutes of Nebraska, is amended to read:

60-471. Motor vehicle ~~shall mean~~ means all vehicles propelled by any power other than muscular power except (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, ~~and~~ (6) electric personal assistive mobility devices as defined in section 449 of this act, and (7) off-road vehicles, including, but not limited to, golf carts, go-carts, riding lawn mowers, garden tractors, all-terrain vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663.

Sec. 446. Section 60-4,182, Revised Statutes Supplement, 2001, is

amended to read:

60-4,182. 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 the laws of this state 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 render aid as required under the laws of this state or any city or village ordinance in the event of a motor vehicle accident resulting in property damage if such accident is reported by the owner or operator within twelve hours from the time of the accident -- 4 points, otherwise -- 8 points, and for purposes of this subdivision a telephone call or other notification to the appropriate peace officers shall be deemed to be a report;
- (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; and
 - (c) More than ten 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 the speed limits provided for in subdivision (1)(e), (f), or (g) of section 60-6,186;
- (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; and
- (13) 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, not including 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 -- 1 point.

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 449 of this act.

Sec. 447. Section 60-501, Reissue Revised Statutes of Nebraska, is amended to read:

60-501. 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) Motor vehicle means any self-propelled vehicle which is designed for use upon a highway, including trailers designed for use with such vehicles, except (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, ~~and~~ (i) electric personal assistive mobility devices as defined in section 449 of this act, and (j) off-road designed vehicles, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663;

(5) Nonresident means every person who is not a resident of this state;

(6) 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;

(7) Operator means every person who is in actual physical control of a motor vehicle;

(8) 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;

(9) Person means every natural person, firm, partnership, limited liability company, association, or corporation;

(10) 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;

(11) Registration means registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles;

(12) State means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada; and

(13) 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.

Sec. 448. Section 60-601, Revised Statutes Supplement, 2001, is amended to read:

60-601. Sections 60-601 to 60-6,374 and sections 449 and 459 to 461 of this act shall be known and may be cited as the Nebraska Rules of the Road.

Sec. 449. 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.

Sec. 450. Section 60-636, Reissue Revised Statutes of Nebraska, is amended to read:

60-636. 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.

Sec. 451. Section 60-638, Reissue Revised Statutes of Nebraska, is amended to read:

60-638. Motor vehicle shall mean every self-propelled land vehicle, not operated upon rails, except mopeds, ~~and~~ self-propelled chairs used by persons who are disabled, and electric personal assistive mobility devices.

Sec. 452. Section 60-639, Reissue Revised Statutes of Nebraska, is amended to read:

60-639. 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, ~~but~~ excluding a tractor tractors and electric personal assistive mobility devices.

Sec. 453. Section 60-640, Reissue Revised Statutes of Nebraska, is amended to read:

60-640. 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.

Sec. 454. Section 60-678, Reissue Revised Statutes of Nebraska, is amended to read:

60-678. 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.

Sec. 455. Section 60-680, Revised Statutes Supplement, 2000, is amended to read:

60-680. (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) ~~(j)~~ Alter or establish speed limits authorized in the Nebraska Rules of the Road;
- (l) ~~(k)~~ Designate no-passing zones;
- (m) ~~(l)~~ 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) ~~(m)~~ 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) ~~(n)~~ Establish minimum speed limits as authorized in the rules;
 (p) ~~(e)~~ Designate hazardous railroad grade crossings as authorized in the rules;

(q) ~~(p)~~ Designate and regulate traffic on play streets;
 (r) ~~(q)~~ Prohibit pedestrians from crossing a roadway in a business district or any designated highway except in a crosswalk as authorized in the rules;

(s) ~~(r)~~ Restrict pedestrian crossings at unmarked crosswalks as authorized in the rules;

(t) ~~(s)~~ Regulate persons propelling push carts;

(u) ~~(t)~~ Regulate persons upon skates, coasters, sleds, and other toy vehicles;

(v) ~~(u)~~ 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) ~~(v)~~ Adopt and enforce such temporary or experimental regulations as may be necessary to cover emergencies or special conditions; and

(x) ~~(w)~~ 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), ~~(i)~~, ~~(j)~~, ~~(k)~~, ~~(l)~~, ~~(m)~~, ~~(o)~~, ~~(p)~~ or ~~(r)~~ (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.

Sec. 456. Section 60-6,142, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,142. 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.

Sec. 457. Section 60-6,144, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,144. 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, and the department or the appropriate local authority shall not issue such permit except in extreme emergency:

(1) Pedestrians except in areas specifically designated for that purpose;

(2) Hitchhikers or walkers;

(3) Vehicles not self-propelled;

(4) Bicycles, motor-driven cycles, and 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.

Sec. 458. Section 60-6,226, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,226. (1) Any motor vehicle having four or more wheels which is manufactured or assembled 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 60-301 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.

Sec. 459. An electric personal assistive mobility device, its owner, and its operator shall be exempt from the requirements of Chapter 60, articles 1, 3, 4, and 5.

Sec. 460. (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.

Sec. 461. 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.

Sec. 462. Section 60-6,241, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,241. (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.

Sec. 463. Section 60-6,304, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,304. (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 ~~metex~~ 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 subsection (2) or (3) of this section shall be guilty of a Class IV misdemeanor.

Sec. 464. Section 60-6,349 Reissue Revised Statutes of Nebraska, is amended to read:

60-6,349. 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.

Sec. 465. Section 60-6,351, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,351. 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.

Sec. 466. Section 60-1417.01, Revised Statutes Supplement, 2000, is amended to read:

60-1417.01. (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. Any prospective seller of a used motor vehicle or trailer at auction shall complete a buyer's information form provided by the auction dealer and approved by the board.

(2) The form shall include (a) the make, (b) the model, (c) the year, (d) the actual mileage if known, except for trailers, (e) the vehicle identification number, (f) the name and address of the present owner of the vehicle or trailer, (g) the name and address of the previous owner, (h) the name and address of the person offering the vehicle for sale if such person is an employee or agent of the present owner, (i) the name and address of the person who has physical possession of the certificate of title, (j) a statement as to whether the title is available for inspection and transfer immediately upon the sale of the motor vehicle or trailer, and (k) whether the unit is subject to any kind of ride-and-drive provisions and can or cannot be rejected and returned for refund within a specific period.

(3) The buyer's information form shall be signed by the seller or the seller's agent and the auction dealer. One copy of the form shall be retained by the seller, and one copy of the form shall be retained and maintained as a record by the auction dealer for a period of two years from the date offered for sale.

(4) (c) The auction dealer shall be responsible for insuring that the information required in subdivisions (2)(a) through (e), (j), and (k) (1)(a)(i), (iii), and (iv) of this section and the name of the state of origin of the current title is available to all prospective purchasers 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.

(5) (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. (6) 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.

Sec. 467. Section 70-301, Reissue Revised Statutes of Nebraska, is amended to read:

70-301. Any public power district, corporation, or municipality that is now or may hereafter be engaged in the generation or transmission, or both, of electric energy for sale to the public for light and power purposes or the production or distribution, or both, of ethanol for use as fuel may acquire right-of-way over and upon lands, except railroad right-of-way and depot grounds, for the construction of pole lines or underground lines necessary for the conduct of such business and for the placing of all poles and constructions for the necessary adjuncts thereto, in the same manner as railroad corporations may acquire right-of-way for the construction of railroads. Such district, corporation, or municipality shall give public notice of the proposed location of such pole lines or underground lines with a voltage capacity of thirty-four thousand five hundred volts or more which involves the acquisition of rights or interests in more than ten separately owned tracts by causing to be published a map showing the proposed line route in a legal newspaper of general circulation within the county where such line is to be constructed at least thirty days before negotiating with any person, firm, or corporation to acquire easements or property for such purposes and shall consider all objections which may be filed to such location. After securing approval from the Public Service Commission and having complied with sections ~~86-301 to 86-331~~ 406 to 412 and 468 to 473 of this act, such public power districts, corporations, and municipalities shall have the right to condemn a right-of-way over and across railroad right-of-way and depot grounds for the purpose of crossing the same. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Sec. 468. Section 86-305, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-305.~~ All persons, associations, and corporations Any person engaged in the generating or transmitting of electric current for sale, use, or purchase in the state for power or other purposes, are hereby is granted the right-of-way for all necessary poles and wires along, within, and across any of the public highways of this state. Such persons, associations, or corporations shall be person is liable for all damages to private property by reason of the use of the public highways for such purpose. Such damages shall be ascertained and determined in the manner set forth in sections 76-704 to 76-724.

Sec. 469. Section 86-306, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-306.~~ (1) Any electric wire ~~All such wires~~ shall be placed at least eighteen feet above all road crossings. Any electric ~~and all such~~ poles and wires shall be so placed as not to interfere with the public use of ~~any of~~ such highways, and ~~if whenever~~ practicable, the poles shall be set upon the line of such highways.

(2) If any person engaged in distributing, generating, or transmitting electric current for power or other purposes by means of wires seeks to construct an electric wire ~~Where such persons, associations, or corporations seek to carry one or more of such wires over and across the any railroad track or tracks, telegraph wires, or right-of-way rights-of-way of any railroad company in this state, where the same and the electric wire intersects and crosses streets, highways, alleys, and other public thoroughfares, or elsewhere, such person and railroad company such persons, associations, or corporations shall first endeavor to agree by a contract as to the manner and kind of crossing to be constructed. The contract shall at a minimum meet the requirements of sections 75-706 and 75-707 as to terms and conditions of such construction or placement, which in no case shall be less than twenty-seven feet above the top of the rails of any railroad tracks, and shall include the compensation, if any, to be awarded as damages. If no contract is reached, the person agreement can be had with any such railroad company as to the manner and kind of crossing, or compensation to be awarded, then such persons, associations, or corporations may proceed to have the same ascertained and determined in the manner set forth in sections 76-704 to 76-724.~~

Sec. 470. Section 86-307, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-307.~~ If any ~~such person or persons, associations or corporations, so~~ engaged in distributing, generating, or and transmitting electric current for power or other purposes by means of wires, shall construct or place the same constructs or places electric wires over the railroad tracks, telegraph wires, or right-of-way rights-of-way of any railroad company without having first complied with the provisions in violation of section 86-306, such person or persons, associations or corporations, upon conviction thereof shall be punished by a fine of not exceeding five hundred dollars ~~468 of this act, section 75-708 shall apply.~~

Sec. 471. Section 86-308, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-308.~~ Nothing contained in section 86-305 shall Section 468 of this act shall not be construed to grant any rights within the corporate limits of any village or city in this state.

Sec. 472. Section 86-308.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-308.01.~~ If the public road, along, upon, across, or under which the right to construct, operate, and maintain the electrical transmission line is granted, is a state or federal highway, then the location and installation of the electrical transmission facilities, insofar as they pertain to the present and future use of the rights-of-way for highway purposes, shall be subject to ~~such~~ reasonable regulations and restrictions ~~as are or may be~~ prescribed by the Department of Roads. If the future use of ~~said~~ the state or federal highway requires the moving or relocating of ~~said~~ the facilities, then such facilities shall be removed or relocated by the owner, at the owner's cost and expense, and as directed by the Department of Roads except as provided by the ~~provisions of~~ section 39-1304.02.

Sec. 473. Section 86-309, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-309.~~ Any person who ~~shall~~ willfully and maliciously ~~break, injure, remove or otherwise interfere~~ breaks, injures, removes, or otherwise interferes with any of such electric poles or wires of any of such persons, associations or corporations shall upon conviction thereof be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding three months, or by both is guilty of a Class IV misdemeanor.

Sec. 474. Whenever any county or township road construction, widening, repair, or grading project requires, or can reasonably be expected to require, the performance of any work within six feet of any electric transmission or electric distribution line, poles, or anchors, notice to the owner of such line, poles, or anchors shall be given by the respective county or township officers in charge of such projects. Such notice shall be given at least thirty days prior to the start of any work when, because of road construction, widening, repair, or grading, or for any other reason, it is necessary to relocate such line, poles, or anchors.

Sec. 475. The notice required by section 474 of this act shall state the nature and location of the work to be done and the date on which

such work is scheduled to commence. In the event of any change in the scheduled time of starting such work, notice of such change shall be given as soon as practicable.

Sec. 476. Any owner of any electric transmission or electric distribution line failing to move its lines, poles, or anchors located near a public highway in accordance with the notice provided by section 474 of this act shall be liable to the county or township for the cost of relocating such lines, poles, and anchors. When an owner of such facilities located on private right-of-way is required to move such lines, poles, or anchors, it shall be at the expense of the county or township. The county or township shall be liable to the owner of any electric transmission or electric distribution line for loss of use of such line for failure to give the notice required by sections 474 and 475 of this act.

Sec. 477. Section 70-625, Revised Statutes Supplement, 2001, is amended to read:

70-625. (1) Subject to the limitations of the petition for its creation and all amendments to such petition, a public power district has all the usual powers of a corporation for public purposes and may purchase, hold, sell, and lease personal property and real property reasonably necessary for the conduct of its business. No district may sell household appliances at retail if the retail price of any such appliance exceeds fifty dollars, except that newly developed electrical appliances may be merchandised and sold during the period of time in which any such appliances are being introduced to the public. New models of existing appliances shall not be deemed to be newly developed appliances. An electrical appliance shall be considered to be in such introductory period of time until the particular type of appliance is used by twenty-five percent of all the electrical customers served by such district, but such period shall in no event exceed five years from the date of introduction by the manufacturer of the new appliance to the local market.

(2) In addition to its powers authorized by Chapter 70 and specified in its petition for creation, as amended, a public power district may sell, lease, and service satellite television signal descrambling or decoding devices, satellite television programming, and equipment and services associated with such devices and programming, except that this section does not authorize public power districts (a) to provide signal descrambling or decoding devices or satellite programming to any location (i) being furnished such devices or programming on April 24, 1987, or (ii) where community antenna television service is available from any person, firm, or corporation holding a franchise pursuant to sections 18-2201 to 18-2206 or a permit pursuant to sections 23-383 to 23-388 on April 24, 1987, or (b) to sell, service, or lease C-band satellite dish systems or repair parts.

(3) In addition to the powers authorized by Chapter 70 and specified in its petition for creation as amended, the board of directors of a public power district may apply for and use funds available from the United States Department of Agriculture or other federal agencies for grants or loans to promote economic development and job creation projects in rural areas as permitted under the rules and regulations of the federal agency from which the funds are received. Any loan to be made by a district shall only be made in participation with a bank pursuant to a contract. The district and the participating bank shall determine the terms and conditions of the contract. In addition, in rural areas of the district, the board of directors of such district may provide technical or management assistance to prospective, new, or expanding businesses, including home-based businesses, provide assistance to a local or regional industrial or economic development corporation or foundation located within or contiguous to the district's service area, and provide youth and adult community leadership training.

(4) In addition to the powers authorized by Chapter 70 and specified in its petition for creation as amended, a public power district may sell or lease its dark fiber pursuant to sections ~~86-2301 to 86-2307~~ 344 to 348 of this act.

(5) Notwithstanding any law, ordinance, resolution, or regulation of any political subdivision to the contrary, each public power district may receive funds and extend loans pursuant to the Nebraska Investment Finance Authority Act or pursuant to this section. In addition to the powers authorized by Chapter 70 and specified in its petition for creation, as amended, and without the need for further amendment thereto, a public power district may own and operate, contract to operate, or lease energy equipment and provide billing, meter reading, surveys, or evaluations and other administrative services, but not to include natural gas services, of public utility systems within a district's service territory.

Sec. 478. Section 70-704, Revised Statutes Supplement, 2001, is amended to read:

70-704. Each corporation shall have power: (1) To sue and be sued, complain, and defend, in its corporate name; (2) to have perpetual succession unless a limited period of duration is stated in its articles of incorporation; (3) to adopt a corporate seal, which may be altered at pleasure, and to use it or a facsimile thereof, as required by law; (4) to generate, manufacture, purchase, acquire, and accumulate electric energy and to transmit, distribute, sell, furnish, and dispose of such electric energy; (5) to acquire, own, hold, use, exercise and, to the extent permitted by law, to sell, mortgage, pledge, hypothecate, and in any manner dispose of franchises, rights, privileges, licenses, rights-of-way, and easements necessary, useful, or appropriate; (6) to purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real and personal property or any interest therein for the purposes expressed herein; (7) to borrow money and otherwise contract indebtedness, to issue its obligations therefor, and to secure the payment thereof by mortgage, pledge, or deed of trust of all or any of its property, assets, franchises, revenue, or income; (8) to sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets; (9) to have the same powers now exercised by law by public light and power districts or private corporations to use any of the streets, highways, or public lands of the state or its political subdivisions in the manner provided by law; (10) to have and exercise the power of eminent domain for the purposes expressed in section 70-703 in the manner set forth in sections 76-704 to 76-724 and to have the powers and be subject to the restrictions of electric light and power corporations and districts as regards the use and occupation of public highways and the manner or method of construction and physical operation of plants, systems, and transmission lines; (11) to accept gifts or grants of money, services, or property, real or personal; (12) to make any and all contracts necessary or convenient for the exercise of the powers granted herein; (13) to fix, regulate, and collect rates, fees, rents, or other charges for electric energy furnished by the corporation; (14) to elect or appoint officers, agents, and employees of the corporation and to define their duties and fix their compensation; (15) to make and alter bylaws not inconsistent with the articles of incorporation or with the laws of this state for the administration and regulation of the affairs of the corporation; (16) to sell or lease its dark fiber pursuant to sections ~~86-2301 to 86-2307~~ 344 to 348 of this act; and (17) to do and perform, either for itself or its members or for any other corporation organized under the Electric Cooperative Corporation Act or for the members thereof, any and all acts and things and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the corporation is organized. Notwithstanding any law, ordinance, resolution, or regulation of any political subdivision to the contrary, each corporation may receive funds and extend loans pursuant to the Nebraska Investment Finance Authority Act.

Sec. 479. Section 70-1409, Revised Statutes Supplement, 2001, is amended to read:

70-1409. Each joint authority shall have all the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of the Joint Public Power Authority Act including, but not limited to, the right and power:

(1) To adopt bylaws for the regulation of the affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may determine;

(4) To sue and be sued in its own name and to plead and be impleaded;

(5) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money;

(6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than an interest in fee;

(7) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest in such property;

(8) To pledge or assign any money, rents, charges, or other revenue and any proceeds derived by the joint authority from the sales of property, insurance, or condemnation awards;

(9) To issue bonds of the joint authority for the purpose of providing funds for any of its corporate purposes;

(10) To authorize the construction, operation, or maintenance of any project or projects by any person, firm, or corporation, including political subdivisions and agencies of any state or of the United States;

(11) To acquire by negotiated purchase or lease an existing project, a project under construction, or other property, either individually or jointly, with one or more public power districts in this state or with any political subdivisions or agencies of this state or any other state or with other joint authorities created pursuant to the Joint Public Power Authority Act;

(12) To dispose of by negotiated sale or lease an existing project, a project under construction, or other property, either individually or jointly, with one or more public power districts in this state, with any political subdivisions or agencies of this state or any other state or, with other joint authorities created pursuant to the Joint Public Power Authority Act, except that no such sale or lease of any project located in this state shall be made to any private person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit;

(13) To fix, charge, and collect rents, rates, fees, and charges for electric power or energy or ethanol and other services, facilities, and commodities sold, furnished, or supplied through any project;

(14) To generate, produce, transmit, deliver, exchange, purchase, or sell for resale only electric power or energy or to produce, deliver, or distribute ethanol and to enter into contracts for any or all such purposes, subject to sections 70-1410 and 70-1413;

(15) To negotiate and enter into contracts for the purchase, exchange, interchange, wheeling, pooling, or transmission of electric power and energy with any public power district, any other joint authority, any political subdivision or agency of this state or any other state, any electric cooperative, or any municipal agency which owns electric generation, transmission, or distribution facilities in this state or any other state;

(16) To negotiate and enter into contracts for the sale or use of electric power and energy or ethanol with any joint authority, electric cooperative, any political subdivision or agency or any public or private electric utility of this state or any other state, any joint agency, electric cooperative, municipality, public or private electric utility, or any state or federal agency or political subdivision, subject to sections 70-1410 and 70-1413;

(17) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint authority under the Joint Public Power Authority Act, including contracts with persons, firms, corporations, and others;

(18) To apply to the appropriate agencies of the state, the United States, or any other state and to any other proper agency for such permits, licenses, certificates, or approvals as may be necessary to construct, maintain, and operate projects in accordance with such licenses, permits, certificates, or approvals, and to obtain, hold, and use the same rights granted in any licenses, permits, certificates, or approvals as any other person or operating unit would have under such documents;

(19) To employ engineers, architects, attorneys, appraisers, financial advisors, and such other consultants and employees as may be required in the judgment of the joint authority and to fix and pay their compensation from funds available to the joint authority. The joint authority may employ technical experts and such other officers, agents, and employees as it may require and shall assess their qualifications, duties, compensation, and term of office. The board may delegate to one or more of the joint authority's employees or agents such powers and duties as the board may deem proper;

(20) To make loans or advances for long-term, supplemental, short-term, and interim financing for both capital projects and operational purposes to those member districts on such terms and conditions as the board of directors of the joint authority may deem necessary and to secure such loans or advances by assignment of revenue, receivables, or other sums of the member district and such other security as the board of directors of the joint authority may determine; and

(21) To sell or lease its dark fiber pursuant to sections ~~86-2301 to 86-2307~~ 344 to 348 of this act.

Any joint authority shall have the same power of eminent domain as the public power districts have under section 70-670.

Sec. 480. Section 71-1,142, Revised Statutes Supplement, 2001, is amended to read:

71-1,142. For purposes of sections 71-1,142 to 71-1,151 and elsewhere in the Uniform Licensing Law, unless the context otherwise requires:

(1) Practice of pharmacy means (a) the interpretation, evaluation, and implementation of a medical order, (b) the dispensing of drugs and devices, (c) drug product selection, (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (g) the provision of pharmaceutical care, and (h) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records. The active practice of pharmacy means the performance of the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;

(2) Administer means to directly apply a drug or device by injection, inhalation, ingestion, or other means to the body of a patient or research subject;

(3) Administration means the act of (a) administering, (b) keeping a record of such activity, and (c) observing, monitoring, reporting, and otherwise taking appropriate action regarding desired effect, side effect, interaction, and contraindication associated with administering the drug or device;

(4) Board means the Board of Pharmacy;

(5) Caregiver means any person acting as an agent on behalf of a patient or any person aiding and assisting a patient;

(6) Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(7) Compounding means preparing, mixing, or assembling a drug or device (a) as the result of a practitioner's medical order or initiative occurring in the course of practice based upon the relationship between the practitioner, patient, and pharmacist or (b) for the purpose of, or incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding includes preparing drugs or devices in anticipation of medical orders based upon routine, regularly observed prescribing patterns;

(8) Delegated dispensing means the practice of pharmacy by which one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more persons pursuant to sections 71-1,147.42 to 71-1,147.64 under a protocol which provides that such person may perform certain dispensing functions authorized by the pharmacist or pharmacists under certain specified conditions and limitations;

(9) Deliver or delivery means to actually, constructively, or attempt to transfer a drug or device from one person to another, whether or not for consideration;

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

(11) Device means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is prescribed by a practitioner and dispensed by a pharmacist or other person authorized by law to do so;

(12) Dialysis drug or device distributor means a manufacturer or wholesaler who provides dialysis drugs, solutions, supplies, or devices, to persons with chronic kidney failure for self-administration at the person's home or specified address, pursuant to a prescription;

(13) Dialysis drug or device distributor worker means a person working for a dialysis drug or device distributor with a delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task or tasks of assembling, labeling, or delivering drugs or devices pursuant to a prescription;

(14) Dispense or dispensing means interpreting, evaluating, and implementing a medical order, including preparing and delivering a drug or device to a patient or caregiver in a suitable container appropriately labeled for subsequent administration to, or use by, a patient. Dispensing includes (a) dispensing incident to practice, (b) dispensing pursuant to a delegated dispensing permit, (c) dispensing pursuant to a medical order, and (d) any transfer of a prescription drug or device to a patient or caregiver other than by administering;

(15) Distribute means to deliver a drug or device, other than by administering or dispensing;

(16) Facility means a health care facility as defined in section 71-413;

(17) Hospital has the same meaning as in section 71-419;

(18) Person means an individual, corporation, partnership, limited liability company, association, or other legal entity;

(19) Labeling means the process of preparing and affixing a label to

any drug container or device container, exclusive of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation;

(20) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(21) Pharmaceutical care means the provision of drug therapy for the purpose of achieving therapeutic outcomes that improve a patient's quality of life. Such outcomes include (a) the cure of disease, (b) the elimination or reduction of a patient's symptomatology, (c) the arrest or slowing of a disease process, or (d) the prevention of a disease or symptomatology. Pharmaceutical care includes the process through which the pharmacist works in concert with the patient and his or her caregiver, physician, or other professionals in designing, implementing, and monitoring a therapeutic plan that will produce specific therapeutic outcomes for the patient;

(22) Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy;

(23) Pharmacy has the same meaning as in section 71-425;

(24) Drugs, medicines, and medicinal substances means (a) articles recognized in the official United States Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States, the official National Formulary, or any supplement to any of them, (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals, (c) articles, except food, intended to affect the structure or any function of the body of a human or an animal, (d) articles intended for use as a component of any articles specified in subdivision (a), (b), or (c) of this subdivision, except any device or its components, parts, or accessories, and (e) prescription drugs or devices as defined in subdivision (31) of this section;

(25) Patient counseling means the verbal communication by a pharmacist, pharmacist intern, or practitioner, in a manner reflecting dignity and the right of the patient to a reasonable degree of privacy, of information to the patient or caregiver in order to improve therapeutic outcomes by maximizing proper use of prescription drugs and devices and also includes the duties set out in section 71-1,147.35;

(26) Pharmacist in charge means a pharmacist who is designated on a pharmacy license or designated by a hospital as being responsible for the practice of pharmacy in the pharmacy for which a pharmacy license is issued and who works within the physical confines of such pharmacy for a majority of the hours per week that the pharmacy is open for business averaged over a twelve-month period or thirty hours per week, whichever is less;

(27) Pharmacist intern means (a) a student currently enrolled in an accredited college or school of pharmacy or (b) a graduate of an accredited college or school of pharmacy serving his or her internship, such internship to expire not later than fifteen months after the date of graduation or at the time of professional licensure, whichever comes first. Such pharmacist intern may compound and dispense drugs or devices and fill prescriptions only in the presence of and under the immediate personal supervision of a licensed pharmacist. Such licensed pharmacist shall either be (i) the person to whom the pharmacy license is issued or a person in the actual employ of the pharmacy licensee or (ii) the delegating pharmacist designated in a delegated dispensing agreement by a hospital with a delegated dispensing permit;

(28) Pharmacy technician means an individual at least eighteen years of age who is a high school graduate or officially recognized by the State Department of Education as possessing the equivalent degree of education, who has never been convicted of any drug-related misdemeanor or felony, and who, under the written control procedures and guidelines of an employing pharmacy, may perform those functions which do not require professional judgment and which are subject to verification to assist a pharmacist in the practice of pharmacy;

(29) Practitioner means an advanced practice registered nurse, certified registered nurse anesthetist, certified nurse midwife, dentist, optometrist, physician assistant, physician, podiatrist, or veterinarian;

(30) Prescribe means to issue a medical order;

(31) Prescription drug or device or legend drug or device means (a) a drug or device which is required under federal law to be labeled with one of the following statements prior to being dispensed or delivered: (i) Caution: Federal law prohibits dispensing without prescription; (ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or (iii) "Rx Only" or (b) a drug or device which is required by any applicable federal or state law to be dispensed pursuant only to a prescription or chart order or which is restricted to use by practitioners only;

(32) Prescription means an order for a drug or device issued by a

practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order;

(33) Nonprescription drugs means nonnarcotic medicines or drugs which may be sold without a medical order and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the laws and regulations of this state and the federal government;

(34) Public health clinic worker means a person in a public health clinic with a delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task of dispensing authorized refills of oral contraceptives pursuant to a written prescription;

(35) Public health clinic means the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic as defined in section 71-416;

(36) Signature means the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section ~~86-1701~~ 373 of this act;

(37) Supervision means the immediate personal guidance and direction by the licensed pharmacist on duty in the facility of the performance by a pharmacy technician of authorized activities or functions subject to verification by such pharmacist, except that when a pharmacy technician performs authorized activities or functions to assist a pharmacist on duty in the facility when the prescribed drugs or devices will be administered by a licensed staff member or consultant or by a licensed physician assistant to persons who are patients or residents of a facility, the activities or functions of such pharmacy technician shall only be subject to verification by a pharmacist on duty in the facility;

(38) Verification means the confirmation by a supervising pharmacist of the accuracy and completeness of the acts, tasks, or functions undertaken by a pharmacy technician to assist the pharmacist in the practice of pharmacy;

(39) Written control procedures and guidelines means the document prepared and signed by the pharmacist in charge and approved by the board which specifies the manner in which basic levels of competency of pharmacy technicians employed by the pharmacy are determined, the manner in which supervision is provided, the manner in which the functions of pharmacy technicians are verified, the maximum ratio of pharmacy technicians to one pharmacist used in the pharmacy, and guidelines governing the use of pharmacy technicians and the functions which they may perform; and

(40) Medical gas distributor means a person who dispenses medical gases to a patient or ultimate user but does not include a person who manufactures medical gases or a person who distributes, transfers, delivers, dispenses, or sells medical gases to a person other than a patient or ultimate user.

Sec. 481. Section 75-101, Reissue Revised Statutes of Nebraska, is amended to read:

75-101. (1) The members of the Public Service Commission shall be resident citizens of this state, registered voters, and, if members of or practitioners in any profession, in good standing according to the established standards of such profession. The members of the Public Service Commission shall be elected as provided in section 32-509. A candidate for the office of public service commissioner shall be a resident of the district from which he or she seeks election. Each public service commissioner shall be a resident of the district from which he or she is elected. Removal from the district shall cause a vacancy in the office of public service commissioner for the unexpired term.

(2) No person shall be eligible to the office of public service commissioner who is directly or indirectly interested in any common carrier in the state or out of it or who is in any way or manner pecuniarily interested in any common carrier subject to Chapter 75 or 86. If any commissioner becomes so interested after election or appointment, his or her office shall become vacant, except that if any commissioner becomes so interested otherwise than voluntarily, he or she shall, within a reasonable time, divest himself or herself of such interest, and failing to do so, his or her office shall become vacant.

(3) A commissioner shall not hold any other office under the government of the United States, of this state, or of any other state and shall not, while such commissioner, engage in any other occupation.

For purposes of Chapter 75:

(a) Commission, when referring to a state agency, ~~shall mean~~ means the Public Service Commission; and

(b) Commissioner ~~shall mean~~ means a member of the commission.

Sec. 482. Except as otherwise specifically provided by law, the Public Service Commission shall have jurisdiction, as prescribed, over the following subjects:

(1) Common carriers, generally, pursuant to sections 75-101 to 75-158;

(2) Grain pursuant to the Grain Dealer Act and the Grain Warehouse Act and sections 89-1,104 to 89-1,108;

(3) Manufactured homes and recreational vehicles pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles;

(4) Modular housing units pursuant to the Nebraska Uniform Standards for Modular Housing Units Act;

(5) Motor carrier registration and safety pursuant to sections 75-301 to 75-322, 75-369.03, 75-370, 75-371, 75-383, and 75-384;

(6) Pipeline carriers and rights-of-way pursuant to sections 57-1301 to 57-1307 and 75-501 to 75-503;

(7) Railroad carrier safety pursuant to sections 74-918, 74-919, 74-1323, and 75-401 to 75-430;

(8) Telecommunications carriers pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, the Telephone Consumer Slamming Prevention Act and sections 344 to 350 of this act;

(9) Transmission lines and rights-of-way pursuant to sections 70-301 and 75-702 to 75-724; and

(10) Water service pursuant to the Water Service Regulation Act.

Sec. 483. Section 75-109, Revised Statutes Supplement, 2000, as amended by section 9, Legislative Bill 435, Ninety-seventh Legislature, Second Session, 2002, is amended to read:

75-109. ~~(1)~~ Except as provided in the Agricultural Suppliers Lease Protection Act and ~~sections section 19-4603, 86-803, and 86-808 and sections 25 and 42 of this act,~~ the commission shall regulate and exercise general control as provided by law over all common and contract carriers engaged in the transportation of freight or passengers for hire or furnishing telecommunications services for hire in Nebraska intrastate commerce.

~~(2) The commission is authorized to do all things reasonably necessary and appropriate to implement the federal Telecommunications Act of 1996, Public Law 104-104, including 47 U.S.C. 251 et seq., as such sections existed on the effective date of this act, including section 252 of the act which establishes specific procedures for negotiation and arbitration of interconnection agreements between telecommunications companies. Interconnection agreements approved by the commission pursuant to section 252 of the act may contain such enforcement mechanisms and procedures that the commission determines to be consistent with the establishment of fair competition in Nebraska telecommunications markets. In addition, the commission may administratively fine pursuant to section 75-156 any person who violates any enforcement mechanism or procedure established pursuant to this subsection. The authority granted to the commission pursuant to this subsection shall be broadly construed in a manner consistent with the federal Telecommunications Act of 1996.~~

Sec. 484. Section 75-117, Reissue Revised Statutes of Nebraska, is amended to read:

75-117. Any motor carrier or regulated motor carrier as defined in section 75-302 or common carrier which fails, neglects, or refuses to comply with any order of the commission shall be guilty of a Class IV misdemeanor. Each day during which such failure, neglect, or refusal continues shall constitute a separate offense. If a motion is filed for a ~~rehearing reconsideration~~ or to set aside the order or if the order is appealed, the carrier shall not be subject to such penalty during the pendency of such motion or such appeal.

Sec. 485. Section 75-122.01, Revised Statutes Supplement, 2000, is amended to read:

75-122.01. Except as otherwise provided in section 75-134, the district courts shall have jurisdiction to enjoin a commission order only when the order was not entered in accordance with ~~the provisions of Chapter 75 or 86 and the commission's rules and regulations adopted and promulgated pursuant to such sections chapters.~~

Sec. 486. Section 75-126, Revised Statutes Supplement, 2000, is amended to read:

75-126. (1) Except as otherwise provided in this section, no common carrier shall:

(a) Charge, demand, collect, or receive from any person a greater or lesser compensation for any services rendered than it charges, demands, collects, or receives from any other person for doing a like or contemporaneous service;

(b) Make or give any undue or unreasonable preference or advantage to any particular person;

(c) Subject any type of traffic to any undue or unreasonable prejudice, delay, or disadvantage in any respect whatsoever;

(d) Charge or receive any greater compensation in the aggregate for the transportation of a like kind of property or passengers for a shorter than for a longer distance over the same line or route, except as the commission may prescribe in special cases to prevent manifest injuries, except that no manifest injustice shall be imposed upon any person at intermediate points. This section shall not prevent the commission from making group or emergency rates;

(e) Demand, charge, or collect, by any device whatsoever, a lesser or greater compensation for any service rendered than that filed with or prescribed by the commission; or

(f) Change any rate, schedule, or classification in any manner whatsoever before application has been made to the commission and permission granted for that purpose, except as otherwise provided in section ~~75-128~~ 54 of this act.

(2) This section shall not prohibit any common carrier from, and a common carrier shall not be subject to any fine, penalty, or forfeiture for, performing services free or at reduced rates to:

(a) The United States, the State of Nebraska, or any governmental subdivision thereof;

(b) The employees, both present and retired, of such common carrier;

(c) Any person when the object is to provide relief in case of any disaster;

(d) Any person who transports property for charitable purposes;

(e) Ministers and others giving their entire time to religious or charitable work; or

(f) Any person who is legally blind or visually handicapped.

Sec. 487. Section 75-128, Reissue Revised Statutes of Nebraska, is amended to read:

75-128. (1) It is hereby declared to be the policy of the Legislature that all matters presented to the commission be heard and determined without delay. All matters requiring a hearing shall be set for hearing at the earliest practicable date and in no event, except for good cause shown, which showing shall be recited in the order, shall the time fixed for hearing be more than six months after the date of filing of the application, complaint, or petition on which such hearing is to be had. Except in case of an emergency and upon a motion to proceed with less than a quorum made by all parties and supported by a showing of clear and convincing evidence of such emergency and benefit to all parties, a quorum of the commission shall hear all matters set for hearing. Except as otherwise provided in section 75-121 and except for good cause shown, a decision of the commission shall be made and filed within thirty days after completion of the hearing or after submission of affidavits in nonhearing proceedings.

(2) ~~Applications for commission approval of specific new rates or charges or changes in existing rates or charges for telephone service which have not been heard and determined within six months and thirty days from the date the application was filed may be put into effect by the common carrier, in an amount not to exceed seventy-five percent of the total amount of the application, subject to refund of any amount collected in excess of the amount which would have been collected under the new or changed rates or charges as finally approved by the commission. The refund shall include an interest payment at a rate of interest determined by the commission, except that the rate of interest shall not exceed the overall rate of return which the common carrier is authorized to earn. When making its final determination on the application, the commission shall not consider the rates and charges of the company put into effect pending such final determination. This section shall not apply to rates or charges placed into effect under section 75-616.~~

~~(3)~~ (3) In the case of any proceeding upon which a hearing is held, the transcript of testimony shall be prepared and submitted to the commission prior to entry of an order, except that it shall not be necessary to have prepared prior to commission decision the transcripts of testimony on hearings involving noncontested proceedings and hearings involving emergency rate applications under section 75-121.

~~(4)~~ (3) For each application, complaint, or petition filed with the commission, except those filed under sections 75-301 to 75-322, there shall be

charged a filing fee to be determined by the commission, but in an amount not to exceed the sum of fifty dollars payable at the time of such filing. There shall also be charged to persons regulated by the commission a hearing fee of fifty dollars for each half day of hearings if the person regulated by the commission files an application, complaint, or petition which necessitates a hearing.

Sec. 488. Section 75-132.01, Revised Statutes Supplement, 2001, is amended to read:

75-132.01. (1) Notwithstanding the provisions of section 75-131, the commission shall have exclusive original jurisdiction over any action concerning a violation of any provision of (a) ~~section 75-109, 75-604, 75-609, 75-609.01, or 86-801 to 86-810~~ by a telecommunications company the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, or the Telephone Consumer Slamming Prevention Act by any person providing telecommunications service for a fee in Nebraska intrastate commerce pursuant to such acts or (b) ~~sections 86-2301 to 86-2307~~ 344 to 348 of this act by an agency or political subdivision of the state.

(2) After all administrative remedies before the commission have been exhausted, any interested party to an action may appeal in accordance with the Administrative Procedure Act.

(3) If the commission enters an order declining jurisdiction under subsection (1) of this section, any interested person may petition the district court of the county in which such alleged violation has occurred. If it appears to the court, after a hearing, that a provision of such acts or sections has been violated, the court may issue an injunction or other proper process to restrain the telecommunications company and its directors, officers, employees, or agents or the agency or political subdivision of the state from continuing such violation and may order additional relief. Any party to the case shall have the right to appeal the decision of the district court to the Court of Appeals under the rules provided by law for appeals in civil cases.

~~(4) For purposes of this section, telecommunications company has the same meaning as in section 86-802.~~

Sec. 489. Section 75-133, Reissue Revised Statutes of Nebraska, is amended to read:

75-133. Whenever the commission has reason to believe that any motor carrier, regulated motor carrier, or other common carrier as defined described in section 75-109 is in neglect or violation of any provision of sections 75-101 to 75-801 Chapter 75 or 86, it shall at once institute an investigation and fix a time and place for hearing thereon, upon its own motion, and shall make any order as it deems just and reasonable, including, but not limited to, an order that the carrier cease and desist from continuing such neglect or violation made effective on the date of entry of the order by the commission.

Sec. 490. Section 75-134, Revised Statutes Supplement, 2000, is amended to read:

75-134. (1) A commission order entered after a hearing shall be written and shall recite (a) a discussion of the facts of a basic or underlying nature, (b) the ultimate facts, and (c) the commission's reasoning or other authority relied upon by the commission.

(2) Every order of the commission shall become effective ten days after the date of the mailing of a copy of the order to the parties of record except (a) when the commission prescribes a later effective date, (b) as otherwise provided in section 75-121 or 75-139, (c) as otherwise provided for cease and desist orders issued pursuant to section 75-133, or (d) for orders entered pursuant to section 75-319 which shall be effective on the date of entry.

(3) Except as otherwise provided in this section or for rate orders provided for in section 75-139, if one of the parties of record commences an appeal pursuant to section 75-137, the order appealed shall be in abeyance until the Court of Appeals or Supreme Court issues its mandate. Nothing in this section shall hold in abeyance an order authorizing the issuance of a certificate or permit, an order denying relief or authority, or an order entered pursuant to section 75-319.

(4) If a party of record to a telecommunications order commences an appeal in accordance with the Administrative Procedure Act, the order appealed shall become effective on the date prescribed in subsection (2) of this section and remain in effect unless upon application (a) the commission or district court issues an order staying the underlying commission order or (b)

the commission, district court, Court of Appeals, or Supreme Court issues an order reversing or modifying the underlying commission order. For purposes of this subsection, telecommunications order means an order entered by the commission pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, or the Telecommunications Relay System Act. ~~subsection (2) of section 75-109, or sections 75-604 to 75-616, 86-801 to 86-811, 86-1001 to 86-1009, or 86-1201 to 86-1222.~~

(5) The commission or district court may only issue a stay pursuant to subsection (4) of this section if it finds that (a) the applicant for the stay is likely to prevail when the matter is finally decided, (b) without relief, the applicant will suffer irreparable injury, and (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings. The commission or district court may require the party requesting such stay to give bond in such amount and conditioned as the commission or court may direct. The grant or denial of a stay shall not be considered to be a final order.

Sec. 491. Section 75-137, Revised Statutes Supplement, 2000, is amended to read:

75-137. The procedure to obtain reversal, modification, or vacation of an order entered by the commission shall be (1) by filing a notice of appeal with the commission within thirty days after the date of the mailing of a copy of the order by the commission to the party appealing or (2) by filing a motion for ~~rehearing~~ reconsideration within ten days after the date of the mailing of a copy of the order by the commission to the party appealing. If the commission overrules the motion for ~~rehearing~~ reconsideration, a notice of appeal shall be filed with the commission within thirty days after the date of the mailing of a copy of the order overruling the motion to the party appealing. When the commission fails to enter an order ruling on the motion for ~~rehearing~~ reconsideration within thirty days after such motion is filed, the appeal may be perfected by filing a notice of appeal before the commission enters an order ruling on the motion for ~~rehearing~~ reconsideration, and the review by the court shall be the same as if the commission had overruled the motion for ~~rehearing~~ reconsideration. Oral arguments on a motion for ~~rehearing~~ reconsideration shall be granted when requested and such arguments shall be heard by a majority of the commission. An appeal shall be deemed perfected and the court shall have jurisdiction of the cause when a notice of appeal has been filed and the docket fee required by section 33-103 has been deposited in the office of the executive director of the commission. After being perfected, no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional.

Sec. 492. Section 75-155, Reissue Revised Statutes of Nebraska, is amended to read:

75-155. Unless a more specific criminal penalty is provided, any person who knowingly and willfully violates ~~any provision of~~ Chapter 75 or 86, any rule, regulation, or order of the commission, or any term or condition of any permit or certificate issued by the commission ~~shall be~~ is guilty of a Class IV misdemeanor. Each day of such violation ~~shall constitute~~ constitutes a separate offense.

Sec. 493. Section 75-156, Revised Statutes Supplement, 2000, is amended to read:

75-156. (1) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any person, motor carrier, regulated motor carrier, common carrier, or contract carrier for each violation of (a) any provision of sections 75-301 to 75-390 administered by the commission or section 75-126 as such section applies to any person or carrier specified in sections 75-301 to 75-390, (b) a commission order entered pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, or the Telecommunications Relay System Act, ~~subsection (2) of section 75-109, or sections 75-604 to 75-616, 86-801 to 86-811, 86-1001 to 86-1009, or 86-1201 to 86-1222,~~ (c) any term, condition, or limitation of any certificate or permit issued by the commission pursuant to sections 75-301 to 75-390, or (d) any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to sections 75-301 to 75-390. The civil penalty assessed under this section shall not exceed two million dollars per year for each violation. The amount

of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(2) Upon notice and hearing in accordance with this section and section 75-157, the commission may enter an order assessing a civil penalty of up to one hundred dollars against any person, firm, partnership, limited liability company, corporation, cooperative, or association for failure to file an annual report as required by section 75-116 and as prescribed by commission rules and regulations. Each day during which the violation continues after the commission has issued an order finding that a violation has occurred constitutes a separate offense. Any party aggrieved by an order of the commission under this section, except an order assessing a civil penalty issued under subdivision (1)(b) of this section, has the rights of appeal set forth in section 75-136.01. For an order assessing a civil penalty issued under subdivision (1)(b) of this section, any party aggrieved may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

(3) When any person or party is accused of any violation listed in this section, the commission shall notify such person or party in writing (a) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based, (b) specifically identifying the particular statute, certificate, permit, rule, regulation, or order purportedly violated, (c) that a hearing will be held and the time, date, and place of the hearing, (d) that in addition to the civil penalty, the commission may enforce additional penalties and relief as provided by law, and (e) that upon failure to pay any civil penalty determined by the commission, the penalty may be collected by civil action in the district court of Lancaster County.

Sec. 494. Section 76-2301, Reissue Revised Statutes of Nebraska, is amended to read:

76-2301. Sections 76-2301 to 76-2330 and section 495 of this act shall be known and may be cited as the One-Call Notification System Act.

Sec. 495. Section 86-304, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-304.~~ Any person who willfully and maliciously breaks, injures, destroys, or otherwise interferes with the poles, wires, or other facilities of any telecommunications or railroad company or electric light and power company in this state or who willfully and purposely interrupts or interferes with the transmission of telecommunications messages or the transmission of light, heat, and power in this state shall be subject to the action and penalty prescribed in section 28-519.

Sec. 496. Section 76-2321, Reissue Revised Statutes of Nebraska, is amended to read:

76-2321. (1) A person shall not commence any excavation without first giving notice to every operator. An excavator's notice to the center shall be deemed notice to all operators. An excavator's notice to operators shall be ineffective for purposes of this subsection unless given to the center. Notice to the center shall be given at least two full business days, but no more than ten business days, before commencing the excavation, except notice may be given more than ten business days in advance when the excavation is a road construction, widening, repair, or grading project provided for in ~~section 86-334~~ sections 413 to 415 and 474 to 476 of this act. An excavator may commence work before the elapse of two full business days when (a) notice to the center has been given as provided by this subsection and (b) all the affected operators have notified the excavator that the location of all the affected operator's underground facilities have been marked or that the operators have no underground facilities in the location of the proposed excavation.

(2) The notice required pursuant to subsection (1) of this section shall include (a) the name and telephone number of the person making the notification, (b) the name, address, and telephone number of the excavator, (c) the location of the area of the proposed excavation, including the range, township, section, and quarter section, unless the area is within the corporate limits of a city or village, in which case the location may be by street address, (d) the date and time excavation is scheduled to commence, (e) the depth of excavation, (f) the type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring, and (g) whether the use of explosives is anticipated.

Sec. 497. Section 86-1601, Reissue Revised Statutes of Nebraska, is

amended to read:

~~86-1601.~~ Sections ~~86-1601 to 86-1606~~ 497 to 502 of this act shall be known and may be cited as the Nebraska Plane Coordinate System Act.

Sec. 498. Section 86-1602, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1602.~~ (1) For purposes of the Nebraska Plane Coordinate System Act, Nebraska Plane Coordinate System means the system of plane coordinates for designating the geographic position of points on the surface of the earth, within the State of Nebraska, which have been established by the National Ocean Service/National Geodetic Survey, or its successors, for defining and stating the geographic positions or locations of points on the surface of the earth, within the State of Nebraska; and

(2) For purposes of more precisely defining the Nebraska Plane Coordinate System, the following definition by the National Ocean Service/National Geodetic Survey is also adopted:

The Nebraska Plane Coordinate System is a Lambert conformal conic projection of the North American Datum of 1983, having standard parallels at north latitudes 40 degrees 00 minutes and 43 degrees 00 minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 100 degrees 00 minutes west of Greenwich and the parallel 39 degrees 50 minutes north latitude. This origin is given the coordinates. N = 0 meters and E = 500,000 meters.

Sec. 499. Section 86-1603, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1603.~~ The plane coordinate values for a point on the earth's surface used to express the geographic position or location of such point of this system shall consist of two distances expressed in meters and decimals of a meter when using the Nebraska Plane Coordinate System. One of the distances, to be known as the "northing" or "N", shall give the position in a north-and-south direction. The other, to be known as the "easting" or "E", shall give the position in an east-and-west direction. These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented horizontal control stations of the North American National Geodetic Horizontal Network as published by the National Ocean Service/National Geodetic Survey, or its successors, and whose plane coordinates have been computed based on the system described in the Nebraska Plane Coordinate System Act. Any such station may be used for establishing a survey connection to the Nebraska Plane Coordinate System.

Sec. 500. Section 86-1604, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1604.~~ No coordinates based on the Nebraska Plane Coordinate System purporting to define the position of a point on a land boundary shall be presented to be recorded in any public land records or deed records unless such point is within one kilometer of a monumented horizontal control station established in conformity with the standards of accuracy and specifications for first-order or second-order geodetic surveying, as prepared and published by the Federal Geodetic Control Subcommittee of the United States Department of Commerce. Standards and specifications of the Federal Geodetic Control Subcommittee, or its successor, in force on the date of the survey shall apply. Publishing existing monumented horizontal control stations, or the acceptance with intent to publish the newly established monumented horizontal control stations, by the National Ocean Service/National Geodetic Survey shall constitute evidence of adherence to the Federal Geodetic Control Subcommittee specifications. The State Surveyor may grant a waiver of the requirements of this section upon submission of evidence that the standards of accuracy and specifications used exceed the requirements of this section.

Sec. 501. Section 86-1605, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1605.~~ The use of the term "Nebraska Plane Coordinate System" on any map, report, survey, or other document shall be limited to coordinates based upon the Nebraska Plane Coordinate System.

Sec. 502. Section 86-1606, Reissue Revised Statutes of Nebraska, is amended to read:

~~86-1606.~~ Descriptions of tracts of land by reference to subdivisions, lines or corners of the United States public land survey, or other original pertinent surveys, are hereby recognized as the basic and prevailing method for describing tracts of land. Whenever coordinates of the Nebraska Plane Coordinate System are used in descriptions of tracts of land, they shall be construed as being supplementary to descriptions of such subdivisions, lines or corners of the United States public land survey, or such other original pertinent surveys contained in official plats and field notes of record. In the event of any conflict, coordinates of the Nebraska

Plane Coordinate System shall not determine the issue, but may be used as collateral facts to show additional evidence.

Sec. 503. Section 79-215, Revised Statutes Supplement, 2001, is amended to read:

79-215. (1) Except as otherwise provided in this section, a student is a resident of the school district where he or she resides or any school district where at least one of his or her parents reside and shall be admitted to any such school district upon request without charge.

(2) A school board shall admit any homeless student that requests admission without charge.

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

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

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

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

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

(8) When a student is not a ward of the state or a ward of any court and is residing in a residential setting located in Nebraska for reasons other than to receive an education and the residential setting is operated by a service provider which is certified or licensed by the Department of Health and Human Services or is enrolled in the medical assistance program established under sections 68-1018 to 68-1025 and Title XIX or XXI of the federal Social Security Act, as amended, the student shall remain a resident of the district in which he or she resided immediately prior to residing in such residential setting. Upon request by a parent or legal guardian, the resident school district shall contract with the district in which such residential setting is located for the provision of all educational services, including all special education services. If the parent or legal guardian has requested that the resident school district contract with the district in which such residential setting is located, the district in which such residential setting is located shall contract with the resident district and provide all educational services, including all special education services, to the student. If the two districts cannot agree on the amount of the contract, the State Department of Education shall determine the amount to be paid by the resident district to the district in which such residential setting is located based on the needs of the student, approved special education rates, the department's general experience with special education budgets, and the cost per student in the district in which such residential setting is located. Once the contract has been entered into, all legal responsibility for special education and related services shall be transferred to the school district in which the residential setting is located. The resident district for a student who is not a ward of the state or a ward of any court does not change when the student moves from one residential setting to another.

(9) In the case of any individual eighteen years of age or younger who is a ward of the state or any court and who is placed in a county detention home established under section 43-2,110, the cost of his or her education shall be paid by the state, regardless of the district in which he

or she resided at the time he or she became a ward, to the agency or institution which: (a) Is selected by the county board with jurisdiction over such detention home; (b) has agreed or contracted with such county board to provide educational services; and (c) has been approved by the State Department of Education pursuant to rules and regulations prescribed by the State Board of Education.

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

(11) On a form prescribed by the State Department of Education, an adult with legal or actual charge or control of a student shall provide the name of the student, the name of the adult with legal or actual charge or control of the student, the address where the student is residing, and the ~~phone~~ telephone number and address where the adult may generally be reached during the school day. If the student is homeless or if the adult does not have a ~~phone~~ telephone number and address where he or she may generally be reached during the school day, those parts of the form may be left blank and a box may be marked acknowledging that these are the reasons these parts of the form were left blank. The adult with legal or actual charge or control of the student shall also sign the form.

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

Sec. 504. Section 79-1241.02, Revised Statutes Supplement, 2001, is amended to read:

79-1241.02. It is the intent of the Legislature that any funds appropriated pursuant to the intent of section 79-1241.01 for technology-related projects or technology initiatives undertaken by an educational service unit follow the review process established in sections ~~86-1501 to 86-1514~~ 282 to 294 of this act, including the review by the technical panel of the Nebraska Information Technology Commission.

Sec. 505. Section 79-1328, Revised Statutes Supplement, 2001, as amended by section 8, Legislative Bill 3, Ninety-seventh Legislature, First Special Session, 2001, is amended to read:

79-1328. (1) For fiscal years 2001-02 and 2002-03, the Excellence in Education Council shall grant up to one million five hundred thousand dollars per fiscal year to a grantee for a distance education network completion grant. The distance education network completion grant shall fund engineering, equipment, and installation charges for two-way interactive distance education capacity for public high school buildings that do not currently have such capacity. The grant application shall:

(a) Designate the State Department of Education as the fiscal agent for the grant;

(b) Specify criteria for determining the public high school buildings for which the grant will fund engineering, equipment, and installation charges;

(c) Specify criteria for determining the engineering, equipment, and installation charges which the grant will fund;

(d) Specify the technique for prorating funding and collecting funds from districts if the charges for engineering, equipment, and installation for the public high school buildings for which grant funds are used exceed the grant funds available;

(e) Specify the procedure for assuring that all projects meet the standards of the technical panel created in section ~~86-1511~~ 291 of this act, including periodic reviews of projects by the technical panel;

(f) Specify the timeline for completing a statewide two-way interactive distance education network that includes all participating public high schools; and

(g) Specify that any equipment obtained through a grant is the property of the school district and not the department.

(2) For a public high school to participate in the grant, the school district must apply to the department as the fiscal agent on a form prescribed by the department on or before a date established by the department. The application shall require evidence that the school district has made a commitment to be part of a distance education consortium and that the distance education consortium has accepted the district's commitment. The application shall also require the applicant district to list the classes that the district anticipates accessing from the consortium or a community college and any classes that the district anticipates that it will offer to other districts in the consortium through distance education.

(3) The department as the fiscal agent may use up to twenty-five thousand dollars per fiscal year of the grant funds to fund a project manager.

Sec. 506. Section 81-1117, Reissue Revised Statutes of Nebraska, is amended to read:

81-1117. (1) As used in this section, unless the context otherwise requires, information management includes, but is not limited to:

(a) Mainframe computers, minicomputers, microprocessors, word processors, and desktop computers;

(b) Any peripheral device to be used with the equipment listed in subdivision (1)(a) of this section for such purposes as data input and output, data storage, or data communications;

(c) Any code or program to control the operation of the equipment or devices listed in subdivision (1)(a) or (1)(b) of this section; and

(d) Employment of professional expertise for computer system design, operations, or program development.

(2) Subject to review and approval by the Director of Administrative Services, the information management services administrator shall have the following powers, duties, and responsibilities:

(a) He or she may review the accounting and other records and reporting systems of all divisions within the Department of Administrative Services and within every other department and agency of the state;

(b) He or she shall systematically review the potential application of information management to any work performed outside the information management services division or by any department or agency of the state or any subdivision of any department or agency of the state, and if he or she finds that the costs of mechanizing such work will not exceed present costs or that efficiencies may be achieved, he or she may accept responsibility for the performance of such work. He or she may also review current computer applications to determine if revision or deletion of computer applications would be beneficial. The findings of reviews made pursuant to this subdivision shall be reported to the Governor and the Legislative Fiscal Analyst;

(c) He or she may, with the approval of the director, make such revisions to internal systems for production of accounting and other reports as may be necessary to permit economical undertaking of work to be performed by the information management services division for any agency or department of the state;

(d) He or she shall organize the information management services division to provide system review, system design, feasibility studies, and machine reviews;

(e) He or she may review the operations of information management installations as may exist in any department or agency of the state and may cause such operations to be merged with those of the information management services division in the event that a cost analysis shows that economic advantage may be achieved. He or she may permit the establishment of departmental or agency information management operations in any department or agency of the state if his or her analysis of feasibility shows a potential economy or a substantial convenience for the state incident to such separate establishment. No state agency shall hire, purchase, lease, or rent any information management item listed in subsection (1) of this section without the written approval of the information management services administrator. All new computer programs developed or acquired for use with information management equipment of any state agency shall be documented according to standards developed or approved by the information management services administrator;

(f) He or she shall prepare a budget in sufficient time in advance of the statutory date for submittal of budget requests by departments and agencies of the state as to permit each department and agency for which services are performed, or are to be performed during the request budget period, to be informed of the cost of maintaining the current fiscal year's production work for inclusion within their respective budget requests;

(g) He or she shall provide for a system of charges for services rendered by the information management services division of the Department of Administrative Services to any other department or agency of the state when these charges are allocable to a particular project carried on by such department or division. Such standard rate charges shall, as nearly as may be practical, reflect the actual costs incurred in the performance of services for such department or agency. Such system of charges shall be annually reviewed by the Legislature's Committee on Appropriations. Rates planned for the coming fiscal year shall be included in the instructions for completion of budget request forms as annually prepared by the Department of Administrative Services budget division. If rate revisions are required during the fiscal year to reflect changes in the information management services division's operating costs, these revisions shall be announced to state agencies at least thirty days prior to their use in billing these agencies for service. Miscellaneous supplies shall be billed to using agencies at actual cost.

Equipment used primarily by one agency for special applications shall be billed to that agency at actual cost. In the event of saturation of the information management services division with the resulting need for contractual support to be furnished by another information management installation, agencies shall be billed at actual cost. The charges received by the department for information management services shall be credited to a fund hereby created which shall be known as the Information Management Revolving Fund. Expenditures shall be made from such fund to finance the operations of the information management services division in accordance with appropriations made by the Legislature. ~~Any money in the Data Processing Revolving Fund on April 3, 1998, shall be transferred to the Information Management Revolving Fund on or after such date.~~ Any money in the Information Management Revolving Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act;

(h) He or she may provide information management services and technical assistance to any subdivision of government as provided for under the Interlocal Cooperation Act or the Joint Public Agency Act;

(i) He or she shall provide for the centralization of all administrative work, including that of educational institutions, into the information management services division;

(j) He or she shall provide definitions of standards and common data elements, coordinate the collection of data, consolidate data files or data banks, and review and approve or disapprove the establishment of separate data banks; and

(k) He or she shall provide assistance as requested by the Nebraska Information Technology Commission to support the technical panel created in section ~~86-1511~~ 291 of this act.

Each member of the Legislature shall receive a copy of the report required by subdivision (2)(b) of this section by making a request for it to the administrator.

Sec. 507. Section 81-1120.17, Reissue Revised Statutes of Nebraska, is amended to read:

81-1120.17. The division of communications shall have the following duties, powers, and responsibilities:

(1) To coordinate the purchase, lease, and use of communications services equipment and facilities for state government;

(2) To advise departments and agencies of the state and political subdivisions thereof as to systems or methods to be used to meet requirements efficiently and effectively;

(3) To provide assistance as requested by the Nebraska Information Technology Commission to support the technical panel created in section ~~86-1511~~ 291 of this act;

(4) To consolidate and integrate radio communications systems and services of state agencies so far as practical and to provide for their joint use by the agencies;

(5) To consolidate telephone and telephone-related activities, so far as practical, and to provide for their joint use by the agencies;

(6) To assume management responsibility for any consolidated system or service and approve all purchases and contracts for such communications activities;

(7) To enter into agreements for the mutual support and use of communications services of the agencies and departments of state government and its political subdivisions;

(8) To provide for the rendering of mutual aid between state government and its political subdivisions and to cooperate with other states and the federal government with respect to the organizing of communications in expediting the carrying out of mutual aid in disasters, emergencies, and civil defense emergencies under the Emergency Management Act;

(9) To use or acquire communications facilities now owned or operated by any state agency and to compensate such agency when appropriate;

(10) To standardize policies and procedures for the use of such services in such a manner that communications systems in the domain of public safety or security not be compromised;

(11) To assume responsibility for the maintenance and repair of state-owned communications facilities so far as practical;

(12) To coordinate and consolidate maintenance and repair procedures and facilities so far as possible in the light of good business practice and the requirements of the agencies and departments concerned;

(13) Subject to the conditions provided in section 81-1120.19, to contract with qualified suppliers and communications common carriers for communications facilities or services, including private-line services;

(14) To apply for, receive, coordinate, and hold or, if appropriate, assist agencies in applying for, receiving, or holding such authorizations, licenses, and allocations of channels and frequencies as are necessary to carry out the purposes of sections 81-1120.01 to 81-1120.03 and 81-1120.15 to 81-1120.28;

(15) To acquire real estate, equipment, and other property as an agency of the state, subject to the provisions of section 81-1120.19;

(16) To cooperate with the Nebraska Emergency Management Agency as to its needs for emergency communications services; and

(17) To insure that communications facilities are not used for any purpose which is contrary to the policy and intent of sections 81-1120.01 to 81-1120.03 and 81-1120.15 to 81-1120.28 or contrary to the laws and agreements under which the facilities are to be utilized.

Sec. 508. Section 81-1120.19, Reissue Revised Statutes of Nebraska, is amended to read:

81-1120.19. The division shall have authority to purchase or lease communications facilities, services, or channels on terms which are for the best interests of the State of Nebraska. In making the decision as to what proposal is for the best interests of the state, the decision of the division shall be based upon, but not necessarily limited to, (1) the total cost to the state, computed in accordance with accepted governmental cost-accounting procedures taking into account taxes to be paid or foregone, interest rates, and obsolescence; (2) the quality of the service offered; (3) the comprehensiveness of the proposed facilities or plan; (4) the financial responsibility of the supplier or carrier submitting the proposal; (5) the repair and maintenance capabilities of the supplier or carrier; (6) the experience as a communications carrier or supplier, as applicable; and (7) the alternate methods or facilities available. The powers conferred by this section shall be subject to the condition that, except for existing state-owned facilities, the division shall obtain all exchange, intercity, toll, wide-area and private-line communications service from telecommunications carriers regulated and that are certificated or permitted by the Public Service Commission in the for any area or areas in which such services are rendered. Any purchase or lease, except from such regulated telecommunications carriers, made by the division shall be made through the materiel division of the Department of Administrative Services pursuant to the functions, powers, and duties of such division.

Sec. 509. Section 81-1576, Reissue Revised Statutes of Nebraska, is amended to read:

81-1576. As used in sections 81-1575 to 81-1577, unless the context otherwise requires:

(1) Hazardous substance shall mean any substance defined in subsection (14) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as it existed on January 1, 1985, but not including any substance regulated as a hazardous waste under subtitle C of such act;

(2) Registration shall mean the submission of information on a form which includes, but is not limited to:

(a) A description of the type and size of the storage tank;

(b) The number of barrels or other measurement used to determine the storage capacity of the tank;

(c) A list of all hazardous substances which are or will be stored in the tank;

(d) The name and address of the facility at which the tank is located;

(e) The name and address of the person, firm, or corporation owning the storage tank and, if different, the name and address of the person who operates the storage tank;

(f) The name of the contact person and a ~~phone~~ telephone number where the contact person can be reached at any time in the event of an emergency involving the tank or facility at which the tank is located; and

(g) If the owner or operator of the storage tank is a public agency, the registration shall include the name of the supervisor of the division, section, or office which operates the tank; and

(3) Storage tank shall mean any tank having a storage capacity in excess of one thousand gallons used for the containment of hazardous substances for any period of time, except those tanks which are regulated under rules and regulations adopted pursuant to section 81-502 in accordance with standard K 61.1(1972) of the American National Standards Institute.

Sec. 510. Section 81-1849, Reissue Revised Statutes of Nebraska, is amended to read:

81-1849. To receive the notices provided for in section 81-1848, a

victim shall keep the county attorney informed of his or her current address and ~~phone~~ telephone number until sentence has been imposed or the final disposition reached in the case in which the victim is involved, whichever is earlier.

Sec. 511. The Revisor of Statutes shall assign:

- (1) Sections 2 to 415 of this act to Chapter 86;
- (2) Section 420 of this act to Chapter 25, article 8;
- (3) Sections 421 to 424 of this act to Chapter 25, article 21;
- (4) Sections 430 and 431 of this act to Chapter 28, article 5;
- (5) Sections 434 and 435 of this act to Chapter 30;
- (6) Section 441 of this act to Chapter 54;
- (7) Sections 468 to 476 of this act to Chapter 70, article 3;
- (8) Section 482 of this act to Chapter 75, article 1;
- (9) Section 495 of this act to Chapter 76, article 23; and
- (10) Sections 497 to 502 of this act to Chapter 76.

Sec. 512. Sections 2 to 426, 428 to 435, 437 to 441, 467 to 510, 513, and 515 of this act become operative on January 1, 2003. The other sections of this act become operative on their effective date.

Sec. 513. Original sections 2-3917.02, 25-2503, 28-515, 28-711, 28-1310, 43-158, 70-301, 75-101, 75-117, 75-128, 75-133, 75-155, 75-605, 75-607, 75-608, 75-611 to 75-616, 76-2301, 76-2321, 81-1117, 81-1120.17, 81-1120.19, 81-1576, 81-1849, 81-2301 to 81-2303, 81-2305, 81-2306, 81-2308, 81-2309 to 81-2313, 81-2601, 81-2603 to 81-2605, 86-101 to 86-107, 86-109, 86-111, 86-112, 86-301 to 86-309, 86-329, 86-331.01 to 86-331.04, 86-334 to 86-338, 86-401 to 86-412, 86-502, 86-601, 86-701 to 86-712, 86-801, 86-802, 86-805 to 86-807, 86-809, 86-810, 86-1001 to 86-1004, 86-1006 to 86-1009, 86-1101 to 86-1109, 86-1201 to 86-1218, 86-1221, 86-1301 to 86-1305, 86-1307, 86-1401, 86-1402, 86-1404, 86-1406 to 86-1410, 86-1501 to 86-1514, 86-1601 to 86-1606, 86-1803 to 86-1811, 86-1901 to 86-1904, 86-1906, 86-1910, 86-1911, 86-2002 to 86-2007, and 86-2009 to 86-2013, Reissue Revised Statutes of Nebraska, sections 2-1570, 25-2602.01, 49-14,141, 52-1307, 52-1314, 75-122.01, 75-126, 75-134, 75-137, 75-156, 75-606, 75-609 to 75-610, 75-617, 81-1120.35 to 81-1120.38, 81-1120.40, 81-1190 to 81-1192, 81-1194, 81-1195, 81-1196.01, 81-1199, 81-11,102, 81-2304, 81-2307, 81-2308.01, 81-2602, 86-803, 86-811, 86-1005, 86-1110, 86-1111, 86-1219, 86-1222, 86-1306, 86-1701, and 86-2101 to 86-2116, Revised Statutes Supplement, 2000, sections 18-419, 28-401, 70-625, 70-704, 70-1409, 71-1,142, 75-132.01, 75-604, 79-215, 79-1241.02, 86-804, 86-808, 86-1403, 86-1405, 86-1905, 86-1907 to 86-1909, 86-2001, 86-2008, 86-2014, 86-2201 to 86-2214, and 86-2301 to 86-2307, Revised Statutes Supplement, 2001, sections 9-812 and 79-1328, Revised Statutes Supplement, 2001, as amended by sections 1 and 8, respectively, Legislative Bill 3, Ninety-seventh Legislature, First Special Session, 2001, and section 75-109, Revised Statutes Supplement, 2000, as amended by section 9, Legislative Bill 435, Ninety-seventh Legislature, Second Session, 2002, are repealed.

Sec. 514. Original sections 28-109, 39-101, 60-102, 60-471, 60-501, 60-636, 60-638, 60-639, 60-640, 60-678, 60-6,142, 60-6,144, 60-6,226, 60-6,241, 60-6,304, 60-6,349, and 60-6,351, Reissue Revised Statutes of Nebraska, sections 60-311.14, 60-680, and 60-1417.01, Revised Statutes Supplement, 2000, and sections 60-301, 60-4,182, and 60-601, Revised Statutes Supplement, 2001, are repealed.

Sec. 515. The following sections are outright repealed: Sections 86-108, 86-110, 86-113, 86-201, 86-202, 86-203, 86-208 to 86-211, 86-330, 86-331, 86-503, 86-602, 86-603, and 86-1220, Reissue Revised Statutes of Nebraska.